

STATE OF KANSAS

**2013 SESSION LAWS
OF KANSAS
VOL. 1**

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

PASSED DURING THE 2013 REGULAR SESSION OF THE
LEGISLATURE OF THE STATE OF KANSAS

Date of Publication of this Volume
July 1, 2013

AUTHENTICATION

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 2013 regular session of the Legislature of the State of Kansas, begun on the 14th day of January, A.D. 2013, and concluded on the 20th day of June, A.D. 2013; 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. 2013, except when otherwise provided.

Given under my hand and seal this 1st day of July, A.D. 2013.

KRIS W. KOBACH,
Secretary of State

(SEAL)

EXPLANATORY NOTES

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 The bill index, subject index and list of statutes repealed or amended will assist you in locating bills of interest.

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Secretary of State	Kris W. Kobach	Piper	Rep.
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<i>Name and residence</i>	<i>Party</i>	<i>Term</i>
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Jerry Moran , Hays	Republican	Term expires Jan. 3, 2017

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(Terms expire January 3, 2015)

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Apple, Pat , P.O. Box 626, Louisburg 66053	Rep.	37
Arpke, Tom , 512 W. Iron Ave., Salina 67401	Rep.	24
Bowers, Elaine S. , 1326 N. 150th Road, Concordia 66901	Rep.	36
Bruce, Terry , P.O. Box 726, Hutchinson 67504	Rep.	34
Denning, Jim , 8416 W. 115th St., Overland Park 66210	Rep.	8
Donovan, Leslie D. (Les) Sr. , 314 N. Rainbow Lake, Wichita 67235	Rep.	27
Emler, Jay Scott , 1457 Shawnee Rd., Lindsborg 67456	Rep.	35
Faust-Goudeau, Oletha , 4158 Regents Ln., Wichita 67208	Dem.	29
Fitzgerald, Steve , 3100 Tonganoxie Rd., Leavenworth 66048	Rep.	5
Francisco, Marci , 1101 Ohio, Lawrence 66044	Dem.	2
Haley, David , 936 Cleveland Ave., Kansas City 66101	Dem.	4
Hawk, Tom , 2600 Woodhaven Ct., Manhattan 66502	Dem.	22
Hensley, Anthony , 2226 S.E. Virginia Ave., Topeka 66605	Dem.	19
Holland, Tom , 961 E. 1600 Rd., Baldwin City 66006	Dem.	3
Holmes, Mitch , 211 S.E. 20th Ave., St. John 67576	Rep.	33
Kelly, Laura , 234 S.W. Greenwood Ave., Topeka 66606	Dem.	18
Kerschen, Dan , 645 S. 263 West, Garden Plain 67050	Rep.	26
King, Jeff , 1212 N. 2nd St., Independence 67301	Rep.	15
Knox, Forrest , 17120 Udall Rd., Altoona 66710	Rep.	14
LaTurner, Jake , 204 E. Euclid, Pittsburg 66762	Rep.	13
Longbine, Jeff , 2801 Lakeridge Rd., Emporia 66801	Rep.	17
Love, Garrett , P.O. Box 1, Montezuma 67867	Rep.	38
Lynn, Julia , 18837 W. 115th Terr., Olathe 66061	Rep.	9
Masterson, Ty , 1539 Phyllis Ln., Andover 67002	Rep.	16
McGinn, Carolyn , P.O. Box A, Sedgwick 67135	Rep.	31
Melcher, Jeff , 11424 Canterbury Cr., Leawood 66211	Rep.	11
O'Donnell, Michael , 1435 W. Haskell, Wichita 67213	Rep.	25
Olson, Rob , 15944 S. Clairborne St., Olathe 66062	Rep.	23
Ostmeyer, Ralph , Box 97, Grinnell 67738	Rep.	40
Petersen, Mike , 2608 Southeast Dr., Wichita 67216	Rep.	28
Pettey, Pat , 5316 Lakewood St., Kansas City 66106	Dem.	6
Pilcher-Cook, Mary , 13910 W. 58th Pl., Shawnee 66216	Rep.	10
Powell, Larry , 2209 Grandview Dr. East, Garden City 67846	Rep.	39
Pyle, Dennis , 2979 Kingfisher Rd., Hiawatha 66434	Rep.	1
Schmidt, Vicki , 5906 S.W. 43rd Ct., Topeka 66610	Rep.	20
Smith, Greg , 8605 Robinson, Overland Park 66212	Rep.	21
Tyson, Caryn , P.O. Box 191, Parker 66072	Rep.	12
Wagle, Susan , 4 N. Sagebrush, Wichita 67230	Rep.	30
Wolf, Kay , 8339 Roe, Prairie Village 66207	Rep.	7

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<i>Name and residence</i>	<i>Party</i>	<i>Dist.</i>
Alcala, John , 520 N.E. Lake, Topeka 66616	Dem.	57
Alford, J. Stephen , 4179 E. Rd. 19, Ulysses 67880	Rep.	124
Ballard, Barbara W. , 1532 Alvamar Dr., Lawrence 66047	Dem.	44
Barker, John E. , 103 Wassinger Ave., Abilene 67410	Rep.	70
Becker, Steven R. , P.O. Box 384, Buhler 67522	Rep.	104
Bideau, Ed , 14 S. Rutter, Chanute 66720	Rep.	9
Boldra, Sue , 2405 General Custer Rd., Hays 67601	Rep.	111
Bollier, Barbara , 6910 Overhill Rd., Mission Hills 66208	Rep.	21
Bradford, John , 125 Rock Creek Loop, Lansing 66043	Rep.	40
Bridges, Carolyn L. , 5219 E. 1st St., Wichita 67208	Dem.	83
Bruchman, Rob , 5016 W. 108th Terr., Overland Park 66211	Rep.	20
Brunk, Steven R. , 8119 E. Champions Ct., Wichita 67226	Rep.	85
Burroughs, Tom , 3131 S. 73rd Terr., Kansas City 66106	Dem.	33
Campbell, Larry L. , 15803 S. Avalon, Olathe 66062	Rep.	26
Carlin, Sydney , 1650 Sunny Slope Ln., Manhattan 66502	Dem.	66
Carlson, Richard , 26810 Jeffrey Rd., St. Marys 66536	Rep.	61
Carpenter, Will , 6965 S.W. 18th, El Dorado 67042	Rep.	75
Cassidy, Ward Michael , 420 E. 2nd, Box 303, St. Francis 67756	Rep.	120
Christmann, Marshall , 816 S. Grand, Lyons 67554	Rep.	113
Claeys, J.R. , 2356 Montclair Dr., Salina 67401	Rep.	69
Clayton, Stephanie , 9825 Woodson Dr., Overland Park 66207	Rep.	19
Concannon, Susan L. , 921 N. Mill St., Beloit 67420	Rep.	107
Corbet, Ken , 10351 S.W. 61st, Topeka 66610	Rep.	54
Couture-Lovelady, Travis , 2680 Three Rd., Palco 67657	Rep.	110
Crum, J. David , 2903 Lakeshore Dr., Augusta 67010	Rep.	77
Davis, Paul , 1731 Indiana, Lawrence 66044	Dem.	46
DeGraaf, Pete , 1545 E. 119th, Mulvane 67110	Rep.	82
Dierks, Diana , 1221 Sunrise Dr., Salina 67401	Rep.	71
Dillmore, Nile , 1102 Jefferson, Wichita 67203	Dem.	92
Doll, John , 2927 Cliff Place, Garden City 67846	Rep.	123
Dove, Willie , 14715 Timber Ln., Bonner Springs 66012	Rep.	38
Edmonds, John , 209 N.E. Ten Rd., Great Bend 67530	Rep.	112
Edwards, George F. (Joe) II , 256 Van Arsdale, Haysville 67060	Rep.	93
Esau, Keith , 11702 S. Winchester St., Olathe 66061	Rep.	14
Ewy, John L. , 801 Roughton St., Jetmore 67854	Rep.	117
Finch, Blaine , 5 S.W. Fairview Dr., Ottawa 66067	Rep.	59
Finney, Gail , 1754 N. Madison, Wichita 67214	Dem.	84
Frownfelter, Stan , 5225 Crest Dr., Kansas City 66106	Dem.	37
Gandhi, Shanti , 5802 Clarion Lakes Way, Topeka 66610	Rep.	52
Garber, Randy , 2424 Timberlane Terr., Sabetha 66534	Rep.	62
Goico, Mario , 1254 N. Pine Grove Ct., Wichita 67212	Rep.	94
Gonzalez, Ramon C. Jr. , 312 Elm, Perry 66073	Rep.	47
Grant, Robert (Bob) , 202 S. Appleton Dr., Frontenac 66763	Dem.	2
Grosserode, Amanda , 12601 W. 99th St., Lenexa 66215	Rep.	16
Hawkins, Daniel , 9406 Harvest Ln., Wichita 67212	Rep.	100

<i>Name and residence</i>	<i>Party</i>	<i>Dist.</i>
Hedke, Dennis , 1669 N. Sagebrush St., Wichita 67230	Rep.	99
Henderson, Broderick , 2710 N. 8th St., Kansas City 66101	Dem.	35
Henry, Jerry , 3515 Neosho Rd., Cummings 66016	Dem.	63
Hermanson, Phil , 5338 S. Mosley, Wichita 67216	Rep.	98
Hibbard, Larry , 858 EE 75 Rd., Toronto 66777	Rep.	13
Highland, Ron , 27487 Wells Creek Rd., Wamego 66547	Rep.	51
Hildabrand, Brett , 16820 W. 67th St., #407, Shawnee 66217	Rep.	17
Hill, Don , 1720 Luther, Emporia 66801	Rep.	60
Hineman, Don , 116 S. Longhorn Rd., Dighton 67839	Rep.	118
Hoffman, Kyle D. , 1318 Ave. T, Coldwater 67029	Rep.	116
Houser, Michael , 6891 S.W. 10th St., Columbus 66725	Rep.	1
Houston, Roderick , 4902 Looman, Wichita 67220	Dem.	89
Howell, Jim , 125 E. Buckthorn Rd., Derby 67037	Rep.	81
Huebert, Steve , 619 N. Birch, Valley Center 67147	Rep.	90
Hutton, Mark , 7118 Clearmeadow Ct., Wichita 67205	Rep.	105
Jennings, J. Russell , P.O. Box 295, Lakin 67860	Rep.	122
Johnson, Steven , 10197 S. Hopkins Rd., Assaria 67416	Rep.	108
Jones, Kevin , 416 E. 7th St., Wellsville 66092	Rep.	5
Kahrs, Mark A. , 201 N. Post Oak Rd., Wichita 67206	Rep.	87
Kelley, Kasha , P.O. Box 1111, Arkansas City 67005	Rep.	80
Kelly, Jim , 309 S. 5th, Independence 67301	Rep.	11
Kinzer, Lance Y. , 12549 S. Brougham, Olathe 66062	Rep.	30
Kleeb, Marvin , 14206 Eby, Overland Park 66221	Rep.	48
Kuether, Annie , 1346 S.W. Wayne Ave., Topeka 66604	Dem.	55
Lane, Harold , 2202 S.E. Monroe St., Topeka 66605	Dem.	58
Lunn, Jerry , 14512 Horton, Overland Park 66223	Rep.	28
Lusk, Nancy , 7700 W. 83rd St., Overland Park 66204	Dem.	22
Macheers, Charles , 21704 W. 57th Terr., Shawnee 66218	Rep.	39
Mast, Peggy , 765 Road 110, Emporia 66801	Rep.	76
McPherson, Craig , 11091 W. 133rd Terr., Apt. 7, Overland Park 66213	Rep.	8
Meier, Melanie , 722 Oak St., Leavenworth 66048	Dem.	41
Meigs, Kelly , 7842 Rosehill Rd., Lenexa 66216	Rep.	23
Menghini, Julie , 1207 E. Quincy, Pittsburg 66762	Dem.	3
Merrick, Ray , 6874 W. 164th Terr., Stilwell 66085	Rep.	27
Montgomery, Robert , 107 W. Cedar, Olathe 66061	Rep.	15
Moxley, Tom , 1852 S. 200 Rd., Council Grove 66846	Rep.	68
O'Brien, Connie , 22123 211th St., Tonganoxie 66086	Rep.	42
Osterman, Lelsie G. , 1401 W. Dallas, Wichita 67217	Rep.	97
Pauls, Janice L. , 101 E. 11th Ave., Hutchinson 67501	Dem.	102
Peck, Virgil Jr. , Box 277, Tyro 67364	Rep.	12
Perry, Emily , P.O. Box 698, Mission 66201	Dem.	24
Peterson, Michael J. , 450 N. 17th, Kansas City 66102	Dem.	32
Petty, Reid , 818 N. Lincoln, Liberal 67901	Rep.	125
Phillips, Tom , 1530 Barrington Dr., Manhattan 66503	Rep.	67
Powell, Joshua , 104 N.W. Redbud Cr., Apt. 8, Topeka 66617	Rep.	50
Proehl, Richard J. , 510 Pine Ridge Rd., Parsons 67357	Rep.	7
Read, Marty , 18244 Kansas Hwy. 52, Mound City 66056	Rep.	4

<i>Name and residence</i>	<i>Party</i>	<i>Dist.</i>
Rhoades, Marc , 1006 Lazy Creek Dr., Newton 67114	Rep.	72
Rooker, Melissa , 4124 Brookridge Dr., Fairway 66205	Rep.	25
Rothlisberg, Allan , 113 Byrd, Grandview Plaza 66441	Rep.	65
Rubin, John J. , 13803 W. 53rd St., Shawnee 66216	Rep.	18
Ruiz, Louis E. , 2914 W. 46th Ave., Kansas City 66103	Dem.	31
Ryckman, Ron Jr. , 14234 W. 158th St., Olathe 66062	Rep.	78
Ryckman, Ron Sr. , 503 N. Cedar St., Meade 67864	Rep.	115
Sawyer, Tom , 1041 S. Elizabeth, Wichita 67213	Dem.	95
Schroeder, Don , 708 Charles St., Hesston 67062	Rep.	74
Schwab, Scott , 14953 W. 140th Terr., Olathe 66062	Rep.	49
Schwartz, Sharon , 2051 20th Rd., Washington 66968	Rep.	106
Seiwert, Joe , 1111 E. Boundary Rd., Pretty Prairie 67570	Rep.	101
Shultz, Clark , P.O. Box 731, McPherson 67460	Rep.	73
Siegfried, Arlen H. , 1403 W. Prairie Terr., Olathe 66061	Rep.	121
Sloan, Tom , 772 Hwy. 40, Lawrence 66049	Rep.	45
Sloop, Patricia M. , 1950 S. Webb Rd., HM #121, Wichita 67207	Dem.	88
Suellentrop, Gene , 6813 W. Northwind Circle, Wichita 67205	Rep.	91
Sutton, Bill , 301 W. Westhoff Pl., Gardner 66030	Rep.	43
Swanson, Vern , 1422 5th St., Clay Center 67432	Rep.	64
Thimesch, Jack , 234 N. Henderson, Cunningham 67035	Rep.	114
Tietze, Annie , 329 S.W. Yorkshire Rd., Topeka 66606	Dem.	53
Todd, James Eric , 9812 W. 118th St., Apt. 3, Overland Park 66210	Rep.	29
Trimmer, Ed , 1402 E. 9th, Winfield 67156	Dem.	79
Vickrey, Jene , 502 S. Countryside Dr., Louisburg 66053	Rep.	6
Victors, Ponka-We , P.O. Box 48081, Wichita 67201	Dem.	103
Ward, Jim , 3100 E. Clark, Wichita 67211	Dem.	86
Waymaster, Troy L. , 112 N. Fairview Ave., Luray 67649	Rep.	109
Weber, Brian , P.O. Box 804, Dodge City 67801	Rep.	119
Weigel, Virgil J. , 1900 S.W. Briarwood Dr., Topeka 66611	Dem.	56
Whipple, Brandon J. , 2925 S. Walnut, Wichita 67217	Dem.	96
Wilson, John , 1923 Ohio St., Lawrence 66046	Dem.	10
Winn, Valdenia C. , 1044 Washington Blvd., Kansas City 66102	Dem.	34
Wolfe Moore, Kathy , 3209 N. 131st, Kansas City 66109	Dem.	36

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Susan W. Kannarr Chief Clerk
***Mike Lietz** Interim Sergeant at Arms
 *Replaced Wayne Owen, deceased

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2013 SESSION LAWS OF KANSAS

CHAPTER 1

HOUSE BILL No. 2019

AN ACT concerning the court of appeals; relating to appointment of judges by the governor; amending K.S.A. 20-3006 and 20-3010 and K.S.A. 2012 Supp. 20-3002 and repealing the existing sections; also repealing K.S.A. 20-3004, 20-3005, 20-3007, 20-3008 and 20-3009.

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

New Section 1. (a) (1) On and after July 1, 2013, any vacancy occurring in the office of any judge of the court of appeals and any position to be open on the court of appeals as a result of enlargement of such court, or the retirement or failure of an incumbent to file such judge's declaration of candidacy to be retained in office as hereinafter required, or failure of a judge to be elected to be retained in office, shall be filled by appointment by the governor, with the consent of the senate, of a person possessing the qualifications of office.

(2) Whenever a vacancy occurs, will occur or position opens on the court of appeals, the clerk of the supreme court shall promptly give notice to the governor.

(3) In event of the failure of the governor to make the appointment within 60 days from the date such vacancy occurred or position became open, the chief justice of the supreme court, with the consent of the senate, shall make the appointment of a person possessing the qualifications of office.

(4) Whenever a vacancy in the office of judge of the court of appeals exists at the time the appointment to fill such vacancy is made pursuant to this section, the appointment shall be effective at the time it is made, but where an appointment is made pursuant to this section to fill a vacancy which will occur at a future date, such appointment shall not take effect until such date.

(b) No person appointed pursuant to subsection (a) shall assume the office of judge of the court of appeals until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 60 days after such appointment is received by the senate. If the senate is not in session and

will not be in session within the 60-day time limitation, the senate shall vote to consent to any such appointment not later than 20 days after the senate begins its next session. In the event a majority of the senate does not vote to consent to the appointment, the governor, within 60 days after the senate vote on the previous appointee, shall appoint another person possessing the qualifications of office and such subsequent appointment shall be considered by the senate in the same procedure as provided in this section. The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the time limitation imposed by this subsection, the senate shall be deemed to have given consent to such appointment.

(c) Persons who are appointed as judges of the court of appeals pursuant to K.S.A. 20-3005, prior to its repeal, and this section, shall commence the duties of office upon appointment and consent, and each judge shall have all the rights, privileges, powers and duties prescribed by law for the office of judge of the court of appeals.

(d) Judges of the court of appeals shall possess the qualifications prescribed by law for justices of the supreme court.

Sec. 2. K.S.A. 2012 Supp. 20-3002 is hereby amended to read as follows: 20-3002. ~~(a) Subject to appropriations therefor, on and after January 1, 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~~ *appointed in the manner provided by section 1*, 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. 3. K.S.A. 20-3006 is hereby amended to read as follows: 20-3006. ~~(a) Persons who are appointed as judges of the court of appeals pursuant to K.S.A. 20-3005, and amendments thereto, shall commence the duties~~

of office upon appointment, and each judge shall have all the rights, privileges, powers and duties prescribed by law for the office of judge of the court of appeals.

(b)(1) (a) Not less than 60 days prior to the holding of the general election next preceding the expiration of the term of any judge of the court of appeals, the judge may file in the office of the secretary of state a declaration of candidacy for retention in office. If a declaration is not filed as provided in this section, the position held by the judge shall be vacant upon the expiration of the judge's term of office. If such declaration is filed, the judge's name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall (Here insert name of judge.), Judge of the Court of Appeals, be retained in office?"

(2) (b) If a majority of those voting on the question votes against retaining the judge in office, the position which the judge holds shall be vacant upon the expiration of the judge's term of office. Otherwise, unless the judge is removed for cause, the judge shall remain in office for a term of four years from the second Monday in January following the election. At the expiration of each term, unless by law the judge is compelled to retire, the judge shall be eligible for retention in office by election in the manner prescribed in this section.

(3) (c) If a majority of those voting on the question votes against the judge's retention, the secretary of state, following the final canvass of votes on the question, shall certify the results to the clerk of the supreme court. Any such judge who has not been retained in office pursuant to this section shall not be eligible for nomination or appointment to the office of judge of the court of appeals prior to the expiration of four years after the expiration of the judge's term of office.

(4) (d) Election laws applicable to the general election of other state officers shall apply to elections upon the question of retention of judges of the court of appeals pursuant to this section, to the extent that they are not in conflict with and are consistent with the provisions of this ~~act~~ section.

Sec. 4. K.S.A. 20-3010 is hereby amended to read as follows: 20-3010. (a) Any person appointed to the office of judge of the court of appeals pursuant to K.S.A. 20-3009 shall commence upon the duties of his or her office on the date such appointment takes effect, and any person so appointed shall have all the rights, privileges, powers and duties prescribed by law for the office of judge of the court of appeals. Any such judge who is so appointed to fill a vacancy or appointed by reason of the expiration of a term of office, shall serve until the second Monday in January following the next general election which occurs after one year in office and shall be eligible to succeed himself or herself *be retained* in office for a

full term of four (4) years as provided in K.S.A. 20-3006, *and amendments thereto*, for the retention of judges first appointed to the court of appeals.

(b) If a majority of the votes cast and counted at such election is in favor of retaining such judge in office, ~~he or she~~ *the judge* shall remain in office for a regular term of four years from the second Monday in January next following such election. Thereafter, such judge shall be subject to retention in office as provided in K.S.A. 20-3006, *and amendments thereto*. If a majority of the votes cast and counted at such election is against retaining such judge in office, such judge's position on the court of appeals shall become vacant on the second Monday in January next following the election, and a successor shall be appointed pursuant to ~~K.S.A. 20-3007, 20-3008 and 20-3009~~ *section 1, and amendments thereto*. If such judge does not declare ~~his or her~~ *such judge's* candidacy for election to ~~succeed himself or herself~~ *be retained* in office, such judge's position on the court of appeals shall be vacant on the second Monday in January next following such election.

Sec. 5. K.S.A. 20-3004, 20-3005, 20-3006, 20-3007, 20-3008, 20-3009 and 20-3010 and K.S.A. 2012 Supp. 20-3002 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 27, 2013.

CHAPTER 2

HOUSE BILL No. 2006

AN ACT concerning the Kansas rules and regulations filing act; amending K.S.A. 2012 Supp. 77-415 and repealing the existing section.

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

Section 1. K.S.A. 2012 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 stat-

utes or regulations by order in an adjudication under the Kansas administrative procedure act or other procedures required by law, except that such order shall not be used as precedent in any subsequent adjudication against a person who was not a party to the original adjudication unless the order is:

- (i) Designated by the agency as precedent;
- (ii) not overruled by a court or later adjudication; and
- (iii) disseminated to the public in one of the following ways:
 - (a) Inclusion in a publicly available index, maintained by the agency and published on its website, of all orders designated as precedent;
 - (b) publication by posting in full on an agency website in a format capable of being searched by key terms; or
 - (c) being made available to the public in such other manner as may be prescribed by the secretary of state.

(B) Any statement of agency policy may be treated as binding within the agency if such statement of policy is directed to:

- (i) Agency personnel relating to the performance of their duties.
- (ii) The internal management of or organization of the agency.

No such statement of agency policy listed in clauses (i) and (ii) of this subparagraph may be relied on to bind the general public.

(C) An agency may provide forms, the content or substantive requirements of which are prescribed by rule and regulation or statute, except that no such form may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.

(D) An agency may provide guidance or information to the public, describing any agency policy or statutory or regulatory requirement except that no such guidance or information may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.

(E) None of the following shall be subject to the ~~Kansas~~ rules and regulations filing act:

(i) Any policy relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution.

(ii) Any parking and traffic regulations of any state educational institution under the control and supervision of the state board of regents.

(iii) Any rule and regulation relating to the emergency or security procedures of a correctional institution, as defined in subsection (d) of K.S.A. 75-5202, and amendments thereto.

(iv) Any order issued by the secretary of corrections or any warden of a correctional institution under K.S.A. 75-5256, and amendments thereto.

(F) When a statute authorizing an agency to issue rules and regulations or take other action specifies the procedures for doing so, those

procedures shall apply instead of the procedures in the ~~Kansas~~ rules and regulations filing act.

(c) As used in the ~~Kansas~~ rules and regulations filing act, and amendments thereto, unless the context clearly requires otherwise:

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

(2) “Environmental rule and regulation” means:

(A) A rule and regulation adopted by the secretary of agriculture, the secretary of health and environment or the state corporation commission, which has as a primary purpose the protection of the environment; or

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

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

(4) “Rule and regulation,” “rule,” and “regulation” means a standard, requirement or other policy of general application that has the force and effect of law, including amendments or revocations thereof, issued or adopted by a state agency to implement or interpret legislation.

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

(6) “Small employer” means any person, firm, corporation, partnership or association that employs not more than 50 employees, the majority of whom are employed within this state.

(7) “State agency” means any officer, department, bureau, division, board, authority, agency, commission or institution of this state, except the judicial and legislative branches, which is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state.

Sec. 2. K.S.A. 2012 Supp. 77-415 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, 2013.

CHAPTER 3

HOUSE BILL No. 2013

AN ACT concerning crimes and punishment; relating to perjury; amending K.S.A. 2012 Supp. 21-5903 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 21-5903 is hereby amended to read as follows: 21-5903. (a) Perjury is intentionally and falsely:

(1) Swearing, testifying, affirming, declaring or subscribing to any material fact upon any oath or affirmation legally administered in any cause, matter or proceeding before any court, tribunal, public body, notary public or other officer authorized to administer oaths; *or*

(2) subscribing as true and correct under penalty of perjury any material matter in any declaration, verification, certificate or statement as permitted by K.S.A. 53-601, and amendments thereto; ~~or~~

~~(3) subscribing as true and correct under penalty of perjury any statement as required by K.S.A. 75-5743, and amendments thereto.~~

(b) Perjury is a:

(1) Severity level 9, nonperson felony, except as provided in subsection (b)(2); and

(2) severity level 7, nonperson felony if the false statement is made upon the trial of a felony charge.

Sec. 2. K.S.A. 2012 Supp. 21-5903 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, 2013.

CHAPTER 4

HOUSE BILL No. 2066

AN ACT concerning physical therapists; evaluation and treatment of patients; amending K.S.A. 2012 Supp. 65-2921 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 65-2921 is hereby amended to read as follows: 65-2921. (a) Except as otherwise provided in subsection (b), ~~(c) or (d)~~, a physical therapist may evaluate patients without physician referral but may initiate treatment only after approval by a licensed physician, a licensed podiatrist, a licensed physician assistant or a licensed advanced practice registered nurse working pursuant to the order or direction of a licensed physician, a licensed chiropractor, a licensed dentist or licensed optometrist in appropriately related cases. Physical therapists may initiate

physical therapy treatment with the approval of a practitioner of the healing arts duly licensed under the laws of another state and may provide such treatment based upon an order by such practitioner in any setting in which physical therapists would be authorized to provide such treatment with the approval of a physician licensed by the board, notwithstanding any provisions of the Kansas healing arts act or any rules and regulations adopted by the board thereunder *and initiate physical therapy treatment on a patient without referral from a licensed health care practitioner. If treating a patient without a referral from a licensed health care practitioner and the patient is not progressing toward documented treatment goals as demonstrated by objective, measurable or functional improvement, or any combination thereof, after 10 patient visits or in a period of 15 business days from the initial treatment visits following the initial evaluation visit, the physical therapist shall obtain a referral from an appropriate licensed health care practitioner prior to continuing treatment.*

(b) ~~Physical therapists may evaluate and treat a patient for no more than 30 consecutive calendar days without a referral under the following conditions: (1) The patient has previously been referred to a physical therapist for physical therapy services by a person authorized by this section to approve treatment, (2) the patient's referral for physical therapy was made within one year from the date a physical therapist implements a program of physical therapy treatment without a referral, (3) the physical therapy being provided to the patient without referral is for the same injury, disease or condition as indicated in the referral for such previous injury, disease or condition, and (4) the physical therapist transmits to the physician or other practitioner identified by the patient a copy of the initial evaluation no later than five business days after treatment commences. Treatment of such patient for more than 30 consecutive calendar days shall only be upon the approval of a person authorized by this section to approve treatment.~~

~~(e)~~—Physical therapists may provide, without a referral, services which do not constitute treatment for a specific condition, disease or injury to: (1) Employees solely for the purpose of education and instruction related to workplace injury prevention; or (2) the public for the purpose of fitness, health promotion and education.

~~(d)~~ (c) Physical therapists may provide services without a referral to special education students who need physical therapy services to fulfill the provisions of their individualized education plan (IEP) or individualized family service plan (IFSP).

(d) *Nothing in this section shall be construed to prevent a hospital or ambulatory surgical center from requiring a physician order or referral for physical therapy services for a patient currently being treated in such facility.*

(e) *When a patient self-refers to a physical therapist pursuant to this*

section, the physical therapist, prior to commencing treatment, shall provide written notice to the patient that a physical therapy diagnosis is not a medical diagnosis by a physician.

(f) Physical therapists shall perform wound debridement services only after approval by a person licensed to practice medicine and surgery or other licensed health care practitioner in appropriately related cases.

(g) As used in this section, “licensed health care practitioner” means a person licensed to practice medicine and surgery, a licensed podiatrist, a licensed physician assistant or a licensed advanced practice registered nurse working pursuant to the order or direction of a person licensed to practice medicine and surgery, a licensed chiropractor, a licensed dentist or licensed optometrist in appropriately related cases.

Sec. 2. K.S.A. 2012 Supp. 65-2921 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, 2013.

CHAPTER 5

HOUSE BILL No. 2252

AN ACT concerning crimes, criminal procedure and punishment; relating to the statute of limitations for rape prosecutions; amending K.S.A. 2012 Supp. 21-5107 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 21-5107 is hereby amended to read as follows: 21-5107. (a) A prosecution for *rape, aggravated criminal sodomy*, murder, terrorism or illegal use of weapons of mass destruction may be commenced at any time.

(b) Except as provided in subsection (e), a prosecution for any crime shall be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.

(c) Except as provided in subsection (e), a prosecution for a sexually violent ~~offense~~ *crime* as defined in K.S.A. 22-3717, and amendments thereto;

(1) When the victim is 18 years of age or older shall be commenced within ~~the limitation of time provided by the law pertaining to such offense~~ 10 years or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later; or

(2) when the victim is under 18 years of age shall be commenced within 10 years of the date the victim turns 18 years of age or one year

from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

(d) Except as provided by subsection (e), a prosecution for any crime, as defined in K.S.A. 2012 Supp. 21-5102, and amendments thereto, not governed by subsection (a), (b) or (c) shall be commenced within five years after it is committed.

(e) The period within which a prosecution shall be commenced shall not include any period in which:

(1) The accused is absent from the state;

(2) the accused is concealed within the state so that process cannot be served upon the accused;

(3) the fact of the crime is concealed;

(4) a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;

(5) an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of article 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto, which may be discovered as a result thereof regardless of who obtains the order of restraint; or

(6) whether the fact of the crime is concealed by the active act or conduct of the accused, there is substantially 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 crime;

(B) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime;

(C) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and

(D) there is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and 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 prosecution be commenced as provided in subsection (e)(6) later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime.

(f) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at

the time when the course of conduct or the defendant's complicity therein is terminated. ~~Time starts to run on the day after the offense is committed except if the offense charged is a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, and the victim was under 18 years of age at the time of the offense, then time shall start to run on the day after the victim's 18th birthday.~~

(g) 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. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(h) As used in this section, "parent or other legal authority" shall include, but not be limited to, natural and stepparents, grandparents, aunts, uncles or siblings.

Sec. 2. K.S.A. 2012 Supp. 21-5107 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 1, 2013.

CHAPTER 6

Senate Substitute for HOUSE BILL No. 2022

AN ACT concerning employees; relating to certain employee organizations; political activities; certain deductions from wages; amending K.S.A. 75-4333 and K.S.A. 2012 Supp. 44-319 and repealing the existing sections.

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

New Section 1. (a) It shall be a prohibited practice for any professional employees' organization, as defined in K.S.A. 72-5413, and amendments thereto, or public employee organization, as defined in K.S.A. 75-4322, and amendments thereto, to use any dues, fees, money or other assessments deducted from a member's paycheck for the purpose of engaging in partisan or political purposes as defined in subsection (d). A professional employees' organization or public employee organization may not require any contribution to a candidate, personal campaign committee, political action committee, registered political party, or political fund as a condition of membership or participation in the professional employees' organization or public employee organization.

(b) (1) A professional employees' organization or a public employee organization wishing to make expenditures for partisan or political purposes shall establish a political fund.

(2) Each professional employee's organization or public employee organization that establishes a political fund shall:

(A) Maintain the political fund as a separate, segregated account apart from any account containing money received by a professional employee's organization or a public employee organization as union dues;

(B) ensure that each contribution to the political fund is voluntary; and

(C) establish the political fund as a political action committee.

(3) (A) A professional employee's organization or a public employee organization may only make expenditures for partisan or political purposes from a political fund established in accordance with this section.

(B) A professional employee's organization or a public employee organization may not expend union dues for partisan or political purposes or transfer union dues to a political fund.

(c) (1) Nothing in this section precludes a professional employees' organization or a public employee organization from making expenditures of union dues to communicate directly with its own members about political candidates or political issues.

(2) Nothing in this section precludes a professional employees' organization or public employee organization from making expenditures of union dues either for the establishment of a political fund or to solicit contributions from its members to a political fund.

(d) (1) "Partisan or political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate for public office at any caucus, political convention, primary, or election.

(2) "Political fund" means a separate segregated fund established by a professional employees' organization or a public employee organization for partisan and political purposes that meets the requirements of this section.

(3) "Union dues" means dues, fees, money, or other assessments required as a condition of membership or participation in a professional employees' organization or a public employee organization.

(e) This section as it relates to public employee organizations shall be supplemental to the provisions of K.S.A. 75-4333, and amendments thereto, and shall be enforced pursuant to the provisions of K.S.A. 75-4334, and amendments thereto.

(f) This section as it relates to professional employees' organizations shall be supplemental to the provisions of K.S.A. 72-5430, and amendments thereto, and shall be enforced pursuant to the provisions of K.S.A. 72-5430a, and amendments thereto.

Sec. 2. K.S.A. 75-4333 is hereby amended to read as follows: 75-4333.

(a) The commission of any prohibited practice, as defined in this section,

among other actions, shall constitute evidence of bad faith in meet and confer proceedings.

(b) It shall be a prohibited practice for a public employer or its designated representative willfully to:

(1) Interfere, restrain or coerce public employees in the exercise of rights granted in K.S.A. 75-4324, *and amendments thereto*;

(2) dominate, interfere or assist in the formation, existence, or administration of any employee organization;

(3) encourage or discourage membership in any employee organization, committee, association or representation plan by discrimination in hiring, tenure or other conditions of employment, or by blacklisting;

(4) discharge or discriminate against an employee because ~~he or she~~ *such employee* has filed any affidavit, petition or complaint or given any information or testimony under this act, or because ~~he or she~~ *such employee* has formed, joined or chosen to be represented by any employee organization;

(5) refuse to meet and confer in good faith with representatives of recognized employee organizations as required in K.S.A. 75-4327, *and amendments thereto*;

(6) deny the rights accompanying certification or formal recognition granted in K.S.A. 75-4328, *and amendments thereto*;

(7) deliberately and intentionally avoid mediation, fact-finding, and arbitration endeavors as provided in K.S.A. 75-4332, *and amendments thereto*; or

(8) institute or attempt to institute a lockout.

(c) It shall be a prohibited practice for public employees or employee organizations willfully to:

(1) Interfere with, restrain or coerce public employees in the exercise of rights granted in K.S.A. 75-4324, *and amendments thereto*;

(2) interfere with, restrain or coerce a public employer with respect to management rights granted in K.S.A. 75-4326, *and amendments thereto*, or with respect to selecting a representative for the purposes of meeting and conferring or the adjustment of grievances;

(3) refuse to meet and confer in good faith with a public employer as required in K.S.A. 75-4327, *and amendments thereto*;

(4) deliberately and intentionally avoid mediation, fact-finding and arbitration efforts as provided in K.S.A. 75-4332, *and amendments thereto*; or

(5) engage in a strike.

(d) (1) It shall be a prohibited practice for a public employee organization to endorse candidates, spend any of its income, directly or indirectly, for partisan or political purposes or engage in any kind of activity advocating or opposing the election of candidates for any public office.

(2) *For the purposes of this section, "partisan or political purposes" means an act done with the intent or in a way to influence or tend to*

influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate for public office at any caucus, political convention, primary or election.

(e) In the application and construction of this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment shall be regarded as binding or controlling precedent.

New Sec. 3. If any provision of this act, including any amendment made by this act, or the application of any such provision to any person or circumstance, is held invalid, the validity of any other provision of this act, or the application of such provision to other persons and circumstances, shall not be affected thereby.

Sec. 4. K.S.A. 2012 Supp. 44-319 is hereby amended to read as follows: 44-319. (a) *Except as provided in subsections (b) and (c)*, no employer may withhold, deduct or divert any portion of an employee's wages unless: (1) The employer is required or empowered to do so by state or federal law; (2) the deductions are for medical, surgical or hospital care or service, without financial benefit to the employer, and are openly, clearly and in due course recorded in the employer's books; (3) the employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee; or (4) the deductions are for contributions attributable to automatic enrollment, as defined in K.S.A. 2012 Supp. 44-319a, and amendments thereto, in a retirement plan established by the employer described in sections 401(k), 403(b), 408, 408A or 457 of the internal revenue code.

(b) *Subject to the provisions of subsection (e), pursuant to a signed written agreement between the employer and employee, an employer may withhold, deduct or divert any portion of an employee's wages for the following purposes:*

(1) *To allow the employee to repay a loan or advance which the employer made to the employee during the course of and within the scope of employment;*

(2) *to allow for recovery of payroll overpayment; and*

(3) *to compensate the employer for the replacement cost or unpaid balance of the cost of the employer's merchandise or uniforms purchased by the employee.*

(c) *Subject to the provisions of subsection (e), upon providing a written notice and explanation, an employer may withhold, deduct or divert any portion of an employee's final wages for the following purposes:*

(1) *To recover the employer's property provided to the employee in the course of the employer's business including, but not limited to, tools of the trade or profession, personal safety equipment, computers, electronic devices, mobile phones, proprietary information such as client or customer lists and intellectual property, security information, keys or ac-*

cess cards or materials until such time as such property is returned by the employee to the employer. Upon return of the employer's property, the employer shall relinquish the wages withheld to the employee;

(2) to allow an employee to repay a loan or advance which the employer made to the employee during the course of and within the scope of employment;

(3) to allow for the recovery of payroll overpayment; or

(4) to compensate the employer for the replacement cost or unpaid balance of the cost of the employer's merchandise, uniforms, company property, equipment, tools of the trade or other materials intentionally purchased by the employee.

(d) Nothing in this section shall be construed as prohibiting the withholding of amounts authorized in writing by the employee to be contributed by the employee to charitable organizations; nor shall this section prohibit deductions by check-off of dues to labor organizations or service fees, where such is not otherwise prohibited by law.

(e) Amounts withheld under this section shall not reduce wages paid to below the minimum wage required under the federal fair labor standards act, 29 U.S.C.A. § 201 et seq., or the minimum wage required under K.S.A. 44-1203, and amendments thereto, whichever is applicable.

Sec. 5. K.S.A. 75-4333 and K.S.A. 2012 Supp. 44-319 are hereby repealed.

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

Approved April 1, 2013.

CHAPTER 7

HOUSE BILL No. 2176*

AN ACT concerning motor vehicles; relating to distinctive license plates; providing for the Eisenhower foundation license plate.

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

Section 1. (a) On and after January 1, 2014, any owner or lessee of one or more passenger vehicles, trucks registered for a gross weight of 20,000 pounds or less or motorcycles, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one Eisenhower foundation license plate for each such passenger vehicle, truck or motorcycle. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and either the payment to the county treasurer of the logo use royalty payment estab-

lished by the Eisenhower foundation or the presentation of the annual logo use authorization statement provided for in subsection (b).

(b) The board of directors of the Eisenhower foundation may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be used to support the Eisenhower foundation. Any motor vehicle owner or lessee annually may apply to the Eisenhower foundation for the use of such logo. Upon annual application and payment to either: (1) The Eisenhower foundation in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate to be issued, the Eisenhower foundation shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.

(c) Any applicant for a license plate authorized by this section may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plate shall either provide the annual logo use authorization statement provided for in subsection (b) or pay to the county treasurer the logo use royalty payment established by the Eisenhower foundation. Application for registration of a passenger vehicle, truck or motorcycle and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) The director of vehicles may transfer the Eisenhower foundation license plates from a leased vehicle to a purchased vehicle.

(f) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant either provides to the county treasurer either the annual logo use authorization statement provided for in subsection (b) or the payment of the logo use royalty payment as established by the Eisenhower foundation. If such logo use authorization statement is not presented at the time of registration or faxed by the Eisenhower foundation, or the annual logo use royalty payment is not made to the county treasurer at the time of registration, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

(g) The Eisenhower foundation shall:

(1) Pay the initial cost of silk-screening for license plates authorized by this section; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the Eisenhower foundation for information concerning the application process or the status of their license plate application.

(h) The Eisenhower foundation, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.

(i) As a condition of receiving the Eisenhower foundation license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, logo use royalty payment amount, plate number and vehicle type to the Eisenhower foundation and the state treasurer.

(j) Annual logo use royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the Eisenhower foundation royalty fund, which is hereby created in the state treasury and shall be administered by the state treasurer. All expenditures from the Eisenhower foundation royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee. Payments from the Eisenhower foundation royalty fund to the appropriate designee of the Eisenhower foundation shall be made on a monthly basis.

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

Approved April 1, 2013.

CHAPTER 8

SENATE BILL No. 69

AN ACT concerning motor vehicles; relating to vehicle registration; license plates; amending K.S.A. 8-163 and 8-167 and K.S.A. 2012 Supp. 8-136, 8-139, 8-171 and 8-2409 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 8-136 is hereby amended to read as follows: 8-136. (a) A licensed manufacturer of or licensed dealer in vehicles demonstrating, displaying or exhibiting any such vehicle upon any

highway in lieu of registering each such vehicle, may obtain from the division of vehicles, upon application therefor upon the proper official form, and payment of the fees required by law, and attach to each such vehicle, one license plate which shall have a distinctive number, the name of this state, which may be abbreviated, and the year for which issued, together with the word "dealer" or a distinguishing symbol indicating that such license plate is issued to a manufacturer or dealer. Any such license plate may, during the calendar year for which issued, be transferred from one such vehicle to another owned or operated by such manufacturer or dealer. Such a license plate may be used in lieu of regular vehicle registration for the purposes of demonstrating, displaying or exhibiting vehicles held in inventory of such manufacturer or dealer. Such a license plate may also be used on such dealer's service vehicle, or substitute vehicles owned by the dealer but loaned to a customer when the dealer is repairing such customer's vehicle and for all other purposes incidental to a dealer's vehicle business. Except as provided in subsection (d), such a license plate may not be used by a manufacturer or dealer to haul commodities weighing in excess of two tons. Such license plates shall not be used on a wrecker or tow truck when providing wrecker or towing service as defined by K.S.A. 66-1329, and amendments thereto.

(b) No manufacturer of or dealer in vehicles shall cause or permit any such vehicle owned by such person to be operated or moved upon a highway unless there is displayed upon such vehicle a license plate as required by this section.

(c) No license plates shall be issued to any manufacturer or dealer unless such manufacturer or dealer at the time of making application therefor shall exhibit to the county treasurer or the division of vehicles a receipt showing that the applicant has paid all personal property taxes levied against such manufacturer or dealer for the preceding year, including taxes assessed against motor vehicles of such manufacturer or dealer which were assessed as stock in trade, or unless the manufacturer or dealer shall exhibit satisfactory evidence to the county treasurer that such manufacturer or dealer had no taxable property for the preceding year or if the application is made directly to the division of vehicles there shall be presented a statement by the county treasurer that the manufacturer or dealer had no taxable property for the preceding year. If application for registration is made before ~~June 21~~ *May 10*, the receipt may show payment of only $\frac{1}{2}$ of the preceding year's taxes.

(d) A trailer manufacturer or dealer is authorized to use a license plate issued under this section for the transportation of not more than four trailers. Such manufacturer or dealer shall be in compliance with the provisions of article 19 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 2. K.S.A. 2012 Supp. 8-139 is hereby amended to read as follows:

8-139. In the event that any license plate, certificate of title, registration decal or registration receipt issued hereunder, shall be lost, mutilated, or shall have become illegible, the person who is entitled thereto shall make immediate application for and obtain a duplicate or substitute therefor, upon furnishing information of such fact satisfactory to the division and upon payment of the required fees: Namely, certificate of title, \$10, registration receipt, ~~\$.50~~ \$1, registration decal, \$.50, license plates, \$2. In case the license plate is of such type or constructed in such a way that it is not reasonably possible to remove it from the vehicle to which it is attached without destroying or mutilating such license plate, and the ownership of such vehicle shall be transferred and the license plate shall be mutilated or destroyed by the owner thereof as a result of the owner's effort to comply with the provisions of K.S.A. 8-135, and amendments thereto, by removing the same from the vehicle so transferred, then and in such case no fee shall be charged for such duplicate or substitute license plate, including any registration decal affixed thereto, but the same shall be furnished free of charge providing such person shall otherwise in all respects have complied with the laws governing the transfer of ownership of such motor vehicle.

Sec. 3. K.S.A. 8-163 is hereby amended to read as follows: 8-163. The secretary of revenue shall adopt rules and regulations necessary to obtain compliance with all state licensing laws relating to use and operation of a private passenger vehicle or a truck licensed for a gross weight of not more than ~~16,000~~ 20,000 pounds before issuing these plates in lieu of the regular Kansas license plates, and all applications for such plates shall be made in a manner prescribed by the division of vehicles.

Sec. 4. K.S.A. 8-167 is hereby amended to read as follows: 8-167. (a) Every owner of an antique motor vehicle intended to be operated upon any highway in this state shall, before the same is operated, apply for the registration thereof, as provided by this act.

(b) In addition to the registration required under the provisions of subsection (a) of this section and K.S.A. 8-168 et seq., *and amendments thereto*, each antique vehicle shall be registered for the purpose of taxation as prescribed by article 51 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, at the time such owner intends to commence the operation of the same upon the highways of the state and at the times prescribed by K.S.A. 8-134, and amendments thereto, for the registration of any other motor vehicle owned by the owner of such antique vehicle. ~~Application for registration of antique vehicles for the purpose of taxation shall be made in the office of the county treasurer upon forms provided by the division of property valuation.~~ The fee for registration of an antique vehicle under the provisions of this subsection shall be five dollars.

Sec. 5. K.S.A. 2012 Supp. 8-171 is hereby amended to read as follows:

8-171. In the event that any license plate, certificate of title or registration receipt issued hereunder, shall be lost, mutilated, or shall have become illegible, the person who is entitled thereto shall make immediate application for and obtain a duplicate therefor, upon furnishing information of such fact satisfactory to the division and upon payment of the required fees: Namely, ~~certificate of title, \$10, registration receipt, \$1, license plates, \$2~~ *the same fees for certificate of title, registration receipt and license plates as listed in K.S.A. 8-139, and amendments thereto.*

Sec. 6. K.S.A. 2012 Supp. 8-2409 is hereby amended to read as follows: 8-2409. (a) Any dealer may purchase from the division of vehicles sixty-day temporary registration permits, ~~in multiples of five permits~~ valid for 60 days at a cost of \$3 each. Such dealer shall have completed the application and permit as required by the division ~~and mail a copy of such application to the division within 24 hours from the date of issuance.~~ Such registration shall not extend the date when registration fees are due, but shall be valid registration for a period of 60 days from date of issuance. The dealer upon presentation of evidence of ownership in the applicant and evidence that the sales tax has been paid, if due, shall issue a sticker or paper registration as determined by the division. No dealer, or county treasurer, as authorized by K.S.A. 8-143, and amendments thereto, shall issue more than one sixty-day temporary registration permit to the purchaser of a vehicle.

(b) The division of vehicles may deny any dealer the authority to purchase sixty-day temporary permits if the vehicle dealer is delinquent in monthly sales reports to the division for two months or more or if the vehicle dealer is found to have issued more than one sixty-day permit to the purchaser of a vehicle.

(c) The temporary registration authorized by this section shall entitle a truck, truck tractor or any combination of truck or truck tractor and any type of trailer or semitrailer to be operated under laden conditions.

Sec. 7. K.S.A. 8-163 and 8-167 and K.S.A. 2012 Supp. 8-136, 8-139, 8-171 and 8-2409 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 2, 2013.

CHAPTER 9

SENATE BILL No. 62

AN ACT concerning utilities; relating to the Kansas corporation commission; gas pipeline safety; amending K.S.A. 66-1,154 and 66-1,157a and K.S.A. 2012 Supp. 66-1,153 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 66-1,153 is hereby amended to read as follows: 66-1,153. *As used in this section, terms have the meanings provided by 49 C.F.R. § 192.3, as in effect on July 1, 2013.* Every person engaged in the operation of gas pipeline systems in this state subject to the jurisdiction and control of the state corporation commission under K.A.R. 82-11-1 et seq. shall annually pay a fee to the commission for the inspection and supervision of the standards of safety prescribed by rules and regulations adopted in conformance with the natural gas pipeline safety act of 1968 (49 U.S.C. § 60101 et seq.), as amended. Nothing in this act shall apply to any public utility required to pay the fee provided for by K.S.A. 66-1503, and amendments thereto. Such fee shall be due and payable on or before September 1 of each year, commencing in the year 1973, and shall be for the fiscal year in which payment is due. Such fee shall be in addition to any and all property, franchise or license fees and other taxes, fees and charges fixed, assessed or charged by law against such utility.

Sec. 2. K.S.A. 66-1,154 is hereby amended to read as follows: 66-1,154. *As used in this section, terms have the meanings provided by 49 C.F.R. § 192.3, as in effect on July 1, 2013.*

(a) The amount of such fee shall be fixed in relation to the number of active gas meters in service within the service area of each ~~public utility~~ *person* engaged in the operation of a gas pipeline system. The fee shall be fixed by rules and regulations adopted by the state corporation commission at rates in accordance with K.S.A. 66-1,153, and amendments thereto, and this section.

(b) The rates prescribed by this section prior to the effective date of this act shall continue in effect until different rates are fixed by rules and regulations adopted by the state corporation commission under this section.

Sec. 3. K.S.A. 66-1,157a is hereby amended to read as follows: 66-1,157a. (a) *As used in this section, terms have the meanings provided by 49 C.F.R. § 192.3, as in effect on ~~the effective date of this act~~ July 1, 2013.*

(b) Except as provided by subsection (c), ~~a public utility, municipal corporation or quasi-municipal corporation which renders~~ *any person rendering* gas utility service shall have full responsibility for maintenance of all pipelines that convey gas from a gas main to the outside wall of

residential premises which are individually metered and directly served by such ~~utility or corporation~~ *person* and is hereby granted the necessary access rights to carry out such responsibility.

(c) A city of the third class, or a city having a population of 2,000 or less, which renders gas utility service shall have responsibility for inspection of pipelines described in subsection (b), but shall not otherwise be responsible for maintenance of such pipelines.

Sec. 4. K.S.A. 66-1,154 and 66-1,157a and K.S.A. 2012 Supp. 66-1,153 are hereby repealed.

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

Approved April 2, 2013.

CHAPTER 10

HOUSE BILL No. 2041
(Amended by Chapter 133)

AN ACT concerning criminal history record information; definition; relating to municipal court reporting; district court reporting; amending K.S.A. 2012 Supp. 12-4106, 22-4701 and 22-4704 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 12-4106 is hereby amended to read as follows: 12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt in the same manner and to the same extent as a judge of the district court.

(b) The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: Grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post trial motions; and discharge accused persons.

(c) The municipal judge shall maintain a docket in which every cause commenced before such municipal judge shall be entered. Such docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case.

(d) The municipal judge shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

(e) The municipal judge shall ensure that information concerning dispositions of city ordinance violations that result in convictions comparable to convictions for ~~class A and B misdemeanors~~ offenses under Kansas criminal statutes is forwarded to the Kansas bureau of investigation central repository. This information shall be transmitted, on a form or in a format approved by the attorney general, within 30 days of final disposition.

(f) In all cases alleging a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 ~~or~~, 8-1567 *or* 32-1131 or K.S.A. 2012 Supp. 8-1025, and amendments thereto, the municipal court judge shall ensure that the municipal court reports the filing and disposition of such case to the Kansas bureau of investigation central repository, and, on and after July 1, ~~2013~~ 2014, reports the filing and disposition of such case electronically to the Kansas bureau of investigation central repository.

(g) In all cases in which a fine is imposed for a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 or 8-1567 or K.S.A. 2012 Supp. 8-1025, and amendments thereto, the municipal court judge shall ensure that the municipal court remits the appropriate amount of such fine to the state treasurer as provided in K.S.A. 2012 Supp. 12-4120, and amendments thereto.

Sec. 2. K.S.A. 2012 Supp. 22-4701 is hereby amended to read as follows: 22-4701. As used in this act, unless the context clearly requires otherwise:

(a) “Central repository” means the criminal justice information system central repository created by this act and the juvenile offender information system created pursuant to K.S.A. 2012 Supp. 38-2326, and amendments thereto.

(b) “Criminal history record information” means all data initiated or collected by a criminal justice agency on a person pertaining to a reportable event, and any supporting documentation. Criminal history record information does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) wanted posters, police blotter entries, court records of public judicial proceedings or published court opinions;

(3) data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide; ~~or~~

(4) presentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation; *or*

(5) *information regarding the release of defendants from confinement by the department of corrections or a jail.*

(c) “Criminal justice agency” means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation or release of persons suspected, charged or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs’ offices and countywide law enforcement agencies, correctional facilities, jails and detention centers;

(2) the offices of the attorney general, county or district attorneys and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses;

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts;

(4) the Kansas sentencing commission;

(5) the prisoner review board; and

(6) the juvenile justice authority.

(d) “Criminal justice information system” means the equipment (including computer hardware and software), facilities, procedures, agreements and personnel used in the collection, processing, preservation and dissemination of criminal history record information.

(e) “Director” means the director of the Kansas bureau of investigation.

(f) “Disseminate” means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) the reporting of such information as required by this act; or

(3) the transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(g) “Reportable event” means an event specified or provided for in K.S.A. 22-4705, and amendments thereto.

Sec. 3. K.S.A. 2012 Supp. 22-4704 is hereby amended to read as follows: 22-4704. (a) In accordance with the provisions of K.S.A. 77-415 et seq., and amendments thereto, the director shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act.

(b) The director shall develop procedures to permit and encourage

the transfer of criminal history record information among and between courts and affected agencies in the executive branch, and especially between courts and the central repository.

(c) The rules and regulations adopted by the director shall include those: (1) Governing the collection, reporting, and dissemination of criminal history record information by criminal justice agencies;

(2) necessary to insure the security of all criminal history record information reported, collected and disseminated by and through the criminal justice information system;

(3) necessary for the coordination of all criminal justice data and information processing activities as they relate to criminal history record information;

(4) governing the dissemination of criminal history record information;

(5) governing the procedures for inspection and challenging of criminal history record information;

(6) governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with this act;

(7) governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies; *and*

(8) governing the exercise of the rights of inspection and challenge provided in this act.

(d) The rules and regulations adopted by the director shall not include any provision that allows the charging of a fee for information requests for the purpose of participating in a block parent program, including, but not limited to, the McGruff house program.

(e) Rules and regulations adopted by the director may not be inconsistent with the provisions of this act.

(f) (1) On or before July 1, ~~2012~~ 2013, the director shall adopt rules and regulations requiring district courts to report the filing *and disposition* of all cases alleging a violation of K.S.A. 8-1567 or K.S.A. 2012 Supp. 8-1025, and amendments thereto, to the central repository.

(2) On or before July 1, ~~2013~~ 2014, the director shall adopt rules and regulations requiring district courts to electronically report all case filings *and dispositions* for violations of K.S.A. 8-1567 or K.S.A. 2012 Supp. 8-1025, and amendments thereto, to the central repository.

Sec. 4. K.S.A. 2012 Supp. 12-4106, 22-4701 and 22-4704 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 2, 2013.

Published in the *Kansas Register* April 11, 2013.

CHAPTER 11

HOUSE BILL No. 2096

AN ACT concerning local governing bodies; relating to investment of public moneys, conditions and limitations; amending K.S.A. 2012 Supp. 12-1675 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 12-1675 is hereby amended to read as follows: 12-1675. (a) The governing body of any county, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for people with intellectual disability or any other governmental entity, unit or subdivision in the state of Kansas having authority to receive, hold and expend public moneys or funds may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other statute.

(b) Such moneys shall be invested only:

(1) In temporary notes or no-fund warrants issued by such investing governmental unit;

(2) in savings deposits, *demand deposits*, time deposit, open accounts, certificates of deposit or time certificates of deposit with maturities of not more than two years: (A) In banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit; or (B) if no main or branch office of a bank, savings and loan association or savings bank is located in such investing governmental unit, then in banks, savings and loan associations and savings banks, which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located;

(3) in repurchase agreements with: (A) Banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or (B) (i) if no main or branch office of a bank, savings and loan association or savings bank, is located in such investing governmental unit; or (ii) if no such bank, savings and loan association or savings bank having a main or branch office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located; or (C) if no bank, savings and loan association or savings bank, having a main or branch office in

such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks located within this state;

(4) in United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with banks, savings and loan associations and savings banks; the federal reserve bank of Kansas City, Missouri; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer engaged in the business of selling government securities which is registered in compliance with the requirements of section 15 or 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-12a401, and amendments thereto;

(5) in the municipal investment pool fund established in K.S.A. 12-1677a, and amendments thereto;

(6) in the investments authorized and in accordance with the conditions prescribed in K.S.A. 12-1677b, and amendments thereto;

(7) in multiple municipal client investment pools managed by the trust departments of banks which have main or branch offices located in the county or counties where such investing governmental unit is located or with trust companies incorporated under the laws of this state which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with banks which have main or branch offices located in the county or counties in which such investing governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Pooled investments of public moneys made by trust departments under this paragraph shall be subject to the same terms, conditions and limitations as are applicable to the municipal investment pool established by K.S.A. 12-1677a, and amendments thereto; or

(8) municipal bonds or other obligations issued by any municipality of the state of Kansas as defined in K.S.A. 10-1101, and amendments thereto, which are general obligations of the municipality issuing the same.

(c) The investments authorized in paragraphs (4), (5), (6), (7) or (8) of subsection (b) shall be utilized only if the banks, savings and loan associations and savings banks eligible for investments authorized in paragraph (2) of subsection (b), cannot or will not make the investments authorized in paragraph (2) of subsection (b) available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto.

(d) In selecting a depository pursuant to paragraph (2) of subsection (b), if a bank, savings and loan association or savings bank eligible for an investment deposit thereunder has an office located in the investing governmental unit and such financial institution will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and such financial institution otherwise qualifies for such deposit, the investing governmental unit shall select one or more of such eligible financial institutions for deposit of funds pursuant to this section. If no such financial institution qualifies for such deposits, the investing governmental unit may select for such deposits one or more eligible banks, savings and loan associations or savings banks which have offices in the county or counties in which all or a part of such investing governmental unit is located which will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and which otherwise qualify for such deposits.

(e) (1) All security purchases and repurchase agreements shall occur on a delivery versus payment basis.

(2) All securities, including those acquired by repurchase agreements, shall be perfected in the name of the investing governmental unit and shall be delivered to the purchaser or a third-party custodian which may be the state treasurer.

(f) Public moneys deposited pursuant to subsection (b)(2) of K.S.A. 12-1675, and amendments thereto, by the governing body of any governmental unit listed in subsection (a) of K.S.A. 12-1675, and amendments thereto, through a selected bank, savings and loan association or savings bank which is part of a reciprocal deposit program in which the bank, savings and loan association or savings bank:

(1) Receives reciprocal deposits from other participating institutions located in the United States in an amount equal to the amount of funds deposited by the municipal corporation or quasi-municipal corporation; and

(2) for which the total cumulative amount of each deposit does not exceed the maximum deposit insurance amount for one depositor at one financial institution as determined by the federal deposit insurance corporation.

Such deposits shall not be treated as securities and need not be secured as provided in this or any other act.

Sec. 2. K.S.A. 2012 Supp. 12-1675 is hereby repealed.

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

CHAPTER 12

HOUSE BILL No. 2202*

AN ACT concerning transportation; relating to motor carrier regulations.

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

Section 1. (a) Whenever the governor or the United States department of agriculture declares that all or any portion of the state is in a state of drought pursuant to subsection (e) of K.S.A. 48-924 et seq., and amendments thereto, the following conditions shall apply to any motor carrier transporting hay or related animal forage feedstuffs to the geographic area as specified in such declaration of drought:

(1) Motor carrier registration and fuel tax permits as enforced by the Kansas department of revenue shall be temporarily suspended;

(2) any licensing, certification and permitting rules and regulations as required by the state corporation commission shall be temporarily suspended;

(3) motor carriers shall not operate during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise, and shall comply with the flags, signs and lighting requirements applicable to overwidth vehicles as provided in K.S.A. 8-1902, and amendments thereto;

(4) motor carriers shall not operate during inclement weather conditions;

(5) oversize or overweight loads shall not be transported when visibility is less than ½ mile, or when conditions of moderate to heavy rain, sleet, snow, fog or smoke exist, or when highway surfaces are slippery due to ice or packed snow; and

(6) motor carriers shall not transport a load of more than 12 feet in width and 14 feet, six inches, in height.

(b) The provisions of subsection (a) shall be effective immediately upon a declaration of a state of drought by the governor or the United States department of agriculture and shall continue in effect until such declaration has been terminated.

(c) As used in this section:

(1) “Commercial vehicle” has the same meaning as provided in K.S.A. 8-2,128, and amendments thereto; and

(2) “motor carrier” means any driver operating a commercial motor vehicle and any person that holds a certificate of convenience and necessity, a certificate of public service or a private carrier permit from the state corporation commission, or is required to register motor carrier equipment pursuant to 49 U.S.C. § 14504a.

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

CHAPTER 13

HOUSE BILL No. 2138

AN ACT repealing K.S.A. 55-103, 55-104, 55-105, 55-106, 55-107, 55-108, 55-109, 55-301, 55-302, 55-303, 55-304, 55-305, 55-306, 55-307, 55-308, 55-309 and 55-310; concerning oil and gas.

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

Section 1. K.S.A. 55-103, 55-104, 55-105, 55-106, 55-107, 55-108, 55-109, 55-301, 55-302, 55-303, 55-304, 55-305, 55-306, 55-307, 55-308, 55-309 and 55-310 are hereby repealed.

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

Approved April 2, 2013.

CHAPTER 14

HOUSE BILL No. 2177

AN ACT relating to motor carriers; concerning safety rules and regulations; certificates of convenience and necessity; transportation of certain materials; amending K.S.A. 66-1,129b and K.S.A. 2012 Supp. 8-2,127, 66-1,114b and 66-1,129 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 8-2,127 is hereby amended to read as follows: 8-2,127. Vehicles that are exempt from this act include:

- (a) Farm vehicles, defined as follows:
 - (1) Registered as a farm truck or truck tractor under K.S.A. 8-143, and amendments thereto;
 - (2) used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm;
 - (3) not used in the operations of a common motor carrier; and
 - (4) used *either*:
 - (A) *In intrastate commerce; or*
 - (B) *in interstate commerce* within 150 air miles of any farm or farms owned or leased by the registered owner of such farm vehicle;
- (b) vehicles operated by firefighters and other persons which are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals and are not subject to normal traffic regulation. These vehicles include fire trucks, hook and ladder trucks, foam or water transport trucks, police SWAT team vehicles, ambulances or other vehicles that are used in response to emergencies;
- (c) military vehicles which are operated by military personnel in pur-

suit of military purposes and all noncivilian operators of equipment owned or operated by the United States department of defense. This applies to any active duty military personnel and members of the reserves and national guard on active duty, including personnel on full-time national guard duty, personnel on part-time training and national guard military technicians, civilians who are required to wear military uniforms and are subject to the code of military justice; and

(d) motor vehicles, which would otherwise be considered commercial motor vehicles, if such vehicles are used solely and exclusively for private noncommercial use and any operator of such vehicles.

Sec. 2. K.S.A. 2012 Supp. 66-1,114b is hereby amended to read as follows: 66-1,114b. (a) Except as hereinafter provided, it shall be unlawful for any public motor carrier to operate as a carrier of property other than household goods or as a carrier of passengers in intrastate commerce within this state without first having obtained from the commission a certificate of public service to transport property other than household goods or to transport passengers.

(b) The commission, upon the filing of an application for a certificate of public service, shall ascertain that the motor carrier is fit, knowledgeable and in compliance with the commission's safety rules and regulations, liability and cargo insurance requirements and other applicable state laws. Once a motor carrier submits a complete application demonstrating that the motor carrier is fit, knowledgeable and in compliance with the commission's safety rules and regulations, liability and cargo insurance requirements and other applicable state laws, the commission may issue that motor carrier a 30-day interim certificate of public service, signed and approved by the commission's executive director. A list of applications received shall be published electronically on the commission's web site, and shall state whether an interim certificate has been granted to the applicant. Any person who opposes the grant of a certificate of public service to a motor carrier applicant shall have 30 days from the commission's grant of an interim certificate to file a written protest with the commission. If no protest against a motor carrier applicant is filed before the expiration of the 30-day interim certificate, the commission may issue the motor carrier applicant a permanent certificate, signed and approved by the commission's executive director. If the commission finds that an applicant is not fit, knowledgeable, or in compliance with the commission's safety rules and regulations, liability and cargo insurance requirements and other applicable state laws, an order shall be issued denying the application. If the commission deems it necessary, a hearing may be held on any application, and any commission decision on such application shall be issued by order.

(c) Motor carriers holding a certificate of convenience and necessity to transport property other than household goods ~~or a local wrecker per-~~

~~mit~~ shall be considered as holding a certificate of public service to transport that property originally granted by the commission as a public motor carrier of property. Pursuant to federal law those motor carriers may transport that property originally granted by the commission statewide.

(d) Within 18 months of the issuance to a public motor carrier of a certificate of public service to transport property other than household goods or passengers, the commission shall verify that such public motor carrier continues to be fit, knowledgeable and in compliance with the commission's safety rules and regulations, liability and cargo insurance requirements and other applicable state laws.

Sec. 3. K.S.A. 2012 Supp. 66-1,129 is hereby amended to read as follows: 66-1,129. (a) The commission shall adopt rules and regulations necessary to carry out the provisions of this act. No public motor carrier of property, household goods or passengers or private motor carrier of property shall operate or allow the operation of any motor vehicle on any public highway in this state except within the provisions of the rules and regulations adopted by the commission. Rules and regulations adopted by the commission shall include:

(1) Every vehicle unit shall be maintained in a safe and sanitary condition at all times.

(2) Every driver of a public or private motor carrier, *except the driver of a farm vehicle*, operating as a carrier of intrastate commerce within this state, shall be at least 18 years of age. ~~Every driver of a private motor carrier, operating as a carrier of intrastate commerce within this state, shall be at least 16 years of age.~~ All such drivers shall be competent to operate the motor vehicle under such driver's charge.

(3) Minimum age requirements for every driver of a motor carrier, operating as a carrier of interstate commerce, shall be consistent with federal motor carrier regulations.

(4) Hours of service for operators of all motor carriers to which this act applies shall be fixed by the commission.

(5) Accidents arising from or in connection with the operation of motor carriers shall be reported to the commission within the time, in the detail and in the manner as the commission requires.

(6) Every motor carrier shall have attached to each unit or vehicle distinctive marking adopted by the commission.

(7) Motor carrier transportation requirements that are consistent with continuation of the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous materials.

(b) No rules and regulations adopted by the commission pursuant to this section shall require the operator of any motor vehicle having a gross vehicle weight rating or gross combination weight rating of not more than

10,000 pounds to submit to a physical examination, unless required by federal laws or regulations.

(c) Any rules and regulations of the commission, adopted pursuant to this section, shall not apply to the following, while engaged in the carriage of intrastate commerce in this state:

(1) The owner of livestock or producer of farm products transporting livestock of such owner or farm products of such producer to market in a motor vehicle of such owner or producer, or the motor vehicle of a neighbor on the basis of barter or exchange for service or employment, or to such owner or producer transporting supplies for the use of such owner or producer in or producer, or in the motor vehicle of a neighbor on the basis of barter or exchange for service or employment.

(2) The transportation of children to and from school, or to motor vehicles owned by schools, colleges, and universities, religious or charitable organizations and institutions, or governmental agencies, when used to convey students, inmates, employees, athletic teams, orchestras, bands or other similar activities.

(3) (A) Except for motor vehicles under subparagraph (B), motor vehicles, with a gross vehicle weight rating of 26,000 pounds or less, carrying tools, property or material belonging to the owner of the vehicle, and used in repair, building or construction work, not having been sold or being transported for the purpose of sale, except vehicles transporting hazardous materials which require placards.

(B) Except vehicles transporting hazardous materials which require placards, motor vehicles, with a gross vehicle weight rating of 26,000 pounds or less, carrying tools, property or material belonging to the owner of the vehicle and used in repair, building or construction work and such tools, property or material are being transported to or from an active construction site located within a radius of 25 miles of the principal place of business of the motor carrier.

(4) Persons operating motor vehicles which have an ad valorem tax situs in and are registered in the state of Kansas, and used only to transport grain from the producer to an elevator or other place for storage or sale for a distance of not to exceed 50 miles.

(5) The operation of hearses, funeral coaches, funeral cars or ambulances by motor carriers.

(6) Motor vehicles owned and operated by the United States, the District of Columbia, any state, any municipality or any other political subdivisions of this state.

(7) Any motor vehicle with a normal seating capacity of not more than ~~the driver and 15 passengers~~ *people, including the driver*, while used for vanpooling or otherwise not-for-profit in transporting persons who, as a joint undertaking, bear or agree to bear all the costs of such operations, or motor vehicles with a normal seating capacity not more than ~~the driver and 15 passengers~~ *people, including the driver*, for not-for-profit trans-

portation by one or more employers of employees to and from the factories, plants, offices, institutions, construction sites or other places of like nature where such persons are employed or accustomed to work.

~~(8) Motor vehicles used to transport water for domestic purposes, as defined by subsection (c) of K.S.A. 82a-701, and amendments thereto, or livestock consumption.~~

~~(9)—The operation of vehicles used for servicing, repairing or transporting of implements of husbandry, as defined in K.S.A. 8-1427, and amendments thereto, by a person actively engaged in the business of buying, selling or exchanging implements of husbandry, if such operation is within 100 miles of such person's established place of business in this state, unless the implement of husbandry is transported on a commercial motor vehicle.~~

Sec. 4. K.S.A. 66-1,129b is hereby amended to read as follows: 66-1,129b. ~~(a)~~ The provisions of 49 C.F.R. § 173.5-agricultural operations; 49 C.F.R. § 173.6-materials of trade; and 49 C.F.R. § 173.8-exceptions for nonspecification packagings used in intrastate transportation, in effect on the effective date of this act, or any later version as adopted by the commission in rules and regulations, are hereby adopted.

~~(b) The following materials are authorized to be transported by intrastate farmers in nonspecification bulk packagings:~~

~~(1) Agricultural products specified in 49 C.F.R. 173.5 (b)(2); and~~

~~(2) flammable liquid petroleum distillates.~~

~~(c) Nonbulk packagings permanently secured to a transport vehicle and protected against leakage or damage in the event of an overturn, having a capacity of less than 450 liters (119 gallons) or less are authorized for the transportation of flammable liquid petroleum distillates.~~

~~(d) Except as authorized in subsections (b) and (c), the packagings must otherwise comply with the applicable requirements of 49 C.F.R. 171 through 180.~~

Sec. 5. K.S.A. 66-1,129b and K.S.A. 2012 Supp. 8-2,127, 66-1,114b and 66-1,129 are hereby repealed.

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

Approved April 2, 2013.

CHAPTER 15

HOUSE BILL No. 2007

AN ACT concerning insurance holding companies; amending K.S.A. 40-3302, 40-3304, 40-3305, 40-3306, 40-3307, 40-3308, 40-3309, 40-3311 and 40-3311a and repealing the existing sections.

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

New Section 1. (a) With respect to any insurer registered under K.S.A. 40-3305, and amendments thereto, and in accordance with subsection (d), the commissioner of insurance shall have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this act.

(b) The powers of the commissioner of insurance with respect to supervisory colleges include, but are not limited to, the following:

- (1) Initiating the establishment of a supervisory college;
- (2) clarifying the membership and participation of other supervisors in the supervisory college;
- (3) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (4) coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities and processes for information sharing;
- (5) establishing a crisis management plan; and
- (6) establishing a regular assessment to the insurer for the payment of expenses incurred pursuant to subsection (c).

(c) Each registered insurer subject to this section shall be liable for and shall pay the expenses, including reasonable expenses for necessary travel, the commissioner of insurance reasonably incurred with respect to the participation in a supervisory college in accordance with subsection (d). A supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates.

(d) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with K.S.A. 40-3307, and amendments thereto, the commissioner of insurance may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner of insurance may enter into agreements in accordance with K.S.A. 40-3308, and amendments thereto, providing the basis for cooperation between the commissioner of insurance and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the com-

missioner of insurance to regulate or supervise the insurer or its affiliates within the jurisdiction of the supervisory college.

New Sec. 2. K.S.A. 40-3301 through 40-3315, and sections 1 and 2, and amendments thereto, shall be known and may be cited as the insurance holding company act.

Sec. 3. K.S.A. 40-3302 is hereby amended to read as follows: 40-3302. As used in this act, unless the context otherwise requires:

(a) “Affiliate” of, or person “affiliated” with, a specific person, means a person that directly, or indirectly through one or more intermediaries, controls, ~~or~~ is controlled by, or is under common control with, the person specified.

(b) “Commissioner of insurance” means the commissioner of insurance, the commissioner’s deputies, or the insurance department, as appropriate.

(c) “Control” including the terms “controlling,” “controlled by” and “under common control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the management ~~and~~ or policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (k) of K.S.A. 40-3305, and amendments thereto, that control does not exist in fact. The commissioner of insurance may determine, after a hearing in accordance with the provisions of the Kansas administrative procedure act, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) *“Enterprise risk” means any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital to fall into company action level RBC, as such term is defined in either K.S.A. 40-2c01 et seq., and amendments thereto, or K.S.A. 40-2d01 et seq., and amendments thereto, as appropriate, or would cause the insurer to be in hazardous financial condition as set forth in K.S.A. 40-222b, 40-222c and 40-222d, and amendments thereto.*

(e) “Insurance holding company system” means two or more affiliated persons, one or more of which is an insurer.

~~(e)~~ (f) “Insurer” means any corporation, company, association, soci-

ety, fraternal benefit society, health maintenance organization, nonprofit medical and hospital service corporation, nonprofit dental service corporation, reciprocal exchange, person or partnership writing contracts of insurance, indemnity or suretyship in this state upon any type of risk or loss except lodges, societies, persons or associations transacting business pursuant to the provisions of K.S.A. 40-202, and amendments thereto.

~~(f)~~ (g) “Person” means an individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

~~(g)~~ (h) “Securityholder” of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

~~(h)~~ (i) “Subsidiary” of a specified person means an affiliate controlled by such person directly, or indirectly, through one or more intermediaries.

~~(i)~~ (j) “Voting security” means any security convertible into or evidencing a right to acquire a voting security.

Sec. 4. K.S.A. 40-3304 is hereby amended to read as follows: 40-3304. (a) (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly~~, or by conversion or by exercise of any right to acquire~~, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed. The requirements of this section shall not apply to the merger or consolidation of those companies subject to the requirements of K.S.A. 40-507 and 40-1216 to 40-1225, inclusive, and amendments thereto.

(2) For the purposes of this section:

(A) A domestic insurer shall include any person controlling a domestic insurer unless such person as determined by the commissioner of insurance is either directly or through its affiliates primarily engaged in business other than the business of insurance. ~~For the purposes of this section,~~

(B) "Person" shall not include any securities broker holding, in the usual and customary broker's function, less than 20% of the voting securities of ~~an~~ the insurance company or of any person which controls ~~an~~ the insurance company.

(b) The statement to be filed with the commissioner of insurance hereunder shall be made under oath or affirmation, shall be accompanied by a nonrefundable filing fee of \$1,000 and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) ~~of this section~~ is to be affected, hereinafter called "acquiring party," and:

(A) If such person is an individual, such individual's principal occupation ~~and~~, all offices and positions held *by such individual* during the past five years and any conviction of crimes other than minor traffic violations during the past 10 years;

(B) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (A) ~~of this subsection~~;

(2) the source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, except that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets ~~or~~, merge or consolidate it with any person or to make any other material change ~~in~~ to its business ~~or~~, corporate structure or management;

(5) the number of shares of any security referred to in subsection (a)

~~of this section~~ which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) ~~of this section~~, and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in subsection (a) ~~of this section~~ which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (a) ~~of this section~~ in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in subsection (a) ~~of this section~~ during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a description of any recommendations to purchase any security referred to in subsection (a) ~~of this section~~ made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (a) ~~of this section~~, and, if distributed, of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (a) ~~of this section~~ for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) *an agreement by the person required to file the statement referred to in subsection (a) that such person will provide the annual report, specified in subsection (l) of K.S.A. 40-3305, and amendments thereto, for so long as control exists;*

(13) *an acknowledgment by the person required to file the statement referred to in subsection (a) that the person and all subsidiaries within its control in the insurance holding company system will provide to the commissioner of insurance upon request such information as the commissioner of insurance deems necessary to evaluate enterprise risk to the insurer; and*

(14) such additional information as the commissioner of insurance

may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) ~~of this section~~ is a partnership, limited partnership, syndicate or other group, the commissioner of insurance may require that the information called for by paragraphs (1) through ~~(12)~~ (14) of subsection (b) ~~of this section~~ shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) ~~of this section~~ is a corporation, the commissioner of insurance may require that the information called for by paragraphs (1) through ~~(12)~~ (14) of subsection (b) ~~of this section~~ shall be given with respect to such corporation, each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner of insurance and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner of insurance and sent to such insurer within two business days after the person learns of such change.

(c) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) ~~of this section~~ is proposed to be made by means of a registration statement under the securities act of 1933 or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) ~~of this section~~ may utilize such documents in furnishing the information called for by that statement.

(d) (1) The commissioner of insurance shall approve any merger or other acquisition of control referred to in subsection (a) ~~of this section~~ unless, after a public hearing thereon conducted in accordance with the provisions of the Kansas administrative procedure act, the commissioner of insurance finds that:

(A) After the change of control the domestic insurer referred to in subsection (a) ~~of this section~~ would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

(C) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets ~~or~~, consolidate or merge it with any person, or to make any other material change in its business ~~or~~, corporate structure

or management, are unfair and unreasonable to policyholders of the insurer ~~and or are~~ not in the public interest; or

(D) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer ~~and or~~ of the public to permit the merger or other acquisition of control; or

(E) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing referred to in paragraph (1) of subsection (d) ~~of this section~~ shall be held as soon as practical after the statement required by this subsection (a) ~~of this section~~ is filed, and at least 20 days' notice thereof shall be given by the commissioner of insurance to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner of insurance. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments in accordance with the Kansas administrative procedure act. In the absence of intervention, such insurer or person shall have the right to present oral or written statements in accordance with subsection (c) of K.S.A. 77-523, and amendments thereto.

(3) *If the proposed acquisition of control will require the approval of more than one commissioner of insurance, the public hearing referred to in paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a). Such person shall file the statement referred to in subsection (a) with the national association of insurance commissioners within five days of making the request for a public hearing. A commissioner of insurance may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in subsection (a). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of insurance of the states in which the insurers are domiciled. Such commissioners of insurance shall hear and receive evidence. A commissioner of insurance may attend such hearing in person or by telecommunication.*

(4) *As a condition of a change of control of a domestic insurer, any determination by the commissioner of insurance that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than 60 days after the date of notification of the change in control submitted pursuant to subsection (a).*

(5) The commissioner of insurance may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not

otherwise a part of the ~~commissioner's staff as may~~ *staff of the commissioner of insurance as the commissioner of insurance deems to* be reasonably necessary to assist the commissioner of *insurance* in reviewing the proposed acquisition of control.

(e) The provisions of this section shall not apply to:

Any offer, request, invitation, agreement or acquisition which the commissioner of insurance by order shall exempt therefrom as:

(1) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(2) as otherwise not comprehended within the purposes of this section.

(f) The following shall be violations of this section:

(1) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b) ~~of this section~~; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner of insurance has given the ~~commissioner's~~ *requisite* approval thereto.

(g) The courts of this state are hereby vested with jurisdiction over every securityholder of a domestic insurer and every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner of insurance under this section and over all actions involving such person arising out of violations of this section. Each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner of insurance to be such person's true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner of insurance and transmitted by registered or certified mail by the commissioner of insurance to such person at such person's last known address.

Sec. 5. K.S.A. 40-3305 is hereby amended to read as follows: 40-3305.

(a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner of insurance, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by May 1 of each year unless the commissioner of insurance for good cause shown extends the time for registration, and then within such extended time. The commissioner of insurance may require any authorized insurer which is a member of ~~a~~ *an insurance* holding company system and which is not subject to registration

under this section to furnish a copy of the registration statement, the summary specified in subsection (c) or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Pursuant to subsection (a), every insurer subject to registration shall file a registration statement on a form provided by the commissioner of insurance, which shall contain current information about:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) the identity and relationship of every member of the insurance holding company system;

(3) the following agreements in force and transactions currently outstanding or which ~~have~~ occurred during the last calendar year between such insurer and its affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) purchases, sales, or exchanges of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) all management agreements ~~and~~, service contracts and ~~all~~ cost sharing arrangements;

(F) reinsurance agreements;

(G) dividends and other distributions to shareholders; and

(H) consolidated tax allocation agreements.

(4) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner of insurance;

(5) any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(6) *if requested by the commissioner of insurance, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the securities act of 1933, as amended, or the securities exchange act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner of insurance with the most recently filed parent corporation financial statements that have been filed with the SEC;*

(7) *statements that the insurer's board of directors and principal officers oversee corporate governance and internal controls and that the*

insurer's principal officers have approved, implemented and continue to maintain and monitor corporate governance and internal control procedures; and

(8) *any other information required by the commissioner of insurance by rules and regulations.*

(c) All registration statements shall ~~contain~~ *be accompanied by* a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purpose of this section. Unless the commissioner of insurance by rules and regulations or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees, involving .5% or less of an insurer's admitted assets as of the December 31 ~~next~~ *immediately* preceding shall ~~not be deemed material~~ *be deemed immaterial* for purposes of this section.

(e) Each registered insurer shall keep current the information required to be disclosed in such insurer's registration statement by reporting all material changes or additions on amendment forms provided by the commissioner of insurance within 15 days after the end of the month in which it learns of each such change or addition, except each registered insurer shall report all dividends and other distributions to shareholders within five business days following its declaration. Any such dividend or distribution shall not be paid for at least 10 business days from the commissioner's receipt of the notice of its declaration.

(f) Any person within an insurance holding company system subject to registration shall ~~be required to~~ provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this act.

(g) The commissioner of insurance shall terminate the registration of any insurer which demonstrates that such insurer no longer is a member of an insurance holding company system.

(h) The commissioner of insurance may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement.

(i) The commissioner of insurance may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any information or transaction if and to the extent the commissioner of insurance by *rule and regulation or order* shall exempt the same from the provisions of this section.

(k) Any person may file with the commissioner of insurance a dis-

claimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner of insurance disallows such a disclaimer. The commissioner of insurance shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

(l) (1) Except as provided in paragraph (2), the ultimate controlling person of every insurer subject to registration also shall file an annual enterprise risk report. The report, to the best of the ultimate controlling person's knowledge and belief, shall identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of insurance of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners. The first enterprise risk report shall be filed no later than May 1, 2015, and annually thereafter by May 1 of each year unless the commissioner of insurance extends the time for filing for good cause shown.

(2) The ultimate controlling person of an insurer with total direct and assumed annual premiums of less than \$300 million is not required to submit an enterprise risk report.

(m) The failure of an insurer or an ultimate controlling person of the insurer to file a registration statement, any summary of the registration statement or enterprise risk filing within the specified time for filing shall be a violation by the insurer or by the ultimate controlling person of the insurer, as applicable.

Sec. 6. K.S.A. 40-3306 is hereby amended to read as follows: 40-3306.

(a) Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable;

(2) *agreements for cost-sharing services and management shall include such provisions as required by rules and regulations adopted by the commissioner of insurance.*

(3) the charges or fees for services performed shall be reasonable;

~~(3) (4) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied~~ *with respect to such transactions shall be allocated*

to the insurer in conformity with the requirements of K.S.A. 40-225, and amendments thereto;

~~(4)~~ (5) the books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and

~~(5)~~ (6) the insurer's surplus as regards policyholders following any transactions, dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in such insurer's *insurance* holding company system may not be entered into unless the insurer has notified the commissioner of *insurance* in writing of such insurer's intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the commissioner of *insurance* may permit, and the commissioner of *insurance* has not disapproved such transaction within such period.

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders; or

(B) with respect to life insurers, 3% of the insurer's admitted assets, each as of December 31~~next~~ immediately preceding.

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets, each as of December 31~~next~~ immediately preceding.

(3) Reinsurance agreements or modifications thereto, including:

(A) All reinsurance pooling agreements; and

(B) agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a projected change in the insurer's liabilities in any of the next three consecutive years equals or exceeds 5% of the insurer's surplus as regards policyholders, as of December 31~~next~~ immediately preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the

insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(4) all management agreements, service contracts, *tax allocation agreements* and all cost-sharing arrangements; and

(5) any material transactions, specified by ~~regulation~~ *rules and regulations*, which the commissioner *of insurance* determines may adversely affect the interests of ~~the~~ *an* insurer's policyholders.

Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same *insurance* holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the *insurance* holding company system if the purpose of those separate transactions is to avoid the ~~statutory~~ threshold amount *required under this section* and thus avoid the review that would occur otherwise. If the commissioner *of insurance* determines that such separate transactions were entered into over any ~~12-month~~ *12-month* period for such purpose, the commissioner *of insurance* may exercise authority under K.S.A. 40-3311, and amendments thereto.

(d) The commissioner *of insurance*, in reviewing transactions pursuant to subsection (b), shall consider whether the transactions comply with the standards set forth in subsection (a), and whether ~~they~~ *such transactions* may adversely affect the interests of policyholders.

(e) The commissioner *of insurance* shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds 10% of such corporation's voting securities.

(f) *A transaction subject to approval by the commissioner of insurance pursuant to K.S.A. 40-3304, and amendments thereto, shall not be subject to the requirements of this section.*

(g) (1) No insurer subject to registration under K.S.A. 40-3305, and amendments thereto, shall pay any extraordinary dividend or make any other extraordinary distribution to such insurer's shareholders until:

(A) Thirty days after the commissioner of insurance has received notice of the declaration thereof and has not within such period disapproved such payment; or

(B) the commissioner of insurance ~~shall have~~ *has* approved such payment within such 30-day period.

(2) (A) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, ~~whose~~ *the* fair market value *of which*, together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of: ~~(A)~~

(i) Ten percent of such insurer's surplus as regards policyholders as of December 31 ~~next~~ *immediately* preceding; or ~~(B)~~

(ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains for the 12-month period ending December 31 ~~next~~ immediately preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(B) *In determining whether a dividend or distribution is extraordinary, an insurer, other than a life insurer, may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.*

(C) An extraordinary dividend or distribution shall also include any dividend or distribution made or paid out of any funds other than earned surplus arising from the insurer's business, as defined in K.S.A. 40-233, and amendments thereto. The provisions of K.S.A. 40-233, and amendments thereto, shall not be construed so as to prohibit an insurer, subject to registration under K.S.A. 40-3305, and amendments thereto, from making or paying an extraordinary dividend or distribution in accordance with this section.

(3) Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the ~~commissioner's approval thereof, and such a declaration shall confer no approval of the commissioner of insurance. No declaration shall confer any rights upon shareholders until:~~

(A) The commissioner of insurance has approved the payment of such dividend or distribution; or

(B) the commissioner of insurance has not disapproved such payment within the 30-day period referred to above.

~~(g)~~ (h) (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this act.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of K.S.A. 40-3306, and amendments thereto.

~~(h)~~ (i) For purposes of this act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to such insurer's financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by such insurer's assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

- (2) the extent to which the insurer's business is diversified among the several lines of insurance;
- (3) the number and size of risks insured in each line of business;
- (4) the extent of the geographical dispersion of the insurer's insured risks;
- (5) the nature and extent of the insurer's reinsurance program;
- (6) the quality, diversification, and liquidity of the insurer's investment portfolio;
- (7) the recent past and projected future trend in the size *and performance* of the insurer's surplus as regards policyholders;
- (8) the surplus as regards policyholders maintained by other comparable insurers;
- (9) the adequacy of the insurer's reserves;
- (10) the quality and liquidity of investments in affiliates. The commissioner of insurance may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the ~~commissioner's~~ judgment *of the commissioner of insurance* such investment so warrants; and
- (11) the quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

Sec. 7. K.S.A. 40-3307 is hereby amended to read as follows: 40-3307. (a) Subject to the limitation contained in this section and in addition to the powers which the commissioner of insurance has under K.S.A. 40-222 and K.S.A. 40-222a, *and amendments thereto*, relating to the examination of insurers, the commissioner of insurance shall ~~also~~ have the power to ~~order any insurer registered under K.S.A. 40-3305 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner of insurance shall have the power to examine such affiliates to obtain such information~~ *examine any insurer registered under K.S.A. 40-3305, and amendments thereto, and such insurer's affiliates to ascertain the financial condition, including enterprise risk, of such insurer.*

(b) (1) ~~The commissioner of insurance shall exercise his power under subsection (A) of this section only if the examination of the insurer under K.S.A. 40-222 or K.S.A. 40-222a is inadequate or the interests of the policyholders of such insurer may be adversely affected~~ *may order any insurer registered under K.S.A. 40-3305, and amendments thereto, to produce such records, books or other information in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this act.*

(2) *To determine compliance with this act, the commissioner of insurance may order any insurer registered under K.S.A. 40-3305, and*

amendments thereto, to produce information not in the possession of the insurer, if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations or another method. In the event the insurer cannot obtain the information requested by the commissioner of insurance, the insurer shall provide the commissioner of insurance a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner of insurance that the detailed explanation is without merit, the commissioner of insurance may require, after notice and hearing, the insurer to pay a penalty of not more than \$1,000 for each day's delay, or may suspend or revoke the license of the insurer.

(c) The commissioner of insurance may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the ~~commissioner's staff as shall~~ *staff of the commissioner of insurance as the commissioner of insurance shall determine* to be reasonably necessary to assist in the conduct of the examination under subsection (a) ~~of this section~~. Any persons so retained shall be under the direction and control of the commissioner of insurance and shall act in a purely advisory capacity.

(d) Each registered insurer producing examination records, books and papers pursuant to subsection (a) ~~of this section~~ shall be liable for and shall pay the expense of such examination in accordance with K.S.A. 40-223 and K.S.A. 40-253.

(e) *The commissioner of insurance shall have the power to issue subpoenas, administer oaths and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner of insurance may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person subpoenaed shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. Such subpoenaed person shall be entitled to the same fees and mileage, if claimed, as a witness in K.S.A. 28-125, and amendments thereto. Fees, mileage and actual expense, if any, necessarily incurred in securing the attendance and testimony of witnesses shall be itemized, charged against and paid by the company being examined.*

Sec. 8. K.S.A. 40-3308 is hereby amended to read as follows: 40-3308. ~~All information, documents and copies thereof obtained by or disclosed to the commissioner of insurance or any other person in the course of an examination or investigation made pursuant to K.S.A. 40-3307 and amendments thereto and all information reported pursuant to K.S.A. 40-3305 and amendments thereto, shall be given confidential treatment and~~

~~shall not be subject to subpoena. Such information, documents and copies thereto shall not be made public by the commissioner of insurance, the national association of insurance commissioners or any other person, except to insurance departments of other states and as otherwise provided in this section, without the prior written consent of the insurer to which it pertains. If the commissioner of insurance, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, the commissioner may publish all or any part thereof in such a manner as the commissioner may deem appropriate.~~(a) Documents, materials or other information obtained by or disclosed to the commissioner of insurance or any other person in the course of an examination or investigation made pursuant to K.S.A. 40-3307, and amendments thereto, and all information reported pursuant to K.S.A. 40-3304, 40-3305 and 40-3306, and amendments thereto, shall:

- (1) *Be confidential and privileged;*
- (2) *not be subject to disclosure under the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto;*
- (3) *not be subject to subpoena; and*
- (4) *not be subject to discovery or admissible in evidence in any private civil action.*

(b) *The commissioner of insurance shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner of insurance, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act, determines that the interests of policyholders, shareholders or the public would be served by the publication thereof, in which event the commissioner of insurance may publish all or any part thereof in such a manner as the commissioner of insurance may deem appropriate. In making such determination, the commissioner of insurance also shall take into consideration any potential adverse consequences of the disclosure thereof.*

(c) *Neither the commissioner of insurance nor any person who received documents, materials or other information while acting under the authority of the commissioner of insurance or with whom such documents, materials or other information are shared pursuant to this section shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a).*

(d) *In order to assist in the performance of the commissioner of insurance's duties, the commissioner of insurance:*

- (1) *May share documents, materials or other information, including*

the confidential and privileged documents, materials or information subject to subsection (a), with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, including members of any supervisory college described in section 1, and amendments thereto, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) *notwithstanding the provisions of paragraph (1) above, the commissioner of insurance may only share confidential and privileged documents, material or information reported pursuant to subsection (1) of K.S.A. 40-3305, and amendments thereto, with the commissioner of insurance or corresponding official of any state having statutes or regulations substantially similar to subsections (a) and (b), and who has agreed in writing not to disclose such information;*

(3) *may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the national association of insurance commissioners, and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information. Documents received pursuant to this section shall not be subject to disclosure pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto; and*

(4) *shall enter into written agreements with the national association of insurance commissioners governing sharing and use of information provided pursuant to this act consistent with this subsection that shall:*

(i) *Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this act, including procedures and protocols for sharing by the national association of insurance commissioners with other state, federal or international regulators;*

(ii) *specify that ownership of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this act remains with the commissioner of insurance, and the national association of insurance commissioners' use of the information is subject to the direction of the commissioner of insurance;*

(iii) *require prompt notice to be given to an insurer and its affiliates whose confidential information in the possession of the national association of insurance commissioners, pursuant to this act, is subject to a re-*

quest or subpoena to the national association of insurance commissioners for disclosure or production; and

(iv) require the national association of insurance commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer and its affiliates shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this act.

(e) The sharing of information by the commissioner of insurance, pursuant to this act, shall not constitute a delegation of regulatory authority or rule-making authority, and the commissioner of insurance is solely responsible for the administration, execution and enforcement of the provisions of this act.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner of insurance under this act or as a result of sharing as authorized in subsection (d).

(g) Documents, materials or other information in the possession or control of the national association of insurance commissioners shall be confidential by law and privileged, shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(h) The provisions of this section shall not be subject to the provisions of K.S.A. 45-229, and amendments thereto.

Sec. 9. K.S.A. 40-3309 is hereby amended to read as follows: 40-3309. The commissioner of insurance, upon notice and opportunity for all interested persons to be heard, may issue such rules; *and* regulations and orders as shall be necessary to carry out the provisions of this act. Hearings on orders, as defined in subsection (d) of K.S.A. 77-502, and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 10. K.S.A. 40-3311 is hereby amended to read as follows: 40-3311. (a) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to subsection (a) of K.S.A. 40-3305 or subsections (c) or (d) of K.S.A. 40-3306, and amendments thereto, or which otherwise violates this act, shall pay, in such directors' or officers' individual capacity, a civil forfeiture of not more than \$5,000 per violation, after notice and hearing before the commissioner of *insurance*. In determining the amount of the civil forfeiture, the commissioner of *insurance* shall take

into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(b) Whenever it appears to the commissioner of *insurance* that any insurer subject to this act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to K.S.A. 40-3306, and amendments thereto, and which would not have been approved had such approval been requested, the commissioner of *insurance* may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner ~~may also~~ of *insurance* also may order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

(c) Whenever it appears to the commissioner of *insurance* that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this act, the commissioner of *insurance* may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state, then by the district court for Shawnee county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this act may be fined not more than \$50,000. Any individual who willfully violates this act may be fined in individual capacity not more than \$10,000 or, be imprisoned for not more than one to three years, or both.

(d) Any officer, director or employee of an insurance holding company system who knew or reasonably should have known they were subscribing to or making or causing to be made any false statements, false reports or false filings with the intent to deceive the commissioner of *insurance* in the performance of duties under this act, upon conviction thereof, shall be imprisoned for not more than five to 10 years or fined \$100,000, or both. Any fines imposed shall be paid by the officer, director or employee in such person's individual capacity.

Sec. 11. K.S.A. 40-3311a is hereby amended to read as follows: 40-3311a. On and after July 1, 1993, when it appears to the commissioner of *insurance* that any person has committed a violation of this act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner of *insurance* may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as the commissioner of *insurance* finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Sec. 12. K.S.A. 40-3302, 40-3304, 40-3305, 40-3306, 40-3307, 40-3308, 40-3309, 40-3311 and 40-3311a are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 2, 2013.

CHAPTER 16

HOUSE BILL No. 2147

AN ACT repealing K.S.A. 68-422b, 68-1129, 68-1601, 68-1602, 68-1603, 68-1604, 68-1605, 68-1606, 68-1607, 68-1608, 68-1609, 68-1610, 68-1611, 68-1612 and 68-1613; relating to roads and bridges.

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

Section 1. K.S.A. 68-422b, 68-1129, 68-1601, 68-1602, 68-1603, 68-1604, 68-1605, 68-1606, 68-1607, 68-1608, 68-1609, 68-1610, 68-1611, 68-1612 and 68-1613 are hereby repealed.

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

Approved April 2, 2013.

CHAPTER 17

HOUSE BILL No. 2030

AN ACT concerning hunting, relating to deer permits; amending K.S.A. 2012 Supp. 32-971 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 32-971 is hereby amended to read as follows: 32-971. (a) ~~The commission~~ *department* may authorize youth hunt of a lifetime *and wounded warrior* deer permits to take deer. ~~Such Youth hunt of a lifetime~~ permits shall be made available only to nonprofit organizations based or operating in Kansas that actively promote hunting for youth under the age of 21 who are handicapped or experiencing life threatening illnesses. *Wounded warrior deer permits shall be made available only to disabled veterans who sustained injuries in combat and have a service-connected disability of not less than 30%.*

(b) The issuance of youth hunt of a lifetime *and wounded warrior* deer permits shall be subject to the following limitations:

(1) A total of not more than 10 youth hunt of a lifetime permits *and*

not more than 10 wounded warrior permits shall be available in ~~one~~ each calendar year;

(2) youth hunt of a lifetime permits *and wounded warrior permits* shall not be included in nor reduce any limited quota permit allotments set by other rules and regulations of the secretary.

~~(c) Application requests by qualified organizations shall be submitted to any member of the commission and shall be provided to the commission as a whole.~~

~~(d)~~(c) The ~~commission~~ department shall conduct a random drawing from the pool of eligible qualified organizations to award youth hunt of a lifetime *or eligible individuals to award wounded warrior permits*, ~~subject to the approval of the secretary if demand exceeds the allocation of permits, as determined by the department.~~

~~(e)~~(d) Organizations awarded youth hunt of a lifetime permits *and individuals awarded wounded warrior permits* shall pay to the department the price established by rules and regulations for the highest value for the type of permit awarded.

~~(f)~~(e) Youth hunt of a lifetime *and wounded warrior permits* shall only be issued in the name of the final recipient. Once a youth hunt of a lifetime *or wounded warrior permit* is issued in the name of the final recipient, it shall not be transferred to any other individual.

~~(g)~~(f) Youth hunt of a lifetime *and wounded warrior permits* shall be subject to the restrictions of the season, sex, equipment type or hunt units as issued on the permit by the department.

~~(h)~~(g) Organizations awarded youth hunt of a lifetime permits shall provide the department with a final report on the use of the permit by the final recipient not later than 30 days following the close of the season for which the permit is valid.

~~(i)~~(h) The secretary may adopt, in accordance with K.S.A. 32-805, and amendments thereto, such rules and regulations as necessary to implement the provisions of this section.

Sec. 2. K.S.A. 2012 Supp. 32-971 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 2, 2013.

Published in the *Kansas Register* April 11, 2013.

CHAPTER 18

HOUSE BILL No. 2305

AN ACT concerning the Kansas storage tank act; relating to secondary containment of underground storage tanks; amending K.S.A. 2012 Supp. 65-34,102 and 65-34,103 and repealing the existing sections.

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

New Section 1. (a) Each underground storage tank, or piping connected to any such tank, installed or replaced on and after July 1, 2013, shall be secondarily contained and monitored for leaks. (1) All secondary containment systems shall: (A) Be designed, constructed and installed to contain regulated substances released from the tank system until they are detected and removed;

(B) prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system; and

(C) be checked for evidence of a release using interstitial monitoring.

(2) Any installation or replacement of secondarily contained piping shall include installation of containment of the submersible pump, but the requirement for secondary containment shall not apply to safe suction piping or repairs to an underground storage tank, piping or dispenser that are meant to restore a tank, pipe or dispenser to operating condition.

(b) The provisions of this section shall apply: (1) For a new underground storage tank system, to all underground storage tanks and connected pipes comprising the system, including systems comprised of multiple storage tanks or connected piping;

(2) for the replacement of an existing underground storage tank or existing piping connected to an underground storage tank system, to the specific underground storage tank or piping being replaced and not to other underground storage tanks and connected pipes comprising such system;

(3) to any new motor fuel dispenser system installed after June 30, 2013. Such system shall include under-dispenser spill containment. The containment must be: (A) Liquid tight on its sides, bottom and at any penetrations;

(B) compatible with the substance conveyed by the piping; and

(C) designed to allow for visual inspection and access to the components in the containment or to be monitored for a release of regulated substances from dispenser and piping.

Sec. 2. K.S.A. 2012 Supp. 65-34,102 is hereby amended to read as follows: 65-34,102. As used in the Kansas storage tank act:

(a) "Aboveground storage tank" means:

(1) Any storage tank in which greater than 90% of the tank volume,

including volume of the piping, is not below the surface of the ground; or

(2) any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

(b) “Aboveground fund” means the aboveground petroleum storage tank release trust fund.

(c) “Department” means the Kansas department of health and environment.

(d) “Facility” means all contiguous land, structures and other appurtenances and improvements on the land used in connection with one or more storage tanks.

(e) “Federal act” means the solid waste disposal act (42 U.S.C. § 3152 et seq., 42 U.S.C. § 6991 et seq., as in effect on January 1, 2012) and rules and regulations adopted pursuant to such federal laws and in effect on January 1, 2012.

(f) “Financial responsibility” means insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the secretary to provide for taking corrective action, including cleanup and restoration of any damage to the land, air or waters of the state, and compensating third parties for cleanup, bodily injury or property damage resulting from a sudden or nonsudden release of a regulated substance arising from the construction, relining, ownership or operation of an underground storage tank and in the amount specified in the federal act.

(g) “Guarantor” means any person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator.

(h) “Operator” means any person in control of or having responsibility for the daily operation of a storage tank, but such term shall not include a person whose only responsibility regarding such storage tank is filling such tank with a regulated substance and who does not dispense or have control of the dispensing of regulated substances from the storage tank.

(i) “Own” means to hold title to or possess an interest in a storage tank or the regulated substance in a storage tank.

(j) (1) “Owner” means any person who: (A) Is or was the owner of any underground storage tank which was in use on November 8, 1984, or brought into use subsequent to that date; (B) in the case of an underground storage tank in use prior to November 8, 1984, owned such tank immediately prior to the discontinuation of its use; (C) is or was the owner of any aboveground storage tank which was in use on July 1, 1992, or brought into use subsequent to that date; or (D) in the case of an aboveground storage tank in use prior to July 1, 1992, owned such tank immediately prior to the discontinuation of its use.

(2) Owner does not include: (A) A person who holds an interest in a petroleum storage tank solely for financial security, unless through fore-

closure or other related actions the holder of a security interest has taken possession of the storage tank; and (B) any city or county which obtains a storage tank or regulated substance as a result of tax foreclosure proceedings.

(k) “Person” means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association, state, interstate body, municipality, commission, political subdivision or any agency, board, department or bureau of this state or of any other state or of the United States government.

(l) “Petroleum” means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pound per square inch absolute, including, but not limited to, gasoline, gasohol, diesel fuel, fuel oils, kerosene and biofuels.

(m) “Petroleum product” means petroleum other than crude oil.

(n) “Petroleum storage tank” means any storage tank used to contain an accumulation of petroleum.

(o) “Regulated substance” means petroleum or any element, compound, mixture, solution or substance defined in section 101(14) of the comprehensive environmental response, compensation and liability act of 1980 of the United States as in effect on January 1, 1989, but not if regulated as a hazardous waste under the resource conservation and recovery act of 1976, 42 U.S.C. §§ 6921 through 6939b, as in effect on January 1, 1989.

(p) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into groundwater, surface water or soils.

(q) “Removal” means the process of removing or disposing of a storage tank, no longer in service, and also shall mean the process of abandoning such tank, in place.

(r) “Repair” means *to restore a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release or a suspected release of product from the UST system or has failed to function properly. The term includes* modification or correction of a storage tank through such means as relining, replacement of piping, valves, fillpipes, vents and liquid level monitoring systems, and the maintenance and inspection of the efficacy of cathodic protection devices, but the term does not include the process of conducting a tightness test to establish the integrity of a tank.

(s) “Secretary” means the secretary of health and environment.

(t) “Storage tank” means any one or combination of tanks used to contain an accumulation of regulated substances, the associated piping and ancillary equipment and the containment system.

(u) “Tank” means a stationary device designed to contain an accu-

mulation of substances and constructed of non-earthen materials such as concrete, steel or plastic, that provide structural support.

(v) “Terminal” means a bulk storage facility for storing petroleum supplied by pipeline or marine vessel.

(w) “Trade secret” has the same meaning as provided in K.S.A. 60-3320, and amendments thereto.

(x) “Underground storage tank” means any storage tank in which 10% or more of the tank volume, including volume of the piping, is below the surface of the ground. Underground storage tank does not include any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

(y) “Underground storage tank contractor” or “contractor” means a business which holds itself out as being qualified to install, repair or remove underground storage tanks.

(z) “Underground fund” means the underground petroleum storage tank release trust fund.

(aa) “Underground storage tank installer” or “installer” means an individual who has an ownership interest or exercises a management or supervisory position with an underground storage tank contractor. The term shall include the crew chief, expeditor, engineer, supervisor, leadman or foreman in charge of a tank installation project.

(bb) “UST redevelopment fund” means the Kansas UST property redevelopment trust fund.

(cc) “Abandoned underground storage tank” means an underground storage tank that exhibits one or more of the following conditions:

(1) Is not in use for more than three months;

(2) does not have a current tank permit issued by the department; or

(3) has been temporarily closed, in accordance with department guidelines, for more than 12 months.

(dd) “Property owner” means for the purposes of the UST redevelopment fund, a person who owns real property on which an abandoned underground storage tank is located.

(ee) *“Installation of a new motor fuel dispenser system” means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the underground storage tank system.*

(ff) *“Replaced” means: (1) For a tank, to remove a tank and install another tank; and*

(2) for piping, to remove 50% or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

(gg) “Secondary containment” or “secondarily contained” means a release prevention and release detection system for a tank or piping. These systems have an inner and outer barrier with an interstitial space that is monitored for a release of regulated substances from the underground storage tank and piping.

(hh) “Safe suction piping” means underground piping that conveys regulated substances under suction, is designed and constructed to operate at less than atmospheric pressure, is sloped so that the contents of the pipe drain back into the storage tank if the suction is released and contains only one check valve in each suction line that is located directly below and as close as practical to the suction pump.

(ii) “Under-dispenser containment” means containment underneath a dispenser system designed to prevent dispenser system leaks from reaching soil or groundwater. The containment must be: (1) Liquid tight on its sides, bottom and at any penetrations;

(2) compatible with the substance conveyed by the piping; and

(3) allow for visual inspection and access to the components in the containment or be monitored for a release of regulated substances from dispenser and piping.

Sec. 3. K.S.A. 2012 Supp. 65-34,103 is hereby amended to read as follows: 65-34,103. Except as provided in K.S.A. 65-34,119, and amendments thereto, the Kansas storage tank act shall not apply to:

(a) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) tanks used for storing heating oil for consumptive use on a single family residential premise where stored;

(c) a pipeline facility, including gathering lines, regulated under:

(1) ~~The natural gas pipeline safety act of 1968; and~~

~~(2) the hazardous liquid pipeline safety act of 1979 U.S.C. 49 chapters 601 and 603 and which is determined by the secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure, or as an integral part of a pipeline; or~~

~~(2) state laws relating to intrastate pipelines comparable to the provisions of law referred to in subsections (c)(1) and (2);~~

(d) surface impoundments, pits, ponds, septic tanks or lagoons;

(e) storm water or waste water collection systems;

(f) flow-through process tanks;

(g) liquid traps, storage tanks or associated gathering lines directly related to oil or gas production and gathering operations;

(h) aboveground storage tanks of agricultural materials regulated by the Kansas department of agriculture;

(i) aboveground storage tanks located at a petroleum refining facility;

(j) pipeline terminals;

(k) aboveground tanks of less than 660 gallons capacity;

(l) storage tanks associated with oil and natural gas production; and
(m) electrical equipment which has as part of its design a storage tank containing one or more regulated substances.

Sec. 4. K.S.A. 2012 Supp. 65-34,102 and 65-34,103 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 2, 2013.

CHAPTER 19

SENATE BILL No. 85

AN ACT concerning insurance; pertaining to proof of motor vehicle liability insurance; amending K.S.A. 2012 Supp. 8-173, 8-1604, 40-3104 and 40-3118 and repealing the existing sections.

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

Section 1. K.S.A. 2012 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, *and amendments thereto*, 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 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 ve-

hicle 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, *and amendments thereto*. 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~~, *facsimile or an image displayed on a cellular phone or any other type of portable electronic device* of any of these documents shall suffice for verification of registration or renewal. *Any person to whom such image of proof of insurance, self-insurance or other financial security required by article 31 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, is displayed, shall view only such image displayed on such cellular phone or other portable electronic device. Such person shall be prohibited from viewing any other content or information stored on such cellular phone or other portable electronic device.* 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. 2. K.S.A. 2012 Supp. 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 property, shall give such driver's name, address and the registration number of the vehicle such driver is driving, and upon request shall exhibit such 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.

(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) 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 \$1,000 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. *Such evidence also may be produced by displaying on a cellular phone or other type of portable electronic device evidence of financial security required by this subsection. Any person to whom such evidence of financial security is displayed shall view only such evidence of financial security. Such person shall be prohibited from viewing any other content or information stored on such cellular phone or other portable electronic devices.* 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. 2012 Supp. 40-3104 is hereby amended to read as follows: 40-3104. (a) Every owner shall provide motor vehicle liability insurance coverage in accordance with the provisions of this act for every motor vehicle owned by such person, unless such motor vehicle: (1) Is included under an approved self-insurance plan as provided in subsection (f); (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a motor vehicle dealer, and such motor vehicle liability insurance coverage is provided by the school district or accredited nonpublic school; (3) is included under a qualified plan of self-insurance approved by an agency of the state in which such motor vehicle is registered and the form prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto, has been filed; or (4) is expressly exempted from the provisions of this act.

(b) An owner of an uninsured motor vehicle shall not permit the operation thereof upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(c) No person shall knowingly drive an uninsured motor vehicle upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(d) (1) Any person operating a motor vehicle upon a highway or upon property open to use by the public shall display, upon demand, evidence of financial security to a law enforcement officer. *Such evidence of financial security which meets the requirements of subsection (e) may be displayed on a cellular phone or any other type of portable electronic device. The law enforcement officer to whom such evidence of financial security is displayed shall view only such evidence of financial responsibility. Such law enforcement officer shall be prohibited from viewing any other con-*

tent or information stored on such cellular phone or other type of portable electronic device. The law enforcement officer shall issue a citation to any person who fails to display evidence of financial security upon such demand. The law enforcement officer shall transmit a copy of the insurance verification form prescribed by the secretary of revenue with the copy of the citation transmitted to the court.

(2) No citation shall be issued to any person for failure to provide proof of financial security when evidence of financial security meeting the standards of subsection (e) is displayed upon demand of a law enforcement officer. Whenever the authenticity of such evidence is questionable, the law enforcement officer may initiate the preparation of the insurance verification form prescribed by the secretary of revenue by recording information from the evidence of financial security displayed. The officer shall immediately forward the form to the department of revenue, and the department shall proceed with verification in the manner prescribed in the following paragraph. Upon return of a form indicating that insurance was not in force on the date indicated on the form, the department shall immediately forward a copy of the form to the law enforcement officer initiating preparation of the form.

(e) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with violating subsection (b), (c) or (d) 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. *Such evidence of financial security may be produced by displaying such information on a cellular phone or any other type of portable electronic device. Any person to whom such evidence of financial security is displayed on a cellular phone or any other type of portable electronic device shall be prohibited from viewing any other content or information stored on such cellular phone or other type of portable electronic device.* 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 of violating subsection (b), (c) or (d) 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.

(f) Any person in whose name more than 25 motor vehicles are registered in Kansas may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner of insurance. The certificate of self-insurance issued by the commissioner shall cover such owned vehicles and those vehicles, registered in Kansas, leased to such person if the lease agreement requires that motor vehicle liability insurance on the vehicles be provided by the lessee. Upon application of any such person, the commissioner of insurance may issue a certificate of self-insurance, if the commissioner is satisfied that such person is possessed and will continue to be possessed of ability to pay any liability imposed by law against such person arising out of the ownership, operation, maintenance or use of any motor vehicle described in this subsection. A self-insurer shall provide liability coverage subject to the provisions of subsection (e) of K.S.A. 40-3107, and amendments thereto, arising out of the ownership, operation, maintenance or use of a self-insured motor vehicle in those instances where the lessee or the rental driver, if not the lessee, does not have a motor vehicle liability insurance policy or insurance coverage pursuant to a motor vehicle liability insurance policy or certificate of insurance or such insurance policy for such leased or rented vehicle. Such liability coverage shall be provided to any person operating a self-insured motor vehicle with the expressed or implied consent of the self-insurer.

Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the commissioner of insurance may cancel a certificate of self-insurance upon reasonable grounds. Failure to provide liability coverage or personal injury protection benefits required by K.S.A. 40-3107 and 40-3109, and amendments thereto, or pay any liability imposed by law arising out of the ownership, operation, maintenance or use of a motor vehicle registered in such self-insurer's name, or to otherwise comply with the requirements of this subsection shall con-

stitute reasonable grounds for the cancellation of a certificate of self-insurance. Reasonable grounds shall not exist unless such objectionable activity occurs with such frequency as to indicate a general business practice.

Self-insureds shall investigate claims in a reasonably prompt manner, handle such claims in a reasonable manner based on available information and effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear.

As used in this subsection, “liability imposed by law” means the stated limits of liability as provided under subsection (e) of K.S.A. 40-3107, and amendments thereto.

Nothing in this subsection shall preclude a self-insurer from pursuing all rights of subrogation against another person or persons.

(g) (1) Any person violating any provision of this section shall be guilty of a class B misdemeanor and shall be subject to a fine of not less than \$300 nor more than \$1,000 or confinement in the county jail for a term of not more than six months, or both such fine and confinement.

(2) Any person convicted of violating any provision of this section within three years of any such prior conviction shall be guilty of a class A misdemeanor and shall be subject to a fine of not less than \$800 nor more than \$2,500.

(h) In addition to any other penalties provided by this act for failure to have or maintain financial security in effect, the director, upon receipt of a report required by K.S.A. 8-1607 or 8-1611, and amendments thereto, or a denial of such insurance by the insurance company listed on the form prescribed by the secretary of revenue pursuant to subsection (d) of this section, shall, upon notice and hearing as provided by K.S.A. 40-3118, and amendments thereto:

(1) Suspend:

(A) The license of each driver in any manner involved in the accident;

(B) the license of the owner of each motor vehicle involved in such accident, unless the vehicle was stolen at the time of the accident, proof of which must be established by the owner of the motor vehicle. Theft by a member of the vehicle owner’s immediate family under the age of 18 years shall not constitute a stolen vehicle for the purposes of this section;

(C) if the driver is a nonresident, the privilege of operating a motor vehicle within this state; or

(D) if such owner is a nonresident, the privilege of such owner to operate or permit the operation within this state of any motor vehicle owned by such owner; and

(2) revoke the registration of all vehicles owned by the owner of each motor vehicle involved in such accident.

(i) The suspension or revocation requirements in subsection (h) shall not apply:

(1) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy as required by K.S.A. 40-3107, and amendments thereto, with respect to the vehicle involved in the accident;

(2) to the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy with respect to such driver's driving of vehicles not owned by such driver;

(3) to any self-insurer as defined by subsection (u) of K.S.A. 40-3103, and amendments thereto;

(4) to the driver or owner of any vehicle involved in the accident which was exempt from the provisions of this act pursuant to K.S.A. 40-3105, and amendments thereto;

(5) to the owner of a vehicle described in subsection (a)(2).

(j) (1) For the purposes of provisions (1) and (2) of subsection (i) of this section, the director may require verification by an owner's or driver's insurance company or agent thereof that there was in effect at the time of the accident an automobile liability policy as required in this act.

(2) Subject to the provisions of subsection (k), any suspension or revocation effected hereunder shall remain in effect until such person:

(A) Has filed satisfactory proof of financial security with the director as required by subsection (d) of K.S.A. 40-3118, and amendments thereto;

(B) has paid the reinstatement fee herein prescribed; and

(C) (i) has been released from liability;

(ii) is a party to an action to determine liability pursuant to which the court temporarily stays such suspension pending final disposition of such action;

(iii) has entered into an agreement for the payment of damages; or

(iv) has been finally adjudicated not to be liable in respect to such accident and evidence of any such fact has been filed with the director.

(3) The reinstatement fee shall be \$100 except that if the registration of a motor vehicle of any owner is revoked within one year following a prior revocation of the registration of a motor vehicle of such owner under the provisions of this act such fee shall be \$300.

(k) (1) Whenever any person whose license has been suspended or revoked pursuant to this section is involved in an accident and has entered into an agreement with any driver, or such driver's insurer, who has been damaged or whose vehicle has been damaged to pay for such damage and such person defaults on payments under such agreement, the driver or the driver's insurer, as appropriate, shall notify the director within 60 days of the date of default.

(2) Upon receipt of the notice of default, the director shall immediately suspend such person's license and registration. If such person is a nonresident, the director shall immediately suspend such nonresident's privilege to operate a motor vehicle in this state.

(3) Except as provided in paragraph (4), such person's driver's license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until:

(A) The director receives notice payments under the agreement referred to in paragraph (1) have been resumed and that payments under such agreement are no longer in default;

(B) such person has filed satisfactory proof of financial responsibility with the director as required by subsection (d) of K.S.A. 40-3118, and amendments thereto; and

(C) the reinstatement fee required by subsection (j) has been paid.

(4) Upon due notice to the director that the conditions of paragraph (3) have been fulfilled, such person may obtain from the director an order restoring such person's driver's license, registration and nonresident's operating privilege to operate a motor vehicle in this state conditioned upon such person's continued compliance with the agreement referred to in paragraph (1).

(5) In the event such person fails to make any further payment under the agreement referred to in paragraph (1) when such payment is due, the director, upon receipt of notice of such default, shall immediately suspend the license, registration or nonresident's operating privilege of such person until all payments have been made under the agreement referred to in paragraph (1). No suspension of such person's license, registration or nonresident's privilege to operate a motor vehicle in this state shall be reinstated pursuant to paragraph (4).

(l) The provisions of this section shall not apply to motor carriers of property or passengers regulated by the corporation commission of the state of Kansas.

(m) The provisions of subsection (d) shall not apply to vehicle dealers, as defined in K.S.A. 8-2401, and amendments thereto, for vehicles being offered for sale by such dealers.

Sec. 4. K.S.A. 2012 Supp. 40-3118 is hereby amended to read as follows: 40-3118. (a) No motor vehicle shall be registered or reregistered in this state unless the owner, at the time of registration, has in effect a policy of motor vehicle liability insurance covering such motor vehicle, as provided in this act, or is a self-insurer thereof, or the motor vehicle is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a motor vehicle dealer, and such policy of motor vehicle liability insurance is provided by the school district or accredited nonpublic school. As used in this section, the term "financial security" means such policy or self-insurance. The director shall require that the owner certify and provide

verification of financial security, in the manner prescribed by K.S.A. 8-173, and amendments thereto, that the owner has such financial security, and the owner of each motor vehicle registered in this state shall maintain financial security continuously throughout the period of registration. In addition, when an owner certifies that such financial security is a motor vehicle liability insurance policy meeting the requirements of this act, the director may require that the owner or owner's insurance company produce records to prove the fact that such insurance was in effect at the time the vehicle was registered and has been maintained continuously from that date. *Such records may be produced by displaying such records on a cellular phone or any other type of portable electronic device. Any person to whom such records are displayed on such cellular phone or other type of portable electronic device shall be prohibited from viewing any other content or information stored on such cellular phone or other type of portable electronic device.* Failure to produce such records shall be prima facie evidence that no financial security exists with regard to the vehicle concerned. It shall be the duty of insurance companies, upon the request of the director, to notify the director within 30 calendar days of the date of the receipt of such request by the director of any insurance that was not in effect on the date of registration and maintained continuously from that date.

(b) Except as otherwise provided in K.S.A. 40-276, 40-276a and 40-277, and amendments thereto, and except for termination of insurance resulting from nonpayment of premium or upon the request for cancellation by the insured, no motor vehicle liability insurance policy, or any renewal thereof, shall be terminated by cancellation or failure to renew by the insurer until at least 30 days after mailing a notice of termination, by certified or registered mail or United States post office certificate of mailing, to the named insured at the latest address filed with the insurer by or on behalf of the insured. Time of the effective date and hour of termination stated in the notice shall become the end of the policy period. Every such notice of termination sent to the insured for any cause whatsoever shall include on the face of the notice a statement that financial security for every motor vehicle covered by the policy is required to be maintained continuously throughout the registration period, that the operation of any such motor vehicle without maintaining continuous financial security therefor is a class B misdemeanor and shall be subject to a fine of not less than \$300 and not more than \$1,000 and that the registration for any such motor vehicle for which continuous financial security is not provided is subject to suspension and the driver's license of the owner thereof is subject to suspension.

(c) The director of vehicles shall verify a sufficient number of insurance certifications each calendar year as the director deems necessary to insure compliance with the provisions of this act. The owner or owner's

insurance company shall verify the accuracy of any owner's certification upon request, as provided in subsection (a).

(d) (1) In addition to any other requirements of this act, the director shall require a person to acquire insurance and for such person's insurance company to maintain on file with the division evidence of such insurance for a period of one year when a person has been convicted in this or another state of any of the violations enumerated in K.S.A. 8-285, and amendments thereto.

(2) The director shall also require any driver whose driving privileges have been suspended pursuant to this section to maintain such evidence of insurance as required above.

(3) The company of the insured shall immediately mail notice to the director whenever any policy required by this subsection to be on file with the division is terminated by the insured or the insurer for any reason. The receipt by the director of such termination shall be prima facie evidence that no financial security exists with regard to the person concerned.

(4) No cancellation notice shall be sent to the director if the insured adds or deletes a vehicle, adds or deletes a driver, renews a policy or is issued a new policy by the same company. No cancellation notice shall be sent to the director prior to the date the policy is terminated if the company allows a grace period for payment until such grace period has expired and the policy is actually terminated.

(5) For the purposes of this act, the term "conviction" includes pleading guilty or nolo contendere, being convicted or being found guilty of any violation enumerated in this subsection without regard to whether sentence was suspended or probation granted. A 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.

(6) The requirements of this subsection shall apply whether or not such person owns a motor vehicle.

(e) Whenever the director shall receive prima facie evidence, as prescribed by this section, that continuous financial security covering any motor vehicle registered in this state is not in effect, the director shall notify the owner by registered or certified mail or United States post office certificate of mailing that, at the end of 30 days after the notice is mailed, the registration for such motor vehicle and the driving privileges of the owner of the vehicle shall be suspended or revoked, pursuant to such rules and regulations as the secretary of revenue shall adopt, unless within 10 days after the notice is mailed: (1) Such owner shall demonstrate proof of continuous financial security covering such vehicle to the satisfaction of the director. *Such proof of continuous financial security may be provided by the owner by displaying such proof on a cellular phone or other portable electronic device;* or (2) such owner shall mail a written request which is postmarked within 10 days after the notice is mailed

requesting a hearing with the director. *Any person to whom such proof of continuous financial security is displayed on a cellular phone or other portable electronic device shall view only such evidence of continuous financial security. Such person shall be prohibited from viewing any other content or information stored on such cellular phone or other portable electronic device.* Upon receipt of a timely request for a hearing, the director shall afford such person an opportunity for hearing within the time and in the manner provided in K.S.A. 8-255, and amendments thereto. If, within the ten-day period or at the hearing, such owner is unable to demonstrate proof of continuous financial security covering the motor vehicle in question, the director shall revoke the registration of such motor vehicle and suspend the driving privileges of the owner of the vehicle.

(f) Whenever the registration of a motor vehicle or the driving privileges of the owner of the vehicle are suspended or revoked for failure of the owner to maintain continuous financial security, such suspension or revocation shall remain in effect until satisfactory proof of insurance has been filed with the director as required by subsection (d) and a reinstatement fee in the amount herein prescribed is paid to the division of vehicles. Such reinstatement fee shall be in the amount of \$100 except that if the registration of a motor vehicle of any owner is revoked within one year following a prior revocation of the registration of a motor vehicle of such owner under the provisions of this act such fee shall be in the amount of \$300. The division of vehicles shall remit such fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state highway fund.

(g) In no case shall any motor vehicle, the registration of which has been revoked for failure to have continuous financial security, be re-registered in the name of the owner thereof, the owner's spouse, parent or child or any member of the same household, until the owner complies with subsection (f). In the event the registration plate has expired, no new plate shall be issued until the motor vehicle owner complies with the reinstatement requirements as required by this act.

(h) Evidence that an owner of a motor vehicle, registered or required to be registered in this state, has operated or permitted such motor vehicle to be operated in this state without having in force and effect the financial security required by this act for such vehicle, together with proof of records of the division of vehicles indicating that the owner did not have such financial security, shall be prima facie evidence that the owner did at the time and place alleged, operate or permit such motor vehicle to be operated without having in full force and effect financial security required by the provisions of this act.

(i) Any owner of a motor vehicle registered or required to be regis-

tered in this state who shall make a false certification concerning financial security for the operation of such motor vehicle as required by this act, shall be guilty of a class A misdemeanor. Any person, firm or corporation giving false information to the director concerning another's financial security for the operation of a motor vehicle registered or required to be registered in this state, knowing or having reason to believe that such information is false, shall be guilty of a class A misdemeanor.

(j) The director shall administer and enforce the provisions of this act relating to the registration of motor vehicles, and the secretary of revenue shall adopt such rules and regulations as may be necessary for its administration.

(k) Whenever any person has made application for insurance coverage and such applicant has submitted payment or partial payment with such application, the insurance company, if payment accompanied the application and if insurance coverage is denied, shall refund the unearned portion of the payment to the applicant or agent with the notice of denial of coverage. If payment did not accompany the application to the insurance company but was made to the agent, the agent shall refund the unearned portion of the payment to the applicant upon receipt of the company's notice of denial.

(l) For the purpose of this act, "declination of insurance coverage" means a final denial, in whole or in part, by an insurance company or agent of requested insurance coverage.

Sec. 5. K.S.A. 2012 Supp. 8-173, 8-1604, 40-3104 and 40-3118 are hereby repealed.

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

Approved April 4, 2013.

CHAPTER 20

HOUSE BILL No. 2044^e

AN ACT concerning crimes and punishment; relating to distribution of controlled substances causing death or great bodily harm.

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

Section 1. (a) Distribution of a controlled substance causing great bodily harm is distributing a controlled substance in violation of K.S.A. 2012 Supp. 21-5705, and amendments thereto, when great bodily harm results from the use of such controlled substance.

(b) Distribution of a controlled substance causing death is distributing a controlled substance in violation of K.S.A. 2012 Supp. 21-5705, and

amendments thereto, when death results from the use of such controlled substance.

(c) (1) Distribution of a controlled substance causing great bodily harm is a nondrug severity level 5, person felony.

(2) Distribution of a controlled substance causing death is a nondrug severity level 1, person felony.

(d) It shall not be a defense that the user contributed to the user's own great bodily harm or death by using the controlled substance or consenting to the administration of the controlled substance by another.

(e) As used in this section:

(1) "Controlled substance" has the same meaning as defined in K.S.A. 2012 Supp. 21-5701, and amendments thereto, and also includes "controlled substance analog" as defined in K.S.A. 2012 Supp. 21-5701, and amendment thereto;

(2) "distribute" has the same meaning as defined in K.S.A. 2012 Supp. 21-5701, and amendments thereto; and

(3) "use" means injection, inhalation, ingestion or other introduction into the body.

(f) This section shall be part of and supplemental to the Kansas criminal code.

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

Approved April 4, 2013.

CHAPTER 21

HOUSE BILL No. 2193

AN ACT concerning accessibility standards for public facilities; amending K.S.A. 58-1301b and repealing the existing section.

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

Section 1. K.S.A. 58-1301b is hereby amended to read as follows: 58-1301b. As used in this act:

(a) "Governmental entity" means a "public entity" as defined in Title II, but shall not include the national railroad passenger corporation, and any commuter authority, as defined in section 103(8) of the rail passenger service act (45 U.S.C. § 541).

(b) "Person" means an individual, partnership, corporation or other association of individuals.

(c) "Title II" means 28 C.F.R. Part 35, nondiscrimination in state and local government services as required by sections 201 to 205, inclusive,

of the Americans with disabilities act of 1990, 42 U.S.C.A. § 12,115 et seq., *as amended by the ADA amendments act of 2008*.

(d) “Title III” means 28 C.F.R. Part 36, nondiscrimination on the basis of disability by public accommodations and commercial facilities as required by section 301 et seq. of the Americans with disabilities act of 1990, 42 U.S.C.A. § 12,181 et seq., *as amended by the ADA amendments act of 2008*.

(e) “Facility” means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots or other real or personal property, including the site where the building, property, structure or equipment is located. This definition of facility shall not apply to K.S.A. 79-32,175, 79-32,176 and 79-32,177, and amendments to such sections *thereto*.

Sec. 2. K.S.A. 58-1301b is hereby repealed.

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

Approved April 4, 2013.

CHAPTER 22

SENATE BILL No. 28°

AN ACT authorizing the division of emergency management within the adjutant general's department to accept certain real property.

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

Section 1. (a) The division of emergency management within the adjutant general's department is hereby authorized to accept and hold, on behalf of the state of Kansas, the real property described in subsection (b) from any federal government department or agency of the United States.

(b) A tract of land being a part of the Southeast Quarter of Section 22 and the Southwest Quarter of Section 23, township 15 South, Range 4 West of the 6th P.M., Saline County, Kansas, more particularly described as follows:

Beginning at the Southeast corner of said Section 22 thence N 89°36'58" W along the South line of the Southeast Quarter of said Section 22, a distance of 50.00 feet; thence N 00°00'10" E Parallel to the East line of the Southeast Quarter of said Section 22, a distance of 2566.72 feet to a point 75.00 feet South of the North line of the SE Quarter of said section 22; thence S 89°33'46" E parallel to the North line of the Southeast Quarter of said Section 22, a distance of 50.00 feet to a point on the East line of the Southeast Quarter of said Section 22; thence S 89°24'08" E parallel

to the North line of the Southwest Quarter of said Section 23, a distance of 2299.88 feet; thence S 00°10'22" W parallel to the East line of the Southwest Quarter of said Section 23, a distance of 580.02 feet; thence S 89°24'08" E parallel to the North line of the Southwest Quarter of said Section 23, a distance of 340.01 feet to the East line of the Southwest Quarter of said Section 23, thence S 00°10'22" W along the East line of the Southwest Quarter of said Section 23, a distance of 1983.14 feet to the Southeast corner of the Southwest Quarter of said Section 23, thence N 89°28'38" W along the South line of the Southwest Quarter of said Section 23, a distance of 2632.25 feet to the Southeast corner of said Section 22 and the POINT OF BEGINNING.

The above described parcel contains +- 153.63 acres (6692171.64 sq. ft.) including Road Right of Way.

(c) The Kansas attorney general shall approve the instrument of conveyance before the real property described in subsection (b) may be conveyed.

(d) The conveyance authorized by this section shall not be subject to the provisions of K.S.A. 75-3043a, and amendments thereto.

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

Approved April 4, 2013.

Published in the *Kansas Register* April 11, 2013.

CHAPTER 23

HOUSE BILL No. 2357*

AN ACT designating a portion of United States highway 169 as the 242nd engineer company — KS army national guard — highway.

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

Section 1. That portion of United States highway 169 from the city of Coffeyville, north on United States highway 169 to the junction of United States highway 169 and 3000 road in Montgomery county is hereby designated as the 242nd engineer company — KS army national guard — highway. The secretary of transportation shall place highway signs along the highway right-of-way at proper intervals to indicate that the highway is the 242nd engineer company — KS army national guard — 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 statute book.

Approved April 4, 2013.

CHAPTER 24

SENATE BILL No. 216

AN ACT concerning public building commissions; relating to municipal universities; amending K.S.A. 12-1758 and 12-1764 and repealing the existing sections.

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

Section 1. K.S.A. 12-1758 is hereby amended to read as follows: 12-1758. (a) Any city or county, by appropriate ordinance or resolution, may create a public building commission for the purposes of acquiring a site or sites for and constructing, reconstructing, equipping and furnishing a building or buildings or other facilities of a revenue producing character, including parking facilities, or for purchasing or otherwise acquiring such building or buildings or facilities. Such building or buildings or facilities shall be maintained and operated for a county courthouse, the housing and accommodation of county offices or county business or for city offices or such other purposes as are commonly carried on in connection with such facilities or in county courthouses and general city buildings, including administrative offices for school districts and housing, accommodations and parking facilities for offices of state and federal agencies.

(b) A public building commission created by a city or county may acquire land and facilities adjacent to ~~or~~, near, *or for the use of* any educational institution under the supervision and control of the state board of regents *or a municipal university* or may acquire by lease, land and facilities constituting a part of the campus of any such institution. Any public building commission may construct, reconstruct, equip and furnish such facilities on such land and lease such land and facilities to the official governing body of such institution. Any such lease entered into shall pledge the net revenue from such land and facilities. Any city also may pledge such funds as may be necessary from those which are provided to be paid over to the board of trustees from the annual tax levy as provided by K.S.A. 76-3a07, and amendments thereto. Any county also may pledge such funds as may be necessary from those which are provided to be paid over to such institution from a special levy authorized for such purpose under K.S.A. 19-117, and amendments thereto. The governing body of such city or county is hereby authorized to designate any surplus from

such tax levy as may be necessary to guarantee the rentals under any such lease, and such city or county is hereby exempted from the provisions of K.S.A. 10-1101 to 10-1122, inclusive, and 79-2925, and amendments thereto, to the extent necessary to enable such city or county to make a covenant to effect such guarantee.

Sec. 2. K.S.A. 12-1764 is hereby amended to read as follows: 12-1764. The public building commission established under this act shall have the power to acquire the fee simple title to real property, or a leasehold interest in real property located on the campus of any state university, including campus property as defined in subsection (c) of K.S.A. 76-3a01, and amendments thereto, *or any municipal university*, including easements and reversionary interests in the streets, alleys and other public places and personal property required for its purposes, by purchase, gift, devise or by the exercise of the power of eminent domain of the state and title thereto shall be taken in the corporate name of the commission.

Sec. 3. K.S.A. 12-1758 and 12-1764 are hereby repealed.

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

Approved April 4, 2013.

Published in the *Kansas Register* April 11, 2013.

CHAPTER 25

HOUSE BILL No. 2028

AN ACT concerning forfeiture; relating to venue in forfeiture proceedings; amending K.S.A. 60-4103 and repealing the existing section.

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

Section 1. K.S.A. 60-4103 is hereby amended to read as follows: 60-4103. (a) The district court has jurisdiction under this act over:

(1) All interests in property if the property for which forfeiture is sought is within this state at the time the action is filed; or

(2) the interest of an owner or interest holder in the property if the owner or interest holder is subject to personal jurisdiction in this state.

(b) (1) In addition to the venue provided for under any other provision of law, a proceeding for forfeiture under this act may be *commenced and* maintained in the county in which any part of the property is found or in the county in which a civil or criminal action could be *commenced and* maintained against an owner or interest holder for the conduct alleged to give rise to the forfeiture.

(2) (A) *Except as provided in subsection (b)(2)(B), any proceeding for*

forfeiture brought by the attorney general may be commenced and maintained in:

(i) Any county in which there is proper venue as provided in subsection (b)(1) or any other provision of law; or

(ii) Shawnee county unless a motion to change venue is properly filed with the court not later than 20 days after service of the petition commencing such proceeding. If such motion to change venue is properly filed, the court shall transfer the proceeding to another county in which there is proper venue as provided in subsection (b)(1) or any other provision of law.

(B) If a proceeding for forfeiture is brought by the attorney general and involves property, law enforcement agencies, or owners or interest holders of property in multiple counties, such proceeding may be commenced and maintained in:

(i) Shawnee county; or

(ii) any county in which there is proper venue as provided in subsection (b)(1) or any other provision of law.

Sec. 2. K.S.A. 60-4103 is hereby repealed.

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

Approved April 4, 2013.

CHAPTER 26

HOUSE BILL No. 2318

AN ACT concerning motor vehicles; relating to motorcycles; authorizing modulating head lamps and side lamps; amending K.S.A. 8-1801 and 8-1804 and repealing the existing sections.

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

Section 1. K.S.A. 8-1801 is hereby amended to read as follows: 8-1801. (a) Every motorcycle and every motor-driven cycle shall be equipped with at least ~~(1)~~ one head lamp which shall comply with the requirements and limitations of this article.

(b) Every head lamp upon every motorcycle and motor-driven cycle shall be located at a height of not more than ~~fifty-four (54)~~ inches nor less than ~~twenty-four (24)~~ inches to be measured as set forth in subsection (b) of K.S.A. 8-1704, *and amendments thereto*.

(c) *Any headlamp, required by this section, may be wired with a headlamp modulation system provided the headlamp modulation system complies with federal standards established by 49 C.F.R. § 571.108.*

Sec. 2. K.S.A. 8-1804 is hereby amended to read as follows: 8-1804.

(a) Every motorcycle and motor-driven cycle shall be equipped with at least one ~~(H)~~ stop lamp meeting the requirements of subsection (a) of K.S.A. 8-1721, *and amendments thereto*.

(b) Every motorcycle manufactured after January 1, 1973, shall be equipped with electric turn signals meeting the requirements of subsection (b) of K.S.A. 8-1721, *and amendments thereto*. Motor-driven cycles may, but need not, be equipped with electric turn signals.

(c) *In addition to the lamps otherwise permitted by this article, a motorcycle may be equipped with lamps on the sides thereof, visible from the side of the motorcycle but not from the front or rear thereof, which lamps, together with mountings or receptacles, shall be set into depressions or recesses in the body or wheel of the motorcycle and shall not protrude beyond or outside the body or wheel of the motorcycle. The light source may emit only white, amber or red light without glare.*

Sec. 3. K.S.A. 8-1801 and 8-1804 are hereby repealed.

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

Approved April 4, 2013.

CHAPTER 27

SENATE BILL No. 51

AN ACT concerning insurance for certain banker's associations; amending K.S.A. 40-2222 and repealing the existing section.

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

Section 1. K.S.A. 40-2222 is hereby amended to read as follows: 40-2222. Any person or other entity which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the commissioner of insurance unless the person or other entity: (a) Is a professional association of architects incorporated in Kansas on October 4, 1954, which provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established November 1, 1986, and complies with K.S.A. 40-2222a, *and amendments thereto*;

(b) is a professional association of dentists incorporated in Kansas on July 3, 1972, which provides coverage for the payment of expenses described herein to or for the members of the association or dependents

through a trust established November 1, 1985, and complies with K.S.A. 40-2222a, *and amendments thereto*;

(c) (1) is a trade association of banks incorporated in Kansas on August 9, 1978, which provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established July 1, 1989, and complies with K.S.A. 40-2222a, *and amendments thereto*; or

(2) is a trade organization of banks incorporated in Kansas on June 1, 1982, which provides coverage for expenses described herein to or for members of the association or dependents, and complies with K.S.A. 40-2222a, *and amendments thereto*;

(d) is a trade association of truckers incorporated in Kansas on July 1, 1985, which provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established January 1, 1990, and complies with K.S.A. 40-2222a, *and amendments thereto*;

(e) is an association of physicians practicing in the Kansas City metropolitan area, incorporated in Missouri on March 5, 1891, and qualified as a foreign corporation in Kansas on May 19, 1987, which provides coverage for the payment of expenses described herein to or for the members of the association, their employees and dependents through a trust established November 1, 1984, and complies with K.S.A. 40-2222a, *and amendments thereto*;

(f) conclusively shows by submission of an appropriate certificate, license, letter or other document issued by the United States department of labor that such person or entity is not subject to Kansas law; or

(g) conclusively shows that it is subject to the jurisdiction of an agency of this state or the federal government. For purposes of this act, tax exempt status under section 501(c) of the federal internal revenue code of 1986 shall not be deemed to be jurisdiction of the federal government.

Sec. 2. K.S.A. 40-2222 is hereby repealed.

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

Approved April 4, 2013.

CHAPTER 28

SENATE BILL No. 59°

AN ACT concerning the attorney general; relating to payment of reward for persons providing certain information.

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

Section 1. (a) The attorney general is hereby authorized to pay a reward not to exceed \$5,000 to any person who first furnishes information to the attorney general concerning a violation by any person of the medicaid fraud control act, the false claims act, or any other provision of law that protects the integrity of the public treasury.

(b) No employee of a governmental entity shall be eligible for a reward under this section, unless the information furnished to the attorney general does not relate in any manner to such employee's responsibilities as an employee of a governmental entity, as determined solely by the attorney general. As used in this section, "employee" and "governmental entity" mean the same as in K.S.A. 75-6102, and amendments thereto.

(c) Any reward pursuant to this section shall be paid only upon certification by the attorney general that information provided by such informant: (1) Was not previously known to the attorney general; and (2) materially contributed to an investigation conducted by the attorney general. No such reward shall be paid except after entry of judgment in favor of the state, or conviction for violation of the law, in the matter upon which the informant provided information.

(d) Any reward payment authorized by this section shall be made on the order of the attorney general from the medicaid fraud prosecution revolving fund established by K.S.A. 2012 Supp. 21-5933, and amendments thereto. The attorney general shall have sole discretion in determining whether a reward shall be paid, the amount of any such payment not to exceed \$5,000 and whether an informant is eligible to receive such reward.

(e) The attorney general shall inform the public of rewards authorized by this section for the purpose of encouraging persons to furnish information described in subsection (a) to the attorney general.

(f) The attorney general may promulgate rules and regulations necessary to carry out the provisions of this section.

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

Approved April 4, 2013.

CHAPTER 29

SENATE BILL No. 52
(Amended by Chapter 103)AN ACT concerning mortgage interest rates; amending K.S.A. 16-207 and
repealing the existing section.*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 16-207 is hereby amended to read as follows: 16-207. (a) Subject to the following provision, the parties to any bond, bill, promissory note or other instrument of writing for the payment or forbearance of money may stipulate therein for interest receivable upon the amount of such bond, bill, note or other instrument of writing, at a rate not to exceed 15% per annum unless otherwise specifically authorized by law.

(b) The interest rate limitation set forth in this subsection applies to all first mortgage loans and contracts for deed to real estate, unless the parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto. The interest rate limitation set forth in this subsection does not apply to a second mortgage loan governed by the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, unless the lender and the borrower agree in writing that the interest rate for the loan is to be governed by this subsection. The maximum rate of interest per annum for notes secured by real estate mortgages and contracts for deed to real estate governed by this subsection shall be at an amount equal to ~~1½~~ 3½ percentage points above the yield of thirty-year fixed rate conventional home mortgages committed for delivery within 61 to 90 days accepted under the federal home loan mortgage corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month unless otherwise specifically authorized by law. Such interest rate shall be computed for each calendar month and be effective on the first day thereof. The secretary of state shall publish notice of such maximum interest rate not later than the second issue of the Kansas register published each month.

(c) No penalty shall be assessed against any party for prepayment of any home loan evidenced by a note secured by a real estate mortgage where such prepayment is made more than six months after execution of such note.

(d) The lender may collect from the borrower: (1) The actual fees paid a public official or agency of the state, or federal government, for filing, recording or releasing any instrument relating to a loan subject to the provisions of this section; and

(2) reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting or renewing of loans subject to the provisions of this section.

(e) Any person so contracting for a greater rate of interest than that authorized by this section shall forfeit all interest so contracted for in excess of the amount authorized under this section; and in addition thereto shall forfeit a sum of money, to be deducted from the amount due for principal and lawful interest, equal to the amount of interest contracted for in excess of the amount authorized by this section and such amounts may be set up as a defense or counterclaim in any action to enforce the collection of such obligation and the borrower shall also recover a reasonable attorney fee.

(f) The interest rates prescribed in subsections (a) and (b) of this section shall not apply to a business or agricultural loan. For the purpose of this section unless a loan is made primarily for personal, family or household purposes, the loan shall be considered a business or agricultural loan. For the purpose of this subsection, a business or agricultural loan shall include credit sales and notes secured by contracts for deed to real estate.

(g) Loans made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant, are not subject to the interest rates prescribed in subsections (a) and (b) of this section.

(h) The interest rates prescribed in subsections (a) and (b) of this section shall not apply to a note secured by a real estate mortgage or a contract for deed to real estate where the note or contract for deed permits adjustment of the interest rate, the term of the loan or the amortization schedule.

(i) A first mortgage loan incurred for personal, family or household purposes may be subject to certain provisions of the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, as follows:

(1) Certain high loan-to-value first mortgage loans are subject to the provisions of the uniform consumer credit code, other than its usury provisions. Examples of provisions of the uniform consumer credit code applicable to high loan-to-value first mortgage loans include, but are not limited to: Limitations on prepaid finance charges; mandatory appraisals; required disclosures; restrictions on balloon payments and negative amortization; limitations on late fees and collection costs; and mandatory default notices and cure rights.

(2) Certain high interest rate first mortgage loans are subject to certain provisions of the uniform consumer credit code, including, without limitation, provisions which impose restrictions on balloon payments and negative amortization.

(3) If the parties to a first mortgage loan agree in writing to make the transaction subject to the uniform consumer credit code, than all applicable provisions of the uniform consumer credit code, including its usury provisions, apply to the loan.

This subsection is for informational purposes only and does not limit or expand the scope of the uniform consumer credit code.

(j) Subsections (c), (d) and (e) of this section do not apply to a first mortgage loan if:

(1) The parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto; or

(2) the loan is a high loan-to-value first mortgage loan subject to any provision of the uniform consumer credit code. In the case of a loan described in subparts (1) or (2) of the preceding sentence, the applicable provisions of the uniform consumer credit code shall govern the loan in lieu of subsections (c), (d) and (e) of this section.

Sec. 2. K.S.A. 16-207 is hereby repealed.

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

Approved April 4, 2013.

CHAPTER 30

HOUSE BILL No. 2156

AN ACT concerning school finance; relating to area vocational school fund; relating to local effort as applied to U.S.D. No. 450; amending K.S.A. 2012 Supp. 72-6409 and repealing the existing section; also repealing K.S.A. 72-6422 and 72-8189.

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

Section 1. K.S.A. 2012 Supp. 72-6409 is hereby amended to read as follows: 72-6409. (a) “General fund” means the fund of a district from which operating expenses are paid and in which is deposited the proceeds from the tax levied under K.S.A. 72-6431, and amendments thereto, all amounts of general state aid under this act, payments under K.S.A. 72-7105a, and amendments thereto, payments of federal funds made available under the provisions of title I of public law 874, except amounts received for assistance in cases of major disaster and amounts received under the low-rent housing program, and such other moneys as are provided by law.

(b) “Operating expenses” means the total expenditures and lawful transfers from the general fund of a district during a school year for all purposes, except expenditures for the purposes specified in K.S.A. 72-6430, and amendments thereto.

(c) “General fund budget” means the amount budgeted for operating expenses in the general fund of a district.

(d) “Budget per pupil” means the general fund budget of a district divided by the enrollment of the district.

(e) “Program weighted fund” means and includes the following funds of a district: Vocational education fund, preschool-aged at-risk education fund and bilingual education fund.

(f) “Categorical fund” means and includes the following funds of a district: Special education fund, food service fund, driver training fund, adult education fund, adult supplementary education fund, ~~area vocational school fund~~, professional development fund, parent education program fund, summer program fund, extraordinary school program fund, and educational excellence grant program fund.

Sec. 2. K.S.A. 72-6422 and 72-8189 and K.S.A. 2012 Supp. 72-6409 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 4, 2013.

CHAPTER 31

HOUSE BILL No. 2163

AN ACT concerning civil procedure; relating to garnishment proceedings; amending K.S.A. 2012 Supp. 60-736 and 61-3509 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 60-736 is hereby amended to read as follows: 60-736. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

(a) The answer of the garnishee shall be substantially in compliance with the forms set forth by the judicial council.

(b) Within 14 days after service, other than that required pursuant to K.S.A. 40-218, and amendments thereto, upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with respect to the demands of the order ~~and~~.

(1) *Except as otherwise provided in subsection (b)(2), the garnishee shall send the completed answer to the judgment creditor’s attorney at the address listed on the answer form or, if the judgment creditor does not have an attorney, to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.*

(2) *If the garnishee does not have assets of the judgment debtor, the garnishee shall send the completed answer to the judgment creditor’s at-*

torney at the address listed on the answer form or, if the judgment creditor does not have an attorney, to the judgment creditor at the address listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

Sec. 2. K.S.A. 2012 Supp. 61-3509 is hereby amended to read as follows: 61-3509. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

(a) Within 14 days after service upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with respect to the demands of the order ~~and~~.

(b) (1) *Except as otherwise provided in subsection (b)(2), the garnishee shall send the completed answer to the judgment creditor's attorney at the address listed on the answer form or, if the judgment creditor does not have an attorney, to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.*

(2) *If the garnishee does not have assets of the judgment debtor, the garnishee shall send the completed answer to the judgment creditor's attorney at the address listed on the answer form or, if the judgment creditor does not have an attorney, to the judgment creditor at the address listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.*

Sec. 3. K.S.A. 2012 Supp. 60-736 and 61-3509 are hereby repealed.

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

Approved April 4, 2013.

CHAPTER 32

HOUSE BILL No. 2169

AN ACT concerning criminal procedure; relating to final disposition of pending charge proceedings; amending K.S.A. 22-4301, 22-4303 and 22-4304 and repealing the existing sections.

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

Section 1. K.S.A. 22-4301 is hereby amended to read as follows: 22-4301. (a) Any person who is imprisoned in a penal or correctional institution of this state may request final disposition of any untried indictment, information, *motion to revoke probation* or complaint pending against ~~him~~ *such person* in this state. The request shall be in writing addressed to the court in which the indictment, information, *motion to revoke pro-*

bation or complaint is pending and to the county attorney charged with the duty of prosecuting it, and shall set forth the place of imprisonment.

(b) The warden, superintendent or other official having custody of prisoners shall promptly inform each prisoner in writing of the source and nature of any untried indictment, information, *motion to revoke probation* or complaint against ~~him~~ *such prisoner* of which the warden, superintendent or other official has knowledge or notice, and of ~~his~~ *such prisoner's* right to make a request for final disposition thereof.

(c) Failure of the warden, superintendent or other official to inform a prisoner, as required by this section, within one ~~(1)~~ year after a detainer has been filed at the institution shall entitle ~~him~~ *such prisoner* to a final dismissal of the indictment, information, *motion to revoke probation* or complaint with prejudice.

Sec. 2. K.S.A. 22-4303 is hereby amended to read as follows: 22-4303. Within ~~one hundred eighty~~ (180) days after the receipt of the request and certificate by the court and county attorney or within such additional time as the court for good cause shown in open court may grant, the prisoner or ~~his~~ *such prisoner's* counsel being present, the indictment, information or complaint shall be brought to trial *or the motion to revoke probation shall be brought for a hearing*; but the parties may stipulate for a continuance or a continuance may be granted on notice to the attorney of record and opportunity for ~~him~~ *such prisoner* to be heard. If, after such a request, the indictment, information or complaint is not brought to trial within that period, *or the motion to revoke probation is not brought for a hearing within that period*, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information, *motion to revoke probation* or complaint be of any further force or effect, and the court shall dismiss it with prejudice.

Sec. 3. K.S.A. 22-4304 is hereby amended to read as follows: 22-4304. Escape from custody of any prisoner subsequent to ~~his~~ *such prisoner's* execution of a request for final disposition of an untried indictment, information, *motion to revoke probation* or complaint voids ~~the~~ *such* request.

Sec. 4. K.S.A. 22-4301, 22-4303 and 22-4304 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 4, 2013.

CHAPTER 33

HOUSE BILL No. 2181*

AN ACT concerning licensing bodies; relating to licensure and military service members; relating to certain distance education courses.

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

Section 1. (a) For the purposes of this section:

(1) “Accreditation” has the meaning ascribed thereto in K.S.A. 2012 Supp. 74-32,163, and amendments thereto;

(2) “accredited educational institution” means an educational institution that has achieved and maintained accreditation;

(3) “applicant” means a person who entered into military service and separated from such military service under conditions other than dishonorable;

(4) “community college” means any community college established under the laws of this state;

(5) “distance education course” means a course consisting solely or primarily of instruction provided online or in other computer-assisted formats, or by correspondence, audiotape, videotape or other media;

(6) “educational institution” means any postsecondary educational institution, private postsecondary educational institution and out-of-state postsecondary educational institution;

(7) “institute of technology” or “Washburn institute of technology” means the institute of technology at Washburn university;

(8) “licensing body” has the meaning ascribed thereto in K.S.A. 74-146, and amendments thereto;

(9) “military service” means the army, navy, marine corps, air force, air or army national guard of any state, coast guard or any branch of the military reserves of the United States;

(10) “municipal university” means Washburn university of Topeka or any other municipal university established under the laws of this state;

(11) “out-of-state postsecondary educational institution” has the meaning ascribed thereto in K.S.A. 2012 Supp. 74-32,163, and amendments thereto;

(12) “postsecondary educational institution” means any state educational institution, municipal university, community college, technical college and institute of technology, and includes any entity resulting from the consolidation or affiliation of any two or more of such postsecondary educational institutions;

(13) “private postsecondary educational institution” has the meaning ascribed thereto in K.S.A. 2012 Supp. 74-32,163, and amendments thereto;

(14) “state educational institution” means any state educational institution, as defined in K.S.A. 76-711, and amendments thereto; and

(15) “technical college” means any technical college established under the laws of this state.

(b) Notwithstanding any other provision of law, a licensing body may authorize any educational requirements for certification or licensure in this state to be waived if an applicant provides satisfactory evidence of completion of a distance education course. To qualify for such a waiver, the distance education course must be:

(1) Provided by an accredited educational institution; and

(2) substantially equivalent to the educational standards required for certification or licensure in this state.

(c) Each licensing body may adopt rules and regulations necessary to implement and carry out the provisions of this section.

(d) This section shall not apply to the practice of law or the regulation of attorneys pursuant to K.S.A. 7-103, and amendments thereto.

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

Approved April 4, 2013.

CHAPTER 34

HOUSE BILL No. 2269

AN ACT designating a portion of Kansas highway 92 as the John Bower memorial highway; amending K.S.A. 2012 Supp. 68-1060 and repealing the existing section.

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

New Section 1. That portion of K-92 highway from the junction of K-92 highway and 94th street in Jefferson county then south on K-92 highway until the northern boundary of the city of McLouth is hereby designated as the John Bower memorial highway. The secretary of transportation shall place highway signs along the highway right-of-way at proper intervals to indicate that the highway is the John Bower memorial highway, except that such signs shall not be placed until the secretary has received sufficient moneys from gifts and donations to reimburse the secretary for the cost of placing such signs and an additional 50% of the initial cost to defray future maintenance or replacement costs of such signs. The secretary of transportation may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Sec. 2. K.S.A. 2012 Supp. 68-1060 is hereby amended to read as follows: 68-1060. United States highway 24 from the east city limits of Topeka, then east on United States highway 24, to the junction with United States highway 59, then north on United States highway 59, to the junction with K-92 highway, *then in a northeasterly direction on K-*

92 highway to the northern boundary of the city of McLouth, then in a northeasterly direction from 94th street in Jefferson county on K-92 highway to the city of Leavenworth, is hereby designated as the 95th division, the iron men of Metz highway. The secretary of transportation shall place signs along the highway right-of-way at proper intervals to indicate that the highway is the 95th division, the iron men of Metz 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. 3. K.S.A. 2012 Supp. 68-1060 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 4, 2013.

CHAPTER 35

HOUSE BILL No. 2205

AN ACT concerning adoption; relating to hearings; time and waiver of notice; amending K.S.A. 59-2133 and repealing the existing section.

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

Section 1. K.S.A. 59-2133 is hereby amended to read as follows: 59-2133. (a) Upon filing the petition, the court shall fix the time and place for the hearing. The time fixed for the hearing may be any time not ~~less than 30 days nor~~ more than 60 days from the date the petition is filed. The time fixed for the hearing may be extended by the court for good cause.

(b) In independent and stepparent adoptions notice of the hearing on the petition shall be given to the parents or presumed parents, *unless waived by the party entitled to notice* or unless parental rights have been previously terminated, and any other persons as the court may direct, *unless waived by the party entitled to notice*. Notice also shall be given in an independent adoption to a legal guardian of the child or individual in loco parentis, *unless waived by the party entitled to notice*.

(c) In an agency adoption notice of the hearing on the petition shall be given to the consenting agency, unless waived *by the party entitled to notice*.

(d) Notice given pursuant to this section shall not include a copy of the petition.

Sec. 2. K.S.A. 59-2133 is hereby repealed.

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

Approved April 4, 2013.

CHAPTER 36

SENATE BILL No. 21
(Amended by Chapter 133)

AN ACT concerning firearms; relating to definition of firearm; criminal possession of a firearm by a convicted felon; expungement; relating to the personal and family protection act; amending K.S.A. 2012 Supp. 12-16,124, 21-6304, 21-6614, 75-7c03, 75-7c04, 75-7c05, 75-7c07 and 75-7c25 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 12-16,124 is hereby amended to read as follows: 12-16,124. (a) No city or county shall adopt any ordinance, resolution or regulation, and no agent of any city or county shall take any administrative action, governing the purchase, transfer, ownership, storage or transporting of firearms or ammunition, or any component or combination thereof. Except as provided in subsection (b) of this section and subsection ~~(a)~~ (b) of K.S.A. 2012 Supp. ~~75-7c11~~ 75-7c10, and amendments thereto, any such ordinance, resolution or regulation adopted prior to the effective date of this 2007 act shall be null and void.

(b) Nothing in this section shall:

(1) Prohibit a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, from acting within the scope of such officer's duties;

(2) prohibit a city or county from regulating the manner of openly carrying a loaded firearm on one's person; or in the immediate control of a person, not licensed *or recognized* under the personal and family protection act while on property open to the public;

(3) prohibit a city or county from regulating in any manner the carrying of any firearm in any jail, juvenile detention facility, prison, courthouse, courtroom or city hall; or

(4) prohibit a city or county from adopting an ordinance, resolution or regulation requiring a firearm transported in any air, land or water vehicle to be unloaded and encased in a container which completely encloses the firearm or any less restrictive provision governing the transporting of firearms, provided such ordinance, resolution or regulation shall not apply to persons licensed *or recognized* under the personal and family protection act.

(c) Except as provided in subsection (b) of this section and subsection ~~(a)~~ (b) of K.S.A. 2012 Supp. ~~75-7c11~~ 75-7c10, and amendments thereto,

no person shall be prosecuted or convicted of a violation of any ordinance, resolution or regulation of a city or county which regulates the storage or transportation of a firearm if such person: (1) Is storing or transporting the firearm without violating any provision of the Kansas criminal code; or (2) is otherwise transporting the firearm in a lawful manner.

(d) No person shall be prosecuted under any ordinance, resolution or regulation for transporting a firearm in any air, land or water vehicle if the firearm is unloaded and encased in a container which completely encloses the firearm.

Sec. 2. K.S.A. 2012 Supp. 21-6304 is hereby amended to read as follows: 21-6304. (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 article 57 of chapter 21 of the Kansas Statutes Annotated, 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 substantially 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 article 57 of chapter 21 of the Kansas Statutes Annotated, 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) 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) within the preceding 10 years, has been convicted of a:

(A) Felony under K.S.A. 2012 Supp. 21-5402, 21-5403, 21-5404, 21-5405, 21-5408, subsection (b) or (d) of 21-5412, subsection (b) or (d) of 21-5413, subsection (a) of 21-5415, subsection (b) of 21-5420, 21-5503, subsection (b) of 21-5504, subsection (b) of 21-5505, and subsection (b) of 21-5807, and amendments thereto; article 57 of chapter 21 of the Kansas Statutes Annotated, 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; an attempt, conspiracy or criminal solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of any such

felony; 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. *The provisions of subsection (j)(2) of K.S.A. 2012 Supp. 21-6614, and amendments thereto, shall not apply to an individual who has had a conviction under this paragraph expunged; 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. 3. K.S.A. 2012 Supp. 21-6614 is hereby amended to read as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d) and (e), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

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

(b) Except as provided in subsections (c), (d) and (e), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for

crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2012 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

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

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

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

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

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

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

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

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

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

(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties

with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2012 Supp. 21-5510, and amendments thereto;

(7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2012 Supp. 21-5604, and amendments thereto;

(8) endangering a child or aggravated endangering a child as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2012 Supp. 21-5601, and amendments thereto;

(9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2012 Supp. 21-5602, and amendments thereto;

(10) capital murder as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2012 Supp. 21-5401, and amendments thereto;

(11) murder in the first degree as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2012 Supp. 21-5402, and amendments thereto;

(12) murder in the second degree as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2012 Supp. 21-5403, and amendments thereto;

(13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2012 Supp. 21-5404, and amendments thereto;

(14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2012 Supp. 21-5405, and amendments thereto;

(15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2012 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2012 Supp. 21-5505, and amendments thereto;

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

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

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

(f) (1) When a petition for expungement is filed, the court shall set a

date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

- (A) Defendant's full name;
- (B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;
- (C) defendant's sex, race and date of birth;
- (D) crime for which the defendant was arrested, convicted or diverted;
- (E) date of the defendant's arrest, conviction or diversion; and
- (F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after April 12, 2012, through June 30, 2013, the supreme court may impose a charge, not to exceed \$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 prisoner review board.

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

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

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

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

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

(1) Upon conviction for any subsequent crime, the conviction that

was expunged may be considered as a prior conviction in determining the sentence to be imposed;

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

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2012 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. 2012 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.

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

(j)(1) Subject to the disclosures required pursuant to subsection (h), 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.~~

(2) Notwithstanding the provisions of subsection (j)(1), and except as provided in subsection (a)(3)(A) of K.S.A. 2012 Supp. 21-6304, and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony.

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

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to em-

ployment 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 represen-

tative 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;

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

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

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

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(l) The provisions of subsection (k)(17) shall apply to records created prior to, on and after July 1, 2011.

Sec. 4. K.S.A. 2012 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. 2012 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. 2012 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 K.S.A. 2012 Supp. 21-6302, and amendments thereto, if the licensee's license is valid.

~~(e) 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. 2012 Supp. 75-7c04, and amendments thereto.~~

(c)(1) Subject to the provisions of subsection (c)(2), a valid license or permit to carry concealed weapons, issued by another jurisdiction, shall be recognized by this state, but only while the holder is not a resident of Kansas.

(2) A valid license or permit that is recognized by this subsection, and a 180-day receipt that has been issued in accordance with this section, shall only entitle the lawful holder thereof to carry concealed handguns, as defined by K.S.A. 2012 Supp. 75-7c02, and amendments thereto, in this state and the holder thereof shall otherwise act in accordance with the laws of this state while such holder is present in this state.

(d) The attorney general shall issue a 180-day receipt to a person who:

(1) Establishes residency in this state on and after July 1, 2010;

(2) except as provided in subsection (e), submits an application for licensure under this act in accordance with subsection (b) of K.S.A. 2012 Supp. 75-7c05, and amendments thereto; and

(3) submits with such person's application for licensure a photocopy of a valid license or permit to carry concealed handguns issued by another jurisdiction.

(e) Prior to the expiration of the 180-day receipt, an applicant for

licensure under this section shall submit proof of training to the attorney general which was:

(1) *Completed in accordance with subsection (b)(1) of K.S.A. 2012 Supp. 75-7c04, and amendments thereto; or*

(2) *utilized to obtain the applicant's license or permit from another jurisdiction and the attorney general determines that such prior training is equal to or greater than the training standards required by this act.*

Submission of an applicant's proof of training under this subsection is considered complete on the date the proof of training is either hand-delivered to the attorney general or, if sent by mail, on the date the mailing is postmarked.

(f) (1) *Except as provided in subsection (f)(3), an applicant for licensure under this section may continue to carry concealed handguns in this state upon receiving a 180-day receipt issued by the attorney general.*

(2) *At all times when the applicant is carrying a concealed handgun, the applicant shall carry: (A) Such applicant's valid license or permit from another jurisdiction; and (B) the 180-day receipt issued by the attorney general.*

(3) *An applicant whose concealed carry license or permit from another jurisdiction becomes invalid prior to the expiration of the attorney general's 180-day receipt may not carry concealed handguns unless otherwise allowed by law.*

(g) *The attorney general may:*

(1) *Create a list of concealed carry handgun licenses or permits issued by other jurisdictions which the attorney general finds have training requirements that are equal to or greater than those of this state and will automatically qualify for recognition under this section; and*

(2) *review each application received under this section to determine if the applicant's previous training qualifications were equal to or greater than those of this state.*

(h) (1) *Prior to the expiration of the applicant's 180-day receipt, the attorney general shall either approve or deny an application under this section.*

(2) *Upon successful review of a background check in accordance with K.S.A. 2012 Supp. 75-7c05, and amendments thereto, and upon receipt of all required documentation and moneys outlined in this section, the attorney general shall approve an application received under this section.*

(3) *If an applicant under this section is disqualified under the provisions of K.S.A. 2012 Supp. 75-7c04, and amendments thereto, or fails to submit sufficient proof of training, the attorney general shall deny the application in accordance with K.S.A. 2012 Supp. 75-7c07, and amendments thereto.*

(i) *For the purposes of this section:*

(1) *"Equal to or greater than" means the applicant's prior training meets or exceeds the training established in this act by having required,*

at a minimum, the applicant to: (A) Receive instruction on the laws of self-defense; and (B) demonstrate training and competency in the safe handling, storage and actual firing of handguns.

(2) *“Jurisdiction” means another state or the District of Columbia.*

(3) *“Valid license or permit” means a concealed carry handgun license or permit from another jurisdiction which has not expired and, except for any residency requirement of the issuing jurisdiction, is currently in good standing.*

Sec. 5. K.S.A. 2012 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 subsections (a)(10) through (a)(13) of K.S.A. 2012 Supp. 21-6301 (a)(1) through (a)(3) of K.S.A. 2012 Supp. 21-6304, 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~~ *handguns* 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~~ *handgun* 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. 2012 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~~ *a determination by the attorney general pursuant to subsection (d) of K.S.A. 2012 Supp. 75-7c03, and amendments thereto.*

Sec. 6. K.S.A. 2012 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. 2012 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. 2012 Supp. 21-5903, 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. 2012 Supp. 75-7c04, and amendments thereto, or if applicable, of a license to carry a firearm as described in if applicable, a photocopy of the proof of training required by subsection (d)(2) of K.S.A. 2012 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. 2012 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 criminal history record check to determine the applicant's eligibility for such license.

(e) *Except as provided in K.S.A. 2012 Supp. 75-7c03, and amendments thereto*, 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. 2012 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. 2012 Supp. 21-5111, 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, *personal 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~~ *handgun* 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. 7. K.S.A. 2012 Supp. 75-7c07 is hereby amended to read as follows: 75-7c07. (a) In accordance with the provisions of the Kansas administrative procedure act, the attorney general shall deny a license to any applicant for license who is ineligible under K.S.A. 2012 Supp. 75-7c04, and amendments thereto, and, except as provided by subsection (b), shall revoke at any time the license of any person who would be

ineligible under K.S.A. 2012 Supp. 75-7c04, and amendments thereto, if submitting an application for a license at such time. Review by the district court in accordance with the Kansas judicial review act shall be, at the option of the party seeking review, in Shawnee county or the county in which the petitioner resides. The revocation shall remain in effect pending any appeal and shall not be stayed by the court.

(b) The license of a person who is charged for an offense or is subject to a proceeding that could render the person ineligible pursuant to subsection (a) of K.S.A. 2012 Supp. 75-7c04, and amendments thereto, shall be subject to suspension and shall be reinstated upon final disposition of the charge or outcome of the proceeding as long as the arrest or proceeding does not result in a disqualifying conviction, commitment, finding or order.

(c) The sheriff of the county where a restraining order is issued that would prohibit issuance of a license under subsection (a)(2) of K.S.A. 2012 Supp. 75-7c04, and amendments thereto, shall notify the attorney general immediately upon receipt of such order. If the person subject to the restraining order holds a license issued pursuant to this act, the attorney general immediately shall suspend such license upon receipt of notice of the issuance of such order. The attorney general shall adopt rules and regulations establishing procedures which allow for 24-hour notification and suspension of a license under the circumstances described in this subsection. The attorney general shall immediately reinstate the license, if it has not otherwise expired, upon proof of the cancellation of the order.

(d) (1) If the provisions of paragraph (2) are met, a license issued pursuant to this act shall not be revoked until 90 days after the person issued such license is no longer a resident of this state, if being a non-resident of this state is the only grounds for revocation.

(2) A license issued pursuant to this act shall be considered valid for 90 days after a licensee is no longer a resident of Kansas, provided that: (A) Prior to the change in residency, the licensee notified the attorney general in writing of the pending change; and (B) the licensee's new state of residence, or any other state or jurisdiction that such licensee travels to during the 90-day period, would recognize such license as valid.

(e) A person who has been issued a license pursuant to this act and who gave up residency in this state, but has returned to reside in this state shall be eligible to have their license reinstated as valid provided that: (1) The license has not expired; and (2)(A) the licensee notified the attorney general in writing of both the residency departure and relocation back to this state; or (B) if such licensee failed to comply with the notification requirements of this subsection, the penalty provisions of subsection (e) of K.S.A. 2012 Supp. ~~75-7c05~~ 75-7c06, and amendments thereto, have been satisfied.

Sec. 8. K.S.A. 2012 Supp. 75-7c25 is hereby amended to read as follows: 75-7c25. (a) ~~On or before July 1, 2007, every district court shall review all files dated on or after July 1, 1998, concerning mentally ill persons 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.~~

~~(b) If the court ordered treatment pursuant to K.S.A. 59-2966 or 59-29b66, and amendments thereto, the clerk of the court shall report such order and all available information identifying the patient including, but not limited to, birth, gender and race, to the Kansas bureau of investigation.~~

~~(c) A copy of such orders shall be delivered by the clerk of the court to the Kansas bureau of investigation on or before July 1, 2007. The Kansas bureau of investigation shall immediately cause the order to be entered into the appropriate state and federal databases.~~

~~(d) The Kansas bureau of investigation shall ensure the accuracy of the entries and the court shall ensure the validity of the orders.~~

~~(e) After July 1, 2007, all orders of involuntary commitment for care and treatment pursuant to K.S.A. 59-2966 or 59-29b66, and amendments thereto, and any orders of termination of discharge shall be immediately forwarded to the Kansas bureau of investigation for entry into the appropriate state and federal databases.~~

~~(f) (b) Upon a finding that the mentally ill person is a danger to self or others, the court shall notify the mentally ill person subject to involuntary commitment for care and treatment that it is a violation of the law to possess a firearm. Upon a finding that a proposed patient is a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment, the court shall notify the person that it is a violation of the law to possess a firearm. Upon release, the state hospital shall notify the patient that it is a violation of the law for the patient to possess a firearm and provide information to the patient regarding the restoration procedure.~~

Sec. 9. K.S.A. 2012 Supp. 12-16,124, 21-6304, 21-6614, 75-7c03, 75-7c04, 75-7c05, 75-7c07 and 75-7c25 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 5, 2013.

CHAPTER 37

SENATE BILL No. 58

AN ACT concerning crimes, criminal procedure and punishment; relating to manufacture of methamphetamine; amending K.S.A. 2012 Supp. 21-5703 and 21-6805 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 21-5703 is hereby amended to read as follows: 21-5703. (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:

(1) Drug severity level 2 felony, except as provided in subsections (b)(2) and (b)(3);

(2) drug severity level 1 felony if:

(A) *The controlled substance is not methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof; and*

(B) *the offender has a prior conviction for unlawful manufacturing of a controlled substance under this section, under K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or under a substantially similar offense from another jurisdiction and the substance was not methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof, in any such prior conviction; and*

(3) drug severity level 1 felony if the controlled substance is methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof.

(c) The provisions of subsection (d) of K.S.A. 2012 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance or controlled substance analog pursuant to this section.

(d) 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.

(e) The sentence of a person who violates this section shall not be subject to statutory provisions for suspended sentence, community service work or probation.

(f) The sentence of a person who violates this section ~~or~~, K.S.A. 65-4159, prior to its repeal *or K.S.A. 2010 Supp. 21-36a03, prior to its transfer*, shall not be reduced because these sections prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to their repeal, K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or K.S.A. 2012 Supp. 21-5705, and amendments thereto.

Sec. 2. K.S.A. 2012 Supp. 21-6805 is hereby amended to read as follows: 21-6805. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for drug crimes. The following sentencing guidelines grid for drug crimes shall be applicable to felony crimes under K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto, except as otherwise provided by law:

SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level I	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	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 22	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 22	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

(b) Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (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. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

(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 prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) 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 4-E, 4-F, 4-G, 4-H, 4-I, 5-C or 5-D, the court may impose an optional nonprison sentence as provided in subsection (q) of K.S.A. 2012 Supp. 21-6804, and amendments thereto.

(e) The sentence for a second or subsequent conviction ~~of for unlawful manufacturing of a controlled substance, K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2012 Supp. 21-5703, and amendments thereto, manufacture of any controlled substance or controlled substance analog or a substantially similar offense from another jurisdiction, if the controlled substance in any prior conviction was methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof,~~ shall be a presumptive term of imprisonment of two times the maximum duration of the presumptive term of imprisonment. The court may impose an optional reduction in such sentence of not to exceed 50% of the mandatory increase provided by this subsection upon making a finding on the record that one or more of the mitigating factors as specified in K.S.A. 2012 Supp. 21-6815, and amendments thereto, justify such a reduction in sentence. Any decision made by the court regarding the reduction in

such sentence shall not be considered a departure and shall not be subject to appeal.

(f) (1) The sentence for a third or subsequent felony conviction of K.S.A. 65-4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2012 Supp. 21-5706, and amendments thereto, shall be a presumptive term of imprisonment and the defendant shall be sentenced to prison as provided by this section. The defendant's term of imprisonment shall be served in the custody of the secretary of corrections in a facility designated by the secretary. Subject to appropriations therefore, the defendant shall participate in an intensive substance abuse treatment program, of at least four months duration, selected by the secretary of corrections. If the secretary determines that substance abuse treatment resources are otherwise available, such term of imprisonment may be served in a facility designated by the secretary of corrections in the custody of the secretary of corrections to participate in an intensive substance abuse treatment program. The secretary's determination regarding the availability of treatment resources shall not be subject to review. 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. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

(2) Such defendant's term of imprisonment shall not be subject to modification under paragraph (1) if:

(A) The defendant has previously completed a certified drug abuse treatment program, as provided in K.S.A. 2012 Supp. 75-52,144, and amendments thereto;

(B) has been discharged or refused to participate in a certified drug abuse treatment program, as provided in K.S.A. 2012 Supp. 75-52,144, and amendments thereto;

(C) has completed an intensive substance abuse treatment program under paragraph (1); or

(D) has been discharged or refused to participate in an intensive substance abuse treatment program under paragraph (1).

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(g) (1) Except as provided further, if the trier of fact makes a finding that an offender carried a firearm to commit a drug felony, or in furtherance of a drug felony, possessed a firearm, in addition to the sentence imposed pursuant to K.S.A. 2012 Supp. 21-6801 through 21-6824, and amendments thereto, the offender shall be sentenced to:

(A) Except as provided in subsection (g)(1)(B), an additional 6 months' imprisonment; and

(B) if the trier of fact makes a finding that the firearm was discharged, an additional 18 months' imprisonment.

(2) The sentence imposed pursuant to subsection (g)(1) shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) The provisions of this subsection shall not apply to violations of K.S.A. 2012 Supp. 21-5706 or 21-5713, and amendments thereto.

Sec. 3. K.S.A. 2012 Supp. 21-5703 and 21-6805 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 5, 2013.

CHAPTER 38

SENATE BILL No. 24

AN ACT concerning insurance; relating to risk-based capital requirements for certain insurance companies; amending K.S.A. 2012 Supp. 40-2c01 and 40-2c05 and repealing the existing sections.

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

Section 1. K.S.A. 2012 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, *and amendments thereto*, 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, *and amendments thereto*, 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, ~~2011~~ 2012, or any later version promulgated by the NAIC as may be adopted by the commissioner under K.S.A. 2012 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. 2012 Supp. 40-2c05 is hereby amended to read as follows: 40-2c05. “Company action level event” means any of the following events:

(a) The filing of an RBC report by an insurer which indicates that:

(1) The insurer’s total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

or

(2) (A) ~~if~~ a life and health insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and ~~2.5 and also 3.0~~ and has a negative trend; or

~~(3)(B) if~~ a property and casualty insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and ~~also~~ triggers the trend test calculation included in the RBC instructions as defined in K.S.A. 40-2c01, and amendments thereto.

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates the event described in subsection (a)(1) or (2), unless the insurer challenges the adjusted RBC report pursuant to K.S.A. 40-2c19, and amendments thereto, and such challenge has not been rejected by the commissioner.

Sec. 3. K.S.A. 2012 Supp. 40-2c01 and 40-2c05 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 5, 2013.

CHAPTER 39

SENATE BILL No. 25

AN ACT concerning insurance; relating to risk-based capital requirements for health organizations; amending K.S.A. 40-2d05 and repealing the existing section.

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

Section 1. K.S.A. 40-2d05 is hereby amended to read as follows: 40-2d05. “Company action level event” means any of the following events:

(a) The filing of an RBC report by a health organization which indicates that ~~a~~:

(1) *The* health organization’s total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(2) *the* health organization has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0, and triggers the trend test determined in accordance with the trend test calculation included in the health RBC instructions as defined in K.S.A. 40-2d01, and amendments thereto.

(b) The notification by the commissioner to the health organization of an adjusted RBC report that indicates the event described in subsection (a) if:

(1) The health organization does not challenge the adjusted RBC report pursuant to K.S.A. 40-2d19, and amendments thereto; or

(2) the commissioner has rejected such challenge after a hearing.

Sec. 2. K.S.A. 40-2d05 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 5, 2013.

CHAPTER 40

SENATE BILL No. 68

AN ACT concerning motor vehicles; relating to driver's licenses; examinations, locations; amending K.S.A. 2012 Supp. 8-235d and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 8-235d is hereby amended to read as follows: 8-235d. (a) Drivers' license examiners of the division shall accept original applications for drivers' licenses and instruction permits, as distinguished from applications for renewals of licenses, on forms prescribed by the division and also shall issue instruction permits. Drivers' license examiners of the division shall examine every applicant for a driver's license who is required by the provisions of the motor vehicle drivers' license act to be examined. Such examination shall be held in the county where the applicant resides or at a place adjacent thereto reasonably convenient to the applicant or at a location established by the secretary ~~for the issuance of a commercial driver's license~~. Such examination shall include a test of the applicant's eyesight, the applicant's ability to read and understand highway signs regulating, warning and directing traffic, the applicant's knowledge of the traffic laws of this state and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of motor vehicles which the class of license applied for would entitle the applicant to drive. At the conclusion of the examination the examiner shall issue a license to the applicant, if the applicant has successfully passed the examination with the class of license the applicant has applied for.

(b) In addition to the requirements of subsection (a):

(1) Any person applying for a driver's license shall comply with the provisions of subsection (b) of K.S.A. 8-240, and amendments thereto; and

(2) any person who is under the age of 18 years and at least 17 years of age, who is applying for a driver's license for the first time, not including an instruction permit, shall submit a signed affidavit of either a parent or

guardian, stating that the applicant has completed at least 50 hours of adult supervised driving with at least 10 of those hours being at night. The required adult supervised driving required in this subsection shall be conducted by an adult who is at least 21 years of age and is the holder of a valid commercial driver's license, class A, B or C driver's license.

Evidence of failure of any licensee who was required to complete the 50 hours of adult supervised driving under this subsection shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages.

Sec. 2. K.S.A. 2012 Supp. 8-235d 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 5, 2013.

CHAPTER 41

SENATE BILL No. 113

AN ACT concerning credit unions; pertaining to certain loans; amending K.S.A. 17-2216 and 17-2216a and repealing the existing sections.

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

Section 1. K.S.A. 17-2216 is hereby amended to read as follows: 17-2216. (a) Subject to rules and regulations of the administrator, a credit union may loan to its members, as provided, for such purposes and upon such security as the bylaws may provide and the credit committee, *credit manager* or duly authorized loan officer shall approve. Loans to members shall be made in conformity with criteria established by the board of directors. No loan shall be made in excess of \$500 or 10% of the credit union's total assets, whichever amount is greater. ~~A member who needs funds with which to purchase necessary supplies for growing crops may receive a loan in fixed monthly installments instead of one sum. A borrower may repay the whole or any part of the loan on any day on which the office of the credit union is open for the transaction of business, except that on a first or second mortgage loan, a credit union may require that any partial prepayments be made on the date monthly installments are due and be in the amount of that part of one or more monthly installments which would be applicable to principal.~~

(b) Any loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by the federal government, a state government or any agency of either may be made under the terms and conditions specified in the law under which such insurance, guarantee or commitment is provided.

Sec. 2. K.S.A. 17-2216a is hereby amended to read as follows: 17-2216a. Subject to rules and regulations of the administrator, a credit union may make loans to its directors, credit committee members and supervisory committee members or other members for which the director or committee member acts as guarantor or endorser who are not employees only if:

(a) Such a loan complies with all lawful requirements under the credit union law with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(b) in the case where, upon the making of the loan, the aggregate of loans outstanding to the borrower exceeds by ~~\$20,000~~ \$50,000 the total amount of shares, share certificates and other shareholdings in any credit union, not otherwise encumbered or pledged, which are pledged as security for the loans of the borrower, the loan is approved by the credit committee or duly authorized loan officer and the board of directors; and

(c) the borrower takes no part in the consideration of the application and does not attend any committee or board meeting while the application is under consideration. All such loans shall be reported to the administrator at least ~~semiannually~~ *annually*.

Sec. 3. K.S.A. 17-2216 and 17-2216a 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 5, 2013.

CHAPTER 42

SENATE BILL No. 75°

AN ACT concerning plastic bulk merchandise containers; relating to sales; records; civil penalties.

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

Section 1. (a) As used in this section:

(1) “Plastic bulk merchandise container” means a plastic crate, pallet or shell used by a product producer, distributor or retailer for the bulk transportation or storage of retail containers of milk, eggs, bakery items or bottled beverage products.

(2) “Proof of ownership” includes a bill of sale or other evidence showing that an item has been sold to the person possessing the item.

(b) A person who is in the business of recycling, shredding or destroying plastic bulk merchandise containers:

(1) Shall not pay for the purchase of any plastic bulk merchandise container with cash; and

(2) shall, for each transaction in which the person purchases one or more plastic bulk merchandise containers, make or obtain a record of the method of payment used to purchase the containers.

(c) A person who is in the business of recycling, shredding or destroying plastic bulk merchandise containers, before purchasing five or more plastic bulk merchandise containers from the same person, shall:

- (1) Obtain from that person proof of ownership for the containers;
- (2) make or obtain a record that contains:

(A) The name, address, telephone number and the identifying number from the seller's driver's license, military identification card, passport or personal identification card of the person or the person's authorized representative. For the purpose of this subsection, the identifying number from an official governmental document for a country other than the United States may be used to meet this requirement only if a legible fingerprint is also obtained from the seller;

(B) a copy of the identification card or document containing such identifying number;

(C) the name and address of the buyer of the containers or any consignee of the containers;

(D) a description of the containers, including the number of the containers to be sold; and

(E) the date of the transaction;

(3) verify the identity of the individual selling the containers or representing the seller from a driver's license or other government-issued identification card that includes the individual's photograph, and record the verification; and

(4) attach the record made or obtained pursuant to subsection (b)(2) to the record made or obtained pursuant to this subsection.

(d) Any person who violates the provisions of this section shall be liable for the payment of a civil penalty not to exceed \$10,000 for each violation, recoverable in an individual action brought by the attorney general or county or district attorney. Each cash transaction made in violation of this section is a separate violation for purposes of imposing a penalty pursuant to this section.

(e) Any civil penalty sued for and recovered by the attorney general shall be paid into the state general fund. Any civil penalty sued for and recovered by a county or district attorney shall be paid into the general fund of the county in which the proceedings are instigated.

Sec. 2. Nothing in this act shall be construed to apply to plastic bulk merchandise containers collected by public or private recycling or refuse haulers as part of a municipal solid waste recycling or trash collection program where the plastic bulk merchandise containers are voluntarily deposited into collection containers by a resident or commercial entity without the receipt of payment for the purposes of disposal or recycling.

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

Approved April 5, 2013.

CHAPTER 43

SENATE BILL No. 118

AN ACT concerning crimes, criminal procedure and punishment; relating to reporting and investigation of missing persons; amending K.S.A. 2012 Supp. 75-712b and 75-712c and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 75-712b is hereby amended to read as follows: 75-712b. (a) The Kansas bureau of investigation shall establish a missing and unidentified person system which shall be a central repository of information received by law enforcement agencies and coroners in this state relating to persons who have been reported missing or are unidentified. Such information shall be maintained for the purpose of improving the ability of law enforcement to locate and return missing persons, identify persons or human remains and inform and notify, in a timely manner, family members of missing or unidentified persons.

(b) All law enforcement agencies and coroners in this state shall report to the missing and unidentified person system established pursuant to this section all information received relating to missing persons or unidentified persons or human remains. Such reports shall be made in accordance with rules and regulations adopted pursuant to this section.

(c) The information in the missing and unidentified person system established pursuant to this section shall be available to all law enforcement officers and coroners in this state and all governmental entities in this state which have a need for information relating to missing persons or unidentified persons or human remains in this state, in accordance with rules and regulations adopted pursuant to this section.

(d) *Upon receiving information that any person is a high-risk missing person, as described in K.S.A. 75-712c, and amendments thereto, the director of the missing and unidentified person system shall immediately provide information concerning such missing person to every law enforcement agency within the state.*

(e) The director of the Kansas bureau of investigation may apply for, accept and expend grants, gifts and bequests from any source for the purpose of carrying out the provisions of this section.

~~(e)~~(f) The director of the Kansas bureau of investigation shall adopt rules and regulations prescribing:

(1) Procedures and forms for reports made to the missing and unidentified person system established pursuant to this section; and

(2) procedures for disseminating information maintained in the missing person system to law enforcement agencies and the federal bureau of investigation as authorized by this section.

~~(f)~~(g) Any law enforcement agency or coroner 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.

Sec. 2. K.S.A. 2012 Supp. 75-712c is hereby amended to read as follows: 75-712c. (a) *(1) All law enforcement agencies in of the state of Kansas, or any political subdivision of this state thereof, shall receive reports of any person who is reported missing accept and process, without delay, any report of a missing person by any person at any time pursuant to K.S.A. 75-712b through 75-712e, and amendments thereto, and K.S.A. 2012 Supp. 75-712f through 75-712h, and amendments thereto.*

(2) *No law enforcement agency shall refuse or otherwise fail to accept a missing person report for any reason: except when the law enforcement agency:*

- (A) *Knows the location of the person reported missing;*
- (B) *has confirmed the safe status of the person reported missing; or*
- (C) *has confirmed that another law enforcement agency has already completed a report on the missing person incident.*

(3) *The reports shall be entered immediately as soon as practical into the missing person system of the national crime information center and the missing and unidentified person system of the Kansas bureau of investigation.*

(4) *The law enforcement agency immediately shall commence an investigation based upon the elements of the initial reports.*

(b) The law enforcement agency shall provide the person making such report with contact information and information concerning the national center for missing and exploited children and the national center for missing adults.

(c) Within a reasonable period of time, and in no case longer than 30 calendar days, follow-up forms from the national crime information center or the Kansas bureau of investigation, or both, shall be given to the reporting party, to be completed and returned to the law enforcement agency. The data reported on the follow-up forms shall be entered immediately into the missing person system of the national crime information center and the missing and unidentified person system of the Kansas bureau of investigation.

~~(b)~~(d) *The reporting party shall be advised to immediately notify the*

law enforcement agency in the event the missing person returns or is located. Except as provided further, the law enforcement agency shall immediately notify the reporting party if the missing person is located or contacted. The law enforcement agency investigating the report shall not give information to the reporting party if the law enforcement agency has reason to believe the missing person is an adult or an emancipated minor and is staying at or has made contact with a domestic violence or sexual assault program and does not expressly consent to the release of this information. Upon location of or contact by the missing person, the law enforcement agency shall clear the case in the national crime information center and Kansas bureau of investigation databases.

(e) (1) Upon receipt of a missing person report, the law enforcement agency shall immediately determine whether such person may be a high-risk missing person.

(2) Upon obtaining any new information concerning the missing person at any time, the law enforcement agency shall evaluate whether such person may be a high-risk missing person.

(3) A high-risk missing person means any person who is at heightened risk of bodily harm or death, including, but not limited to, persons missing:

(A) As a result of an abduction;

(B) under suspicious or known dangerous circumstances;

(C) more than 30 days;

(D) who have been designated as high-risk missing persons by another law enforcement agency; or

(E) under any facts or circumstances that would lead the law enforcement agency to believe such person may be at risk of bodily harm or death.

(4) Upon a determination that a missing person is a high-risk missing person, the law enforcement agency shall immediately and specifically make such determination known to the missing and unidentified person system of the Kansas bureau of investigation and the missing person system of the national crime information center.

Sec. 3. K.S.A. 2012 Supp. 75-712b and 75-712c 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 5, 2013.

CHAPTER 44

SENATE BILL No. 135

AN ACT concerning the boiler safety act; transferring duties from the secretary of labor to the state fire marshal; amending K.S.A. 44-916, 44-917, 44-918, 44-919, 44-920, 44-921, 44-922, 44-923, 44-924, 44-925, 44-927 and 44-929 and K.S.A. 2012 Supp. 44-636, 44-914, 44-915, 44-926 and 44-928 and repealing the existing sections.

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

New Section 1. (a) All of the powers, duties and functions of the secretary of labor under the boiler safety act, K.S.A. 44-913 et seq., and amendments thereto, are hereby transferred to and conferred and imposed upon the office of state fire marshal.

(b) In accordance with the provisions of appropriation acts, the office of state fire marshal shall administer the boiler inspection fee fund, established by K.S.A. 44-926, and amendments thereto.

(c) All liabilities of the secretary of labor, including accrued compensation or salaries of officers and employees who are transferred to the office of state fire marshal under this section shall be assumed and paid by the office of state fire marshal.

New Sec. 2. (a) The state fire marshal shall be the successor in every way to the powers, duties and functions of the secretary of labor under the boiler safety act, K.S.A. 44-913 et seq., and amendments thereto, in which the same were vested prior to the effective date of this act and that are transferred pursuant to section 1, and amendments thereto. Every act performed in the exercise of such transferred powers, duties and functions by or under the state fire marshal pursuant to section 1, and amendments thereto, shall be deemed to have the same force and effect as if performed by the secretary of labor in which such powers, duties and functions were vested prior to the effective date of this act.

(b) Whenever the secretary of labor, or words of like effect, are referred to or designated by a statute, contract or other document and such reference is in regard to any of the powers, duties or functions transferred to the office of state fire marshal pursuant to section 1, and amendments thereto, such reference or designation shall be deemed to apply to the office of state fire marshal or the state fire marshal as the context requires.

(c) All rules and regulations, orders and directives of the secretary of labor adopted or issued pursuant to the powers, duties or functions transferred to the office of state fire marshal pursuant to section 1, and amendments thereto, which are in effect on the effective date of this act shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the state fire marshal until revised, amended, revoked or nullified pursuant to law.

(d) The state fire marshal shall have the legal custody of all records, memoranda, writings, entries, prints, representations, electronic data or combinations thereof of any act, transaction, occurrence or event of the

secretary of labor relating to any of the powers, duties or functions transferred to the office of state fire marshal pursuant to section 1, and amendments thereto.

(e) The state fire marshal shall be the continuation of the secretary of labor with respect to the powers, duties and functions transferred to the office of state fire marshal pursuant to section 1, and amendments thereto.

(f) (1) All officers and employees who, immediately prior to the effective date of this act, were engaged in the performance of powers, duties or functions of the secretary of labor transferred pursuant to section 1, and amendments thereto, or the powers, duties and functions of which are transferred to the office of state fire marshal, and who, in the opinion of the state fire marshal, are necessary to perform the powers, duties and functions of the office of state fire marshal, shall be transferred to, and shall become officers and employees of the office of state fire marshal.

(2) Officers and employees of the department of labor transferred by this act shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer, including any benefits and rights accrued or vested as a result of participating in the Kansas public employees retirement system or the Kansas police and firemen's retirement system and such participation shall continue as provided by law. The service of each such officer and employee so transferred shall be deemed to have been continuous. All transfers, layoffs or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this act shall affect the classified status of any transferred person employed by the department of labor.

New Sec. 3. (a) When any conflict arises as to the disposition of any property, power, duty or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under section 1, and amendments thereto, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The office of state fire marshal shall succeed to all property, property rights and records which were used for or pertain to the performance of powers, duties and functions transferred to the office of state fire marshal pursuant to section 1, and amendments thereto. Any conflict as to the proper disposition of property, personnel or records arising under this section or sections 1 or 2, and amendments thereto, shall be determined by the governor, whose decision shall be final.

Sec. 4. K.S.A. 2012 Supp. 44-636 is hereby amended to read as follows: 44-636. (a) The secretary of labor shall have power to enter any factory or mill, workshop, private works, public works or state agency or institution, mercantile establishment, laundry or any other place of business where labor is or is intended to be performed for any purpose, when

the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this act, and to examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places and to keep a record thereof of such inspection.

If it shall be found upon such investigation that the heating, lighting, ventilation, occupant capacity or sanitary arrangement of any such establishment or place is such as to be injurious to the health of persons employed or residing therein, or that the means of egress in case of fire or other disaster are not sufficient, or that the belting, shafting, gearing, elevators, drums, saws, cogs or machinery, in any such establishment or place are so located or are in a condition so as to be dangerous, or are not sufficiently guarded, or that the vats, pans or any other structures filled with molten metal, hot liquid or hazardous materials or substances are not surrounded with proper safeguards for preventing accidents, injury or illness to those persons in, or near them, or that the construction or condition of any building or buildings, ~~or any boiler,~~ machinery or other appurtenances in or about any place as described in this section is such as to be dangerous or injurious to the persons employed or residing therein, or that the methods of operation are such as to be unnecessarily dangerous or injurious to the persons employed or residing therein, or that any other condition which is within the control of the owner, proprietor, agent, administrator or lessee of any such building, establishment or place to be found to be dangerous or injurious to any persons employed therein or to any other person or persons, the secretary or the authorized agent of the secretary after making such inspection shall notify in writing the owner, proprietor, agent, administrator or lessee of such building, establishment, or place. Such notification may also include an order that requires the provisions of such safeguards or safety devices or the making of such alterations or additions or changes in methods of operation or the taking of any other measures the secretary may deem appropriate and necessary for the safety and protection of the employees or other persons endangered by such conditions and the amount of time granted by the secretary for making any such alterations, additions, changes or taking such other methods as required. Such amount of time shall not exceed 60 days after service of the notice and the order unless an extension thereof is requested for good cause shown by the person named in the order, and such extension is granted by the secretary.

(b) The notification required by subsection (a) shall include notice of the right to a hearing concerning any order included therein. Any such order shall become final unless within 15 days after service of the notice and order, the person or persons named therein shall request in writing a hearing by the secretary. If a request is made for a hearing the date of the hearing shall not be more than 30 days after such request is made.

Orders under subsection (a), and hearings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

(c) No person, firm or corporation, nor any officer, agent or employee thereof, shall remove or require to be removed, or made ineffective any practical safeguard around or safety attachment to any machinery, vats, pan, or other apparatus or device mentioned in this section while the same is in use, except for the purpose of immediately making repairs thereto, and all safeguards or safety attachments so removed shall be promptly replaced before the dangerous machine, apparatus or device is returned to normal use or operation. Except as otherwise provided, no person shall require or permit the operation of, or operate, the dangerous machine, apparatus or device without the required safeguards or safety attachments.

(d) If the secretary of labor determines that conditions or products in any place of employment are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately, or before such danger can be eliminated through the enforcement provisions otherwise provided by law, the secretary may, in accordance with the provisions of K.S.A. 77-536, and amendments thereto, order the immediate taking of any steps necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to prevent any avoidable loss of production facilities or product.

(e) Upon issuance of the order authorized by subsection (d) of this section and upon the request of any party who is adversely affected thereby, the secretary shall fix a place and time for a hearing to be held on such order in accordance with the provisions of the Kansas administrative procedure act.

(f) No person shall discharge or in any manner discriminate against any employee because such employee has filed a complaint with, or furnished information to, the secretary of labor concerning conditions or situations alleged to be unsafe or hazardous or otherwise covered by the provisions of this act.

(g) Any person who willfully violates any provision of this section or any lawful order issued pursuant to this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$25 nor more than \$100. Each day that such violation exists shall constitute a separate offense.

(h) An action brought pursuant to this section shall not constitute a bar to enforcement of the provisions of this section by injunction or other appropriate remedy, and upon request of the secretary of labor, the attorney general shall have the power to institute and maintain in the name of the state any and all appropriate enforcement procedures.

Sec. 5. K.S.A. 2012 Supp. 44-914 is hereby amended to read as follows: 44-914. As used in this act, unless the context otherwise requires:

(a) “Boiler” means a closed vessel in which water or other liquid is heated, steam or vapor is generated or steam is superheated, or in which any combination of these functions is accomplished, under pressure or vacuum, for use internal or external to itself, by the direct application of energy from the combustion of fuels or of electric or solar power. The term boiler shall also include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

(b) “Certificate inspection” means an inspection, the report of which is used by the chief inspector to determine whether or not an inspection certificate shall be issued as provided by K.S.A. 44-924, and amendments thereto.

(c) “Heating boiler” means a steam or vapor boiler operating at pressures not exceeding 15 pounds per square inch gauge or a hot water heating boiler operating at pressures not exceeding 160 pounds per square inch gauge or temperatures not exceeding 250° Fahrenheit.

(d) “High pressure, high temperature water boiler” means a water boiler operating at pressures exceeding 160 pounds per square inch gauge or temperatures exceeding 250° Fahrenheit.

(e) “Power boiler” means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch gauge.

~~(f) “Secretary” means the secretary of labor.~~

~~(g)~~(f) “Pressure vessel” means a vessel or container used for the containment of pressure either internal or external in which the pressure is obtained from an external source of vapor, liquid or gas.

~~(h)~~(g) “Hot water supply boiler” means a vessel heating water for external uses, by gas, oil, electricity or solar energy that does not exceed 160 psi, or 210° Fahrenheit.

~~(i)~~(h) “Inspection fee” means any inspection fees collected pursuant to subsection (a) of K.S.A. 44-926, and amendments thereto, and shall not include any certificate fees collected pursuant to subsection (b) of K.S.A. 44-926, and amendments thereto, and any travel or hotel expense.

Sec. 6. K.S.A. 2012 Supp. 44-915 is hereby amended to read as follows: 44-915. (a) The provisions of this act shall not apply to:

(1) Boilers and pressure vessels under the control of the United States government or federal law;

(2) antique, scale model or other steam boilers which are used exclusively for exhibition purposes and which are inspected by associations that have established an approved inspection procedure and whose inspectors are registered as special inspectors with the boiler safety unit of the state of Kansas, department of labor *state fire marshal*;

(3) fire engine boilers brought into the state for temporary use in times of emergency;

(4) boilers and pressure vessels located on producing oil and gas leases or storage areas, and outside the limits of any municipality, used solely for oil and gas production purposes;

(5) hot water supply boilers which are directly fired with oil, gas, electricity or solar energy and which are equipped with pressure and temperature safety relief valves approved by the American society of mechanical engineers or the national board of boiler and pressure vessel inspectors, if none of the following limitations is exceeded:

(A) Heat input of 200,000 BTUH;

(B) water temperature of 210° Fahrenheit; and

(C) nominal water capacity of 85 gallons or 120 gallons for an electrical utility generating plant; ~~and~~

(6) pressure vessels constructed and installed prior to January 1, 1999; *and*

(7) *pressure vessels used to store or transport anhydrous ammonia.*

(b) The provisions of subsections (b) and (c) of K.S.A. 44-923, and amendments thereto, and the provisions of K.S.A. 44-924, 44-925 and 44-926, and amendments thereto, shall not apply to:

(1) Boilers and pressure vessels located on farms and used solely for agriculture or horticultural purposes;

(2) heating boilers and pressure vessels which are located in private residences or in apartment houses of less than five family units;

(3) boilers and pressure vessels operated and regularly inspected by railway companies operating in interstate commerce;

(4) any boiler and pressure vessels in any establishment in which petroleum products are refined or processed in which all boiler and pressure equipment is inspected and rated either by an inspection service regularly maintained within such establishment or provided by a manufacturer, designer or insurer of such equipment, in accordance with the applicable provisions of any published code or codes of rules or recommended practices nationally recognized in the industry of which such establishment is a part as providing suitable standards for the inspection, repair and rating of pressure equipment of the type used in such establishment;

(5) pressure vessels used for transportation and storage of compressed gases when constructed in compliance with specifications of the United States department of transportation and when charged with gas marked, maintained and periodically requalified for use, as required by appropriate regulations of the United States department of transportation;

(6) pressure vessels located on vehicles operating under the rules and regulations of other state authorities and used to transport passengers or freight;

(7) pressure vessels installed on the right-of-way of railroads and used in the operation of trains;

(8) pressure vessels having an internal or external operating pressure not exceeding 15 psig with no limit on size;

(9) pressure vessels having an inside diameter, width, height or cross section diagonal not exceeding six inches, with no limitation on length of the vessel or pressure;

(10) pressure vessels for containing water or other nonflammable liquids under pressure, including those containing air, the compression of which serves only as a cushion, when neither of the following limitations is exceeded:

(A) A design pressure of 300 psig; or

(B) a design temperature of 210° Fahrenheit;

(11) pressure vessels which may be classified as pressure containers which are an integral part of components of rotating or reciprocating mechanical devices such as pumps, turbines, generators, engines and hydraulic or pneumatic cylinders, where the primary design considerations and stresses are derived from the functional requirements of the device;

(12) pressure vessels that do not exceed: (A) 15 cubic feet and 250 psi pressure; or (B) 1½ cubic feet in volume and 600 psi pressure; and

(13) pressure vessels installed and constructed before January 1, 1999.

Sec. 7. K.S.A. 44-916 is hereby amended to read as follows: 44-916.

(a) The ~~secretary~~ *state fire marshal* shall adopt rules and regulations, consistent with the provisions of this act, for the safe construction, installation, inspection, maintenance and repair of boilers in this state. The ~~secretary~~ *state fire marshal* shall adopt rules and regulations, consistent with the provisions of this act, for the safe construction and installation of pressure vessels in this state.

(b) *Rules and regulations adopted hereunder may include reporting, monitoring and recordkeeping requirements for owners and users of boilers and pressure vessels subject to this act.*

~~(b)~~(c) Rules and regulations adopted hereunder for construction of new boilers and pressure vessels shall be based upon and at all times follow generally accepted nationwide engineering standards, formulae and practices established and pertaining to boiler construction and safety. Such rules and regulations may incorporate by reference specific editions, or portions thereof, of the boiler and pressure vessel code of the American society of mechanical engineers or other approved codes of construction.

~~(c)~~(d) Rules and regulations adopted hereunder for the construction, installation, inspection, maintenance and repair of boilers and pressure vessels shall be based upon and at all times follow generally accepted nationwide engineering standards. Such rules and regulations may incorporate by reference specific editions, or portions thereof, of the inspec-

tion code of the national board of boiler and pressure vessel inspectors and may require the use of such board's "R" stamp for repairs.

~~(d)~~(e) The chief inspector or deputy inspectors may perform inspections of boilers and pressure vessels and issue, upon completion, a special certification showing that such inspection was done in accordance with nationwide engineering standards as adopted by rules and regulations.

Sec. 8. K.S.A. 44-917 is hereby amended to read as follows: 44-917.

(a) All new boilers and pressure vessels shall conform to the rules and regulations ~~issued~~*adopted* pursuant to this ~~statute~~*act* which govern new construction and installation. If a new boiler or pressure vessel is of special design or construction and the design is consistent with the spirit and safety objectives of this act and rules and regulations, an interested party may request a variance from the ~~secretary~~*state fire marshal* to build and operate a nonconforming boiler or pressure vessel.

(b) The maximum allowable working pressure of a boiler or pressure vessel carrying the American society of mechanical engineers or other approved code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.

(c) The maximum allowable working pressure of a boiler or pressure vessel which does not carry the American society of mechanical engineers code symbol shall be computed in accordance with the rules and regulations adopted by the ~~secretary~~*state fire marshal*.

(d) This act shall not be construed as in any way preventing the use, sale or reinstallation of a boiler or pressure vessel previously installed in this state, provided it has been made to conform to the rules and regulations governing existing installations and provided it has not been found upon inspection to be in an unsafe condition. If a previously installed boiler or pressure vessel is of special design or construction and the design is consistent with the spirit and safety objectives of this act and rules and regulations, an interested party may request a variance from the ~~secretary~~*state fire marshal* to use, sell, or reinstall a nonconforming boiler or pressure vessel.

(e) This act shall not be construed to require a pressure vessel inspection of those pressure vessels moved to a different location by the same owner.

Sec. 9. K.S.A. 44-918 is hereby amended to read as follows: 44-918.

(a) The ~~secretary~~*state fire marshal* shall appoint a chief inspector who shall be a citizen of this state, or, if not available, a citizen of another state, and who shall have at the time of appointment not less than 10 years experience in the construction, installation, inspection, operation, maintenance or repair of high pressure boilers and pressure vessels as a mechanical engineer, steam operating engineer, boiler maker or boiler inspector, and who shall hold a commission issued by the national board of boiler and pressure vessel inspectors. The chief inspector shall be in

the unclassified civil service and shall receive such compensation as prescribed by the ~~secretary~~ *state fire marshal*, subject to the approval of the governor.

(b) The chief inspector shall serve under the direction of the ~~secretary and is~~ *state fire marshal*. *The state fire marshal, chief inspector and other duly authorized representatives of the state fire marshal are hereby charged, directed and empowered:*

(1) To take action necessary for the enforcement of this act and of the rules and regulations adopted hereunder;

(2) to maintain a complete record of all boilers and pressure vessels to which this act applies, which record shall include the name and address of each owner or user and the type, dimensions, maximum allowable working pressure, age and last recorded inspection of each such boiler or pressure vessel;

(3) to publish and make available copies of rules and regulations adopted hereunder to any person requesting them;

(4) to issue, or to suspend or revoke for cause, inspection certificates as provided in K.S.A. 44-924, and amendments thereto; and

(5) to cause the prosecution of all violators of the provisions of this act or of the rules and regulations adopted hereunder.

Sec. 10. K.S.A. 44-919 is hereby amended to read as follows: 44-919. The ~~secretary~~ *state fire marshal* shall employ one or more deputy inspectors who shall be responsible to the chief inspector. Each deputy inspector shall have at the time of appointment not less than three years experience in the construction, installation, inspection, operation, maintenance or repair of high pressure boilers and pressure vessels as a mechanical engineer, steam operating engineer, boilermaker or boiler inspector. Deputy inspectors shall be in the unclassified civil service and shall receive such compensation as prescribed by the ~~secretary~~ *state fire marshal*, subject to the approval of the governor.

Sec. 11. K.S.A. 44-920 is hereby amended to read as follows: 44-920. (a) In addition to the deputy inspectors authorized by K.S.A. 44-919, and amendments thereto, the ~~secretary~~ *state fire marshal*, upon the request of any company licensed to insure and insuring boilers and pressure vessels in this state shall issue to any inspectors of such insurance company certificates of competency as special inspectors, provided that each such inspector shall hold a commission issued by the national board of boiler and pressure vessel inspectors.

(b) Special inspectors shall receive no salary from, nor shall any of their expenses be paid by, the state, and the continuance of their certificates of competency shall be conditioned upon their continuing in the employ of the boiler insurance company duly authorized as aforesaid and upon their maintenance of the standards imposed by this act and by rules and regulations adopted hereunder.

(c) Special inspectors shall inspect all boilers insured by their respective companies and, when so inspected, the owners and users of such boilers shall be exempt from the payment to the state of the inspection fees provided for in subsection (a) of K.S.A. 44-926, and amendments thereto.

(d) The ~~secretary~~*state fire marshal* shall fix, by rules and regulations, certification requirements for inspectors of antique, scale models or other steam boilers used exclusively for exhibition purposes.

Sec. 12. K.S.A. 44-921 is hereby amended to read as follows: 44-921. The ~~chief inspector~~*state fire marshal* may suspend or revoke a special inspector's certificate of competency for cause, after due investigation, if the ~~chief inspector~~*state fire marshal* finds incompetence, untrustworthiness, falsification of any matter or statement contained in a special inspector's application or report, or a failure by the special inspector to report findings of any inspection made by such inspector to the chief inspector. Such a suspension or revocation of certificate shall be effective as soon as notice of the suspension or termination has been delivered to the special inspector or the inspector's employer.

Sec. 13. K.S.A. 44-922 is hereby amended to read as follows: 44-922. If a certificate of competency is lost or destroyed, a new certificate of competency shall be issued in its place without another examination. The ~~secretary~~*state fire marshal* may charge a fee for a replacement certificate.

Sec. 14. K.S.A. 44-923 is hereby amended to read as follows: 44-923. (a) The ~~secretary~~*state fire marshal*, the chief inspector or any deputy inspector shall have free access, during reasonable hours, to any premises in the state where boilers and pressure vessels are being operated, repaired, installed or constructed for use in this state, for the purpose of ascertaining whether boilers or pressure vessels have been constructed and installed in accordance with the provisions of this act and the rules and regulations adopted hereunder.

(b) Each boiler used or proposed to be used within this state, except for boilers exempt under K.S.A. 44-915, and amendments thereto, shall be thoroughly inspected as to construction, installation and condition as follows:

(1) Power boilers and high pressure, high temperature water boilers shall receive an annual certificate inspection which shall be an internal inspection, where construction permits, or as complete an inspection as possible, where construction does not permit internal inspection. Such boilers shall also be externally inspected while under pressure.

(2) Steam heating boilers shall receive an annual certificate inspection, with an internal inspection every three (3) years where construction permits.

(3) All other boilers subject to this section shall receive an annual certificate inspection, with an internal inspection at the discretion of the

inspector. An electrical generating utility may apply for, and receive a variance granting such utility up to an additional year between inspections.

(4) A grace period of two months beyond the periods specified in ~~subdivisions-paragraphs~~ (1), (2) and (3) of this subsection may elapse between certificate inspections.

(5) The ~~secretary~~*state fire marshal* may provide, by rules and regulations, for longer periods between certificate inspections.

(c) The inspections herein required shall be made by the chief inspector, by a deputy inspector or by a special inspector provided for in this act.

(d) If, at the discretion of the inspector, a pressure test shall be deemed necessary, it shall be made by the owner or user of the boiler.

(e) All pressure vessels installed after January 1, 1999, and boilers, other than cast iron sectional boilers, shall be inspected during construction as required by the applicable rules and regulations by an inspector authorized to inspect boilers and pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a commission issued by the national board of boiler and pressure vessel inspectors. All pressure vessels installed after January 1, 1999, and boilers, regardless of code of construction, shall be registered with the national board of boiler and pressure vessel inspectors.

(f) Hot water supply boilers shall receive an external certificate inspection every three years.

(g) Low pressure hot water supply boilers with a heat input over 400,000 BTUH shall receive an annual external certificate inspection.

(h) Hot water supply boilers over 200,000 BTUH or 120 gallon capacity shall be stamped and registered with the national board of boiler and pressure vessels inspectors.

Sec. 15. K.S.A. 44-924 is hereby amended to read as follows: 44-924.

(a) All inspections made by any inspector shall be reported to the office of the ~~chief inspector~~*state fire marshal* within 30 days following each certificate inspection upon the appropriate form as approved by the ~~secretary~~*state fire marshal*. The filing of reports of external inspections, other than certificate inspections, shall be required whenever such inspections disclose that the boiler or pressure vessel is in an unsafe condition.

(b) If a report filed pursuant to subsection (a) of this section shows that a boiler or pressure vessel is found to comply with the rules and regulations adopted hereunder, the owner or user thereof shall pay directly to the ~~chief inspector~~*office of the state fire marshal* the certificate fee prescribed by subsection (b) of K.S.A. 44-926, and amendments thereto, and the ~~chief inspector~~*state fire marshal* or the ~~chief inspector's~~*state fire marshal's* duly authorized representative shall issue to such

owner or user an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated. Such boiler inspection certificate shall be valid for not more than 14 months from its date unless covered by a variance. In the case of those boilers covered by subsection (b) of K.S.A. 44-923, and amendments thereto, for which the ~~secretary~~ *state fire marshal* has established or extended the operating period between required inspections pursuant to the provisions of ~~subdivision (5) of subsection (b) (5) of~~ K.S.A. 44-923, and amendments thereto, the certificate shall be valid for a period of not more than two months beyond the period set by the ~~secretary~~ *state fire marshal*. Certificates shall be maintained on site and available upon request of *the state fire marshal, chief inspector or any deputy inspector*.

(c) Whenever a boiler becomes uninsured or there is a change of insurers, the owner or new insurer must notify the ~~chief boiler inspector~~ *office of the state fire marshal* within 30 days.

(d) ~~The chief inspector or deputy inspector may shut down or suspend the operation of a boiler or pressure vessel in accordance with the Kansas administrative procedure act if the chief inspector or deputy inspector finds that the boiler or pressure vessel cannot be operated without an immediate danger to the public health, safety or welfare or does not comply with the rules and regulations adopted hereunder. The suspension or shutdown of the boiler or pressure vessel shall continue in effect until the owner or operator demonstrates that the danger has been abated and the applicable rules and regulations have been complied with. The chief inspector or deputy inspector shall reinspect the boiler or pressure vessel to ensure it is safe and that applicable rules and regulations have been complied with, before issuing a permit to restart or resume operations. The state fire marshal, chief inspector and any deputy inspector are authorized to order the revocation or suspension of any certificate issued pursuant to this act, and order any owner, operator or resident agent of an owner to cease and desist operation of any boiler or pressure vessel subject to this act for failure to comply with any of the provisions of this act or any rules and regulations promulgated under the authority of this act. The state fire marshal, chief inspector and any deputy inspector are further authorized to order any owner, operator or resident agent of an owner to cease and desist operation of any boiler or pressure vessel subject to this act if the state fire marshal, chief inspector or deputy inspector finds that such boiler or pressure vessel does not have a certificate as required by this act, or finds that such boiler or pressure vessel cannot be operated without an immediate danger to the public health, safety or welfare.~~

(e) ~~An order revoking or suspending a certificate or any cease and desist order shall continue in effect until the owner or operator demonstrates that any danger has been abated and the applicable rules and~~

regulations have been complied with. The state fire marshal, chief inspector or any deputy inspector shall reinspect the boiler or pressure vessel to ensure that it is safe to operate and that all applicable rules and regulations have been complied with before issuing or reinstating a certificate to operate the boiler or pressure vessel.

Sec. 16. K.S.A. 44-925 is hereby amended to read as follows: 44-925.

(a) It shall be unlawful for any person, firm, partnership, corporation or other entity to operate in this state a pressure vessel installed after January 1, 1999, or a boiler without a valid inspection certificate, ~~and~~. The operation of a pressure vessel installed after January 1, 1999, or a boiler without such inspection certificate or at a pressure exceeding that specified in such inspection certificate shall constitute a class C misdemeanor. Each day of such unlawful operation shall be deemed a separate offense.

(b) If an inspection certificate is lost or destroyed, a new certificate shall be issued in its place without another inspection. The ~~secretary-state~~ *fire marshal* may charge a fee for a replacement certificate.

(c) It shall be unlawful for any person, firm, partnership, corporation or other entity to install or operate any boiler or pressure vessel in this state or to construct any boiler or pressure vessel for use in this state in violation of this act or the rules and regulations adopted hereunder, and any such unlawful installation, operation or construction shall constitute a class C misdemeanor. Each day of unlawful installation, operation or construction shall be deemed a separate offense.

(d) *In addition to any other penalty provided by law, the state fire marshal, upon finding that any person has violated any of the provisions of this act or any rule or regulation promulgated under the authority of this act, is authorized to impose a civil penalty not to exceed \$1,000 per violation for each day of such unlawful operation, which shall constitute an actual and substantial economic deterrent to the violation for which the penalty is assessed. No civil penalty shall be imposed pursuant to this subsection except upon the written order of the state fire marshal to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to request a hearing as provided in K.S.A. 44-928, and amendments thereto.*

(e) *All moneys received from civil penalties imposed pursuant to subsection (d) 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 general fund.*

Sec. 17. K.S.A. 2012 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~~ *office of the state fire marshal*, upon completion of inspection, inspection fees fixed by the ~~sec-~~

~~retary-state fire marshal~~ in accordance with this ~~subsection (a)~~-*section*. The ~~secretary-state fire marshal~~ 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~~ *office of the state fire marshal*, before issuance of such certificate, a certificate fee fixed by the ~~secretary-state fire marshal~~ 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~~ *The state fire marshal shall remit all such moneys received from the fees established hereunder* to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. 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~~ *state fire marshal*, or by a person or persons designated by the ~~secretary~~ *state fire marshal*.

Sec. 18. K.S.A. 44-927 is hereby amended to read as follows: 44-927. The chief inspector and each deputy inspector shall be required to furnish bond under the provisions of article 41 of chapter 75 of the Kansas Statutes Annotated, *and amendments thereto*.

Sec. 19. K.S.A. 2012 Supp. 44-928 is hereby amended to read as follows: 44-928. (a) Any person aggrieved by ~~any act or determination of the secretary or of the chief inspector, performed or made pursuant to the provisions of this act, or rules and regulations adopted hereunder~~ *an order issued pursuant to the provisions of this act*, may request a hearing thereon *within 15 days from the date of the service of such order by filing such request in writing with the office of the state fire marshal*. Such hearing shall be conducted by the ~~secretary or the secretary's designee~~ in accordance with the provisions of the Kansas administrative procedure act. *The filing of a request for a hearing shall not abate or operate as a stay of the effect of an order to cease and desist unless otherwise stated in such order.*

(b) ~~Any action of the secretary pursuant to this act is subject to review~~

Judicial review and civil enforcement of agency actions under this act shall be in accordance with the Kansas judicial review act.

Sec. 20. K.S.A. 44-929 is hereby amended to read as follows: 44-929. No city, county or other political subdivision of this state shall have the power to make any laws, ordinances or resolutions providing for the construction, installation, inspection, maintenance and repair of boilers *or any pressure vessels installed after January 1, 1999*, within the limits of such city, county or political subdivision, and any such laws, ordinances or resolutions heretofore made or passed shall be void and of no effect.

Sec. 21. K.S.A. 44-916, 44-917, 44-918, 44-919, 44-920, 44-921, 44-922, 44-923, 44-924, 44-925, 44-927 and 44-929 and K.S.A. 2012 Supp. 44-636, 44-914, 44-915, 44-926 and 44-928 are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 5, 2013.

CHAPTER 45

SENATE BILL No. 139

AN ACT concerning money transmitters; amending K.S.A. 2012 Supp. 9-508, 9-509, 9-510, 9-511, 9-513, 9-513c and 9-513d and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 9-508 is hereby amended to read as follows: 9-508. As used in this act:

(a) “Agent” means ~~an entity or~~ *either a person receiving funds from a Kansas resident and forwarding such funds to a licensee to effectuate money transmission or a person designated by the licensee, or by an exempt entity, to otherwise engage in the business of transmitting money transmission on behalf of the licensee, or an exempt entity, at one or more physical locations throughout the state or through the internet, regardless of whether such person would be exempt from the act by conducting money transmission on such person’s own behalf;*

(b) “commissioner” means the state bank commissioner;

(c) “electronic instrument” means a card or other tangible object for the transmission or payment of money, including a ~~stored value prepaid access~~ *card or device which contains a microprocessor chip, magnetic stripe or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services;*

(d) “licensee” means *a person licensed under this act;*

(e) “*nationwide multi-state licensing system and registry*” means a licensing system developed and maintained by the conference of state bank supervisors, or its successors and assigns, for the licensing and reporting of those persons engaging in the money transmission;

(f) “monetary value” means a medium of exchange, whether or not redeemable in money;

~~(e)~~(g) “money transmission” means to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United States by wire, facsimile, electronic means or any other means, *except that money transmission does not include currency exchange where no transmission of money occurs*;

~~(f)~~(h) “outstanding payment instrument” means any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any money order or instrument issued by the licensee which has been sold by an agent of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee;

~~(g)~~(i) “payment instrument” means any electronic or written check, draft, money order, travelers check or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term “payment instrument” does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services;

~~(h)~~(j) “permissible investments” means:

- (1) Cash;
- (2) deposits in a demand or interest bearing account with a domestic federally insured depository institution, including certificates of deposit;
- (3) debt obligations of a domestic federally insured depository institution;

(4) any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(5) investment grade bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States or an instrumentality of the United States;

(6) obligations that a state, an agency or political subdivision of a state, the United States or an instrumentality of the United States has unconditionally agreed to purchase, insure or guarantee and that bear a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(7) shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds pri-

marily composed of such securities or a fund composed of one or more permissible investments as set forth herein;

(8) receivables which are due to a licensee ~~from such licensee's agents pursuant to a contract~~ *related to money transmission*, which are not past due or doubtful of collection and which do not exceed in the aggregate 20% of the total required permissible investments pursuant to K.S.A. 9-513b, and amendments thereto; or

(9) any other investment or security device approved by the commissioner;

~~(i)~~(k) "person" means any individual, partnership, association, joint-stock association, trust, corporation or any other form of business enterprise; ~~and~~

~~(j)~~(l) "~~stored value~~" means ~~monetary value that is evidenced by an electronic record~~. "*resident*" means *any natural person or business entity located in this state; and*

(m) "*tangible net worth*" means *the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property and goodwill.*

Sec. 2. K.S.A. 2012 Supp. 9-509 is hereby amended to read as follows: 9-509. (a) No person shall engage in the business of selling, issuing or delivering its payment instrument, check, draft, money order, personal money order, bill of exchange, evidence of indebtedness or other instrument for the transmission or payment of money or otherwise engage in the business of money transmission with a resident of this state, or, except as provided in K.S.A. 9-510, and amendments thereto, act as agent for another in the transmission of money as a service or for a fee or other consideration, unless such person obtains a license from the commissioner.

(b) (1) An application for a license shall be submitted in the form and manner prescribed by the commissioner. The application shall be accompanied by nonrefundable fees established by the commissioner for the license and each agent location. ~~Such fees shall be due annually on July 1. At least 30 days prior to expiration of the license as reflected on the face of the license certificate, a license shall be renewed by filing with the commissioner a complete application and nonrefundable application fees at least 30 days prior to expiration of the license as reflected on the face of the license certificate. Each license shall expire December 31 of each year. A license shall be renewed by filing with the commissioner a complete application and nonrefundable application fee at least 30 days prior to expiration of the license. Expired licenses may be reinstated through February 28 of each year by filing a reinstatement application and paying the appropriate application and late fees. The application shall be accom-~~

panied by nonrefundable fees established by the commissioner for the license and each agent location.

(2) *The commissioner may use a nationwide multi-state licensing system and registry for processing applications, renewals, amendments, surrenders, and any other activity the commissioner deems appropriate. The commissioner may also use a nationwide multi-state licensing system and registry for requesting and distributing any information regarding money transmitter licensing to and from any source so directed by the commissioner. The commissioner may establish relationships or contracts with the nationwide multi-state licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, as may be reasonably necessary to participate in the nationwide multi-state licensing system and registry. The commissioner may report violations of the law, as well as enforcement actions and other relevant information to the nationwide multi-state licensing system and registry. The commissioner may require any applicant or licensee to file reports with the nationwide multi-state licensing system and registry in the form prescribed by the commissioner.*

(3) *An application shall be accompanied by nonrefundable fees established by the commissioner for the license and each agent location. The commissioner shall determine the amount of such fees to provide sufficient funds to meet the budget requirements of administering and enforcing the act for each fiscal year. For the purposes of this subsection, "each agent location" means each physical location within the state where money transmission is conducted, including, but not limited to, branch offices, authorized vendor offices, delegate offices, kiosks and drop boxes. Any person using the multi-state licensing system shall pay all associated costs.*

~~(2)~~(4) (A) *The commissioner may require fingerprinting of any individual, officer, director, partner, member, shareholder or any other person related to the application deemed necessary by the commissioner. Such fingerprints may be submitted to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of arrests and convictions in this state or other jurisdiction.*

(B) *The commissioner may use information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license, or in the case of an applicant company, the persons associated with the company.*

(C) *For purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have with the individual states, the commissioner may use a nationwide multi-state licensing system and registry for requesting information from and distrib-*

uting information to the department of justice or any governmental agency.

(D) Whenever the commissioner requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application. If the applicant is a publicly traded corporation or a subsidiary of a publicly traded corporation, no fingerprint check shall be required.

~~(3)~~(5) In addition, each person submitting an application shall meet the following requirements:

(A) The *tangible* net worth of such person shall be at all times not less than \$250,000, as shown by an audited financial statement and certified to by an owner, a partner or officer of the corporation or other entity filed in the form and manner prescribed by the commissioner. A *consolidated financial statement from an applicant's holding company may be accepted by the commissioner*. The commissioner may require any person to file a statement at any other time upon request;

(B) such person shall deposit and at all times keep on deposit with the state treasurer, or a bank in this state approved by the commissioner, cash or securities satisfactory to the commissioner in an amount not less than \$200,000. The commissioner may increase the amount of cash or securities required up to a maximum of \$500,000 upon the basis of the impaired financial condition of a person, as evidenced by a reduction in net worth, financial losses or other relevant criteria as determined by the commissioner;

(C) in lieu of the deposit of cash or securities required by paragraph (B), such person may give a surety bond in an amount equal to that required for the deposit of cash or securities, in a form satisfactory to the commissioner and issued by a company authorized to do business in this state, which bond shall be payable to the office of the state bank commissioner and be filed with the commissioner; and

(D) such person shall submit a list to the commissioner of the names and addresses of other persons who are authorized to act as agents for transactions with Kansas residents.

(c) The deposit of cash, securities or surety bond required by this section shall be subject to:

(1) Payment to the commissioner for the protection and benefit of purchasers of money transmission services, purchasers or holders of payment instruments furnished by such person, and those for whom such person has agreed to act as agent in transmission of monetary value and to secure the faithful performance of the obligations of such person in respect to the receipt, handling, transmission and payment of monetary value; and

(2) payment to the commissioner for satisfaction of any expenses, fines, fees or refunds due pursuant to this act, levied by the commissioner or that become lawfully due pursuant to a final judgment or order.

(d) The aggregate liability of the surety for all breaches of the con-

ditions of the bond, in no event, shall exceed the amount of such bond. The surety on the bond shall have the right to cancel such bond upon giving 30 days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. The commissioner or any aggrieved party may enforce claims against such deposit of cash or securities or surety bond. So long as the depositing person is not in violation of this act, such person shall be permitted to receive all interest and dividends on the deposit and shall have the right to substitute other securities satisfactory to the commissioner. If the deposit is made with a bank, any custodial fees shall be paid by such person.

(e) (1) The commissioner shall have the authority to examine the books and records of any person operating in accordance with the provisions of this act, at such person's expense, to verify compliance with state and federal law.

(2) For purposes of investigation, examination or other proceeding under this act, the commissioner may administer or cause to be administered oaths, subpoena witnesses and documents, compel the attendance of witnesses, take evidence and require the production of any document that the commissioner determines to be relevant to the inquiry.

Sec. 3. K.S.A. 2012 Supp. 9-510 is hereby amended to read as follows: 9-510. A licensee may engage in the business of money transmission at one or more locations in this state and through or by means of such agents as such ~~person~~ licensee may designate and appoint from time to time. ~~A verified list of agents shall be furnished annually to the commissioner by persons operating hereunder, on a date prescribed by the commissioner. No such agent shall be required to comply with the licensing provisions of this act subject to the following provisions:~~

(1) *No agent of a licensee shall be required to comply with the licensing provisions of this act.*

(2) *Only a licensee may designate an agent.*

(A) *No agent shall appoint a subagent.*

(B) *No person acting as an agent for an exempt entity shall be exempt from the licensing provisions of this act.*

(3) *A person accepting a consumer's funds for transmission through an exempt entity is a money transmitter and subject to the provisions of this act.*

(4) *In conjunction with filing a renewal application, each applicant shall provide in the form and manner prescribed by the commissioner a complete list of its proposed or existing agents. At the end of each calendar quarter each licensee shall provide in the form and manner prescribed by the commissioner any additions or deletions in the licensee's agents.*

(5) *A written contract between a licensee and agent shall be main-*

tained for inspection by the commissioner upon request and the written contract must contain provisions to the following effect:

(A) *The agent must operate in full compliance with this act and the rules and regulations adopted thereunder.*

(B) *The agent is prohibited from using subagents or conducting money transmission business from locations that have not been approved by the licensee.*

(C) *A description of the specific money services the licensee has permitted the agent to perform on behalf of the licensee.*

(6) *The agent may only conduct activities authorized by the licensee in the written agreement, unless the agent is also a licensee.*

(7) *A licensee may contract with another licensee to use that other licensee's existing authorized agents only for the purpose of loading funds onto existing prepaid access cards. The licensee with the direct contractual relationship with the agents shall record the transactions as such licensee's own. If a shared agent sells new prepaid access cards on behalf of the licensee, then such licensee must directly contract with the agent and comply with all other requirements for designating an agent.*

Sec. 4. K.S.A. 2012 Supp. 9-511 is hereby amended to read as follows: 9-511. ~~This act shall not apply to~~ *The following persons shall be exempt from the provisions of this act:*

(a) (1) Banks, building and loan associations, savings and loan associations, savings banks or credit unions, ~~including agents of any of these business entities~~, organized under the laws of and subject to the supervision of this state, another state or the United States;

(2) the government of the United States and its agencies, including agents of the government and its agencies; or

(3) the state of Kansas and its agencies, including agents of the state of Kansas and its agencies.

(b) This act also shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity.

Sec. 5. K.S.A. 2012 Supp. 9-513 is hereby amended to read as follows: 9-513. ~~This act shall be interpreted by~~ *The commissioner shall rely on the deputy commissioner of the banking division established pursuant to K.S.A. 75-3135, and amendments thereto, and such deputy's staff to administer, interpret and enforce this act* for the purpose of protecting the citizens of this state, against financial loss, who purchase payment instruments or who give money or control of their funds or credit into the custody of another person for transmission, regardless of whether the transmitter has any office, facility, agent or other physical presence in the state.

Sec. 6. K.S.A. 2012 Supp. 9-513c is hereby amended to read as fol-

laws: 9-513c. (a) Notwithstanding any other provision of law, all information or reports obtained and prepared by the commissioner in the course of licensing or examining a person engaged in money transmission business shall be confidential and may not be disclosed by the commissioner except as provided in subsection (b) or (c).

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

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

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

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

(e) 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.

(f) 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. 7. K.S.A. 2012 Supp. 9-513d is hereby amended to read as follows: 9-513d. (a) The provisions of K.S.A. 9-508 through 9-513, and amendments thereto, and K.S.A. 2012 Supp. 9-513a through ~~9-513c~~ 9-513d, and amendments thereto, shall be known as and may be cited as the Kansas money transmitter act.

(b) *The commissioner is hereby authorized to adopt rules and regu-*

lations necessary to administer and implement the Kansas money transmitter act.

Sec. 8. K.S.A. 2012 Supp. 9-508, 9-509, 9-510, 9-511, 9-513, 9-513c and 9-513d are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 5, 2013.

CHAPTER 46

SENATE BILL No. 166

AN ACT concerning insurance; pertaining to the insurers supervision, rehabilitation and liquidation act; amending K.S.A. 40-3607 and repealing the existing section.

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

New Section 1. *Qualified financial contracts.* (a) (1) No person shall be stayed, enjoined or prohibited from exercising any of the following:

(A) A contractual right to terminate, liquidate, accelerate or close out, or cause the termination, liquidation, acceleration or close out of obligations, under or in connection with any netting agreement or qualified financial contract with an insurer because of any of the following:

(i) The insolvency, financial condition or default of the insurer at any time, provided that the right is enforceable under applicable law other than this act; or

(ii) the commencement of a formal delinquency proceeding under this act;

(B) any right under a pledge, security, collateral, reimbursement or guarantee agreement or arrangement or any other similar security arrangement or other credit enhancement relating to one or more netting agreements or qualified financial contracts; or

(C) subject to the provisions of subsection (b) of K.S.A. 40-3633, and amendments thereto, any right to set off or net out any termination value, payment amount or other transfer obligation arising under or in connection with one or more netting agreements or qualified financial contracts where the counterparty or its guarantor is organized under the laws of the United States or a state or a foreign jurisdiction approved by the securities valuation office (SVO) of the national association of insurance commissioners as eligible for netting.

(2) If a counterparty to a master netting agreement or a qualified financial contract with an insurer subject to a formal delinquency proceeding under this act terminates, liquidates, closes out or accelerates the agreement or contract, damages shall be measured as of the date or dates

of termination, liquidation, close out or acceleration. The amount of a claim for damages shall be actual direct compensatory damages calculated in accordance with subsection (f).

(b) Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a non-defaulting party to an insurer against which an application or petition has been filed under this act shall be transferred to or on the order of the receiver for the insurer even if the insurer is the defaulting party, notwithstanding any walkaway clause in the netting agreement or qualified financial contract. For the purposes of this subsection, the term “walkaway clause” means a provision in a netting agreement or a qualified financial contract that, after calculation of a value of a party’s position or an amount due to or from one of the parties in accordance with its terms upon termination, liquidation or acceleration of the netting agreement or qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party, in whole or in part, solely because of the party’s status as a non-defaulting party. Any limited two-way payment or first method provision in a netting agreement or qualified financial contract with an insurer that has defaulted shall be deemed to be a full two-way payment or second method provision as against the defaulting insurer. Any such net or settlement amount shall, except to the extent it is subject to one or more secondary liens or encumbrances or rights of netting or setoff, be a general asset of the insurer.

(c) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a formal delinquency proceeding under this article, the receiver shall either:

(1) Transfer to one party, other than an insurer subject to a proceeding under this act, all netting agreements and qualified financial contracts between a counterparty or any affiliate of such counterparty and the insurer that is the subject of the formal delinquency proceeding, including all of the following:

(A) All rights and obligations of each party under each such netting agreement and qualified financial contract; and

(B) all property, including any guarantees or other credit enhancement, securing any claims of each party under each such netting agreement and qualified financial contract; or

(2) transfer none of the netting agreements, qualified financial contracts, rights, obligations or property referred to in paragraph (1) of this subsection with respect to the counterparty and any affiliate of such counterparty.

(d) (1) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, then the receiver shall use its best efforts to notify any person who is a party to the netting agreements or qualified financial contracts of the transfer by 12 noon, the receiver’s local time, on the business day following the transfer.

(2) For purposes of this subsection, “business day” means a day other than a Saturday, Sunday or any day on which either the New York stock exchange or the federal reserve bank of New York is closed.

(e) (1) Notwithstanding any other provision of this act to the contrary, except as provided in paragraph (2), a receiver shall not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge, security, collateral or guarantee agreement or any other similar security arrangement or credit support document relating to such netting agreement or qualified financial contract that is made before the commencement of a formal delinquency proceeding under this act.

(2) However, a transfer may be avoided under subsection (a) of K.S.A. 40-3629, and amendments thereto, if such transfer was made with actual intent to hinder, delay or defraud the insurer, a receiver appointed for the insurer or existing or future creditors.

(f) (1) In exercising the rights of disaffirmance or repudiation of a receiver with respect to any netting agreement or qualified financial contract to which an insurer is a party, the receiver for the insurer shall either:

(A) Disaffirm or repudiate all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding; or

(B) disaffirm or repudiate none of the netting agreements and qualified financial contracts referred to in subsection (f)(1)(A) with respect to the person or any affiliate of the person;

(2) notwithstanding any other provisions of this act, any claim of a counterparty against the estate arising from the receiver’s disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding a conservation or rehabilitation case shall be determined and shall be allowed or disallowed:

(A) As if the claim had arisen before the date of the filing of the petition for liquidation; or

(B) if a conservation or rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for conservation or rehabilitation.

(3) The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract.

(4) (A) The term “actual direct compensatory damages” does not include punitive or exemplary damages, damages for lost profit or lost opportunity or damages for pain and suffering.

(B) The term “actual direct compensatory damages” does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives, securities or other market for the contract and agreement claims.

(g) As used in this section, the term “contractual right” shall include:
(1) Any right set forth in a rule or bylaw or resolution of the governing board of a:

(A) Derivatives clearing organization, as defined in the commodity exchange act;

(B) multilateral clearing organization, as defined in the federal deposit insurance corporation improvement act of 1991;

(C) national securities exchange;

(D) national securities association;

(E) securities clearing agency;

(F) contract market designated under the commodity exchange act;

(G) derivatives transaction execution facility registered under the commodity exchange act; or

(H) board of trade, as defined in the commodity exchange act;

(2) any right, whether or not evidenced in writing, arising under statutory or common law, or under merchant law, or by reason of normal business practice.

(h) The provisions of this section shall not apply to any person who is an affiliate of the insurer that is the subject of the formal delinquency proceeding.

(i) All rights of any counterparties under this act shall apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

(j) The provisions of this section shall apply only to a liquidation, rehabilitation or conservation proceeding that commences on or after the effective date of this act.

(k) This section shall be a part of and supplemental to the insurers supervision, rehabilitation and liquidation act.

Sec. 2. K.S.A. 40-3607 is hereby amended to read as follows: 40-3607. For the purposes of this act:

(a) “Ancillary state” means any state other than a domiciliary state.

(b) “Commissioner” means the commissioner of insurance.

(c) “Creditor” means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

(d) “Delinquency proceeding” means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer, and any summary proceeding under K.S.A. 40-3613 or 40-3614, *and amendments thereto*.

(e) “Doing business” includes, but is not necessarily limited to, any of the following acts, whether effected by mail or otherwise:

(1) The issuance or delivery of contracts of insurance to persons resident in this state;

(2) the solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;

(3) the quoting of premiums, membership fees, assessments or other consideration for such contracts;

(4) the transaction of matters subsequent to execution of such contracts and arising out of them; or

(5) operating under a license or certificate of authority, as an insurer, issued by the insurance department.

(f) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.

(g) "Fair consideration" is given for property or obligation:

(1) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(2) when such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

(h) "Foreign country" means any other jurisdiction not in any state.

(i) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured hereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

(j) "Guaranty association" means the Kansas insurance guaranty association created by K.S.A. 40-2901, and amendments thereto, the Kansas life and health insurance guaranty association created by K.S.A. 40-3001, and amendments thereto, and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.

(k) "Insolvency" or "insolvent" means:

(1) For an insurer issuing only assessable fire insurance policies:

(A) The inability to pay any obligation within 30 days after it becomes payable; or

(B) if an assessment is made, within 30 days after such date. The inability to pay such obligation 30 days following the date specified in the first assessment notice issued after the date of loss.

(2) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

(A) Any capital and surplus required by law for its organization; or

(B) the total par of stated value of its authorized and issued capital stock.

~~(C)~~(3) For purposes of this subsection, “liabilities” shall include, but not be limited to, reserves required by statute or by insurance department general regulations or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto.

(l) “Insurer” means any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision or conservation by, any insurance commissioner. For purposes of this act, any other persons included under K.S.A. 40-3606, *and amendments thereto*, shall be deemed to be insurers.

(m) “Person” means any individual, aggregation of individuals, trust, association, partnership, corporation or any affiliate thereof.

(n) “Preferred claim” means any claim with respect to which the terms of this act accord priority of payment from the general assets of the insurer.

(o) “Receiver” means receiver, liquidator, rehabilitator or conservator as the context requires.

(p) “Reciprocal state” means any state other than this state in which in substance and effect subsection (a) of K.S.A. 40-3622 and K.S.A. 40-3650, 40-3651 and 40-3653 through 40-3655, *and amendments thereto*, are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(q) “Secured claim” means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including, special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(r) “Special deposit claim” means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

(s) “State” means any state, district, or territory of the United States and the Panama Canal Zone.

(t) “Transfer” shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or within an interest therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally,

voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

(u) “Commodity contract” means any of the following:

(1) A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a:

(A) Board of trade or contract market under the commodity exchange act, 7 U.S.C. § 1 et seq.; or

(B) board of trade outside the United States.

(2) An agreement that is subject to regulation under section 23 of the commodity exchange act, 7 U.S.C. § 1 et seq., and that is commonly known to the commodities trade as a margin account, margin contract, leverage account or leverage contract.

(3) An agreement or transaction that is subject to regulation under section 6c(b) of the commodity exchange act, 7 U.S.C. § 1 et seq., and that is commonly known to the commodities trade as a commodity option.

(4) Any combination of the agreements or transactions referred to in this paragraph.

(5) Any option to enter into an agreement or transaction referred to in this paragraph.

(v) “Formal delinquency proceeding” means a delinquency proceeding, except that such term shall not include a supervision under K.S.A. 40-3613, and amendments thereto.

(w) “Forward contract” shall have the meaning ascribed to such term in the federal deposit insurance act, 12 U.S.C. § 1821(e)(8)(D).

(x) “Netting agreement” means:

(1) A contract or agreement, including the terms and conditions incorporated by reference therein, including a master agreement, (which master agreement, together with all schedules, confirmations, definitions and addenda thereto and transactions under any thereof, shall be treated as one netting agreement) that documents one or more transactions between the parties to the agreement:

(A) For or involving one or more qualified financial contracts; and

(B) that provides for the netting, liquidation, setoff, termination, acceleration or close out under or in connection with one or more qualified financial contracts or present or future payment or delivery obligations or payment or delivery entitlements thereunder (including liquidation or close out values relating to such obligations or entitlements) among the parties to the netting agreement;

(2) any master agreement or bridge agreement for one or more master agreements described in paragraph (1) of this subsection; or

(3) any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in either paragraph (1) or (2) of this subsection.

Provided that any contract or agreement described in either paragraph

(1) or (2) of this subsection relating to agreements or transactions that are not qualified financial contracts shall be deemed to be a netting agreement only with respect to those agreements or transactions that are qualified financial contracts.

(y) “Qualified financial contract” means any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement and any similar agreement that the commissioner determines by regulation, rule or order to be a qualified financial contract for the purposes of this act.

(z) “Repurchase agreement” shall have the meaning ascribed to such term in the federal deposit insurance act, 12 U.S.C. § 1821(e)(8)(D). The term repurchase agreement also applies to a reverse repurchase agreement.

(aa) “Securities contract” shall have the meaning set forth in the federal deposit insurance act, 12 U.S.C. § 1821(e)(8)(D).

(bb) “Swap agreement” shall have the meaning set forth in the federal deposit insurance act, 12 U.S.C. § 1821(e)(8)(D).

Sec. 3. K.S.A. 40-3607 is hereby repealed.

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

Approved April 5, 2013.

Published in the *Kansas Register* April 18, 2013.

CHAPTER 47

HOUSE BILL No. 2203*

AN ACT concerning civil procedure; relating to exercise of religion.

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

Section 1. As used in the Kansas preservation of religious freedom act:

(a) “Burden” means any government action that directly or indirectly constrains, inhibits, curtails or denies the exercise of religion by any person or compels any action contrary to a person’s exercise of religion, and includes, but is not limited to, withholding benefits, assessing criminal, civil or administrative penalties, or exclusion from government programs or access to government facilities.

(b) “Compelling governmental interest” includes, but is not limited to, protecting the welfare of a child from abuse and neglect as defined by state law.

(c) “Exercise of religion” means the practice or observance of religion under section 7 of the bill of rights of the constitution of the state of

Kansas and the free exercise clause of the first amendment to the constitution of the United States and includes the right to act or refuse to act in a manner substantially motivated by a sincerely-held religious tenet or belief, whether or not the exercise is compulsory or a central part or requirement of the person's religious tenets or beliefs.

(d) "Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party.

(e) "Government" includes the executive, legislative and judicial branches and any and all agencies, boards, commissions, departments, districts, authorities or other entities, subdivisions or parts whatsoever of state and local government as well as any person acting under color of law.

(f) "Person" means any legal person or entity under the laws of the state of Kansas and the laws of the United States.

Sec. 2. (a) Government shall not substantially burden a person's civil right to exercise of religion even if the burden results from a rule of general applicability, unless such government demonstrates, by clear and convincing evidence, that application of the burden to the person:

(1) Is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) A person whose exercise of religion has been burdened, or is substantially likely to be burdened, in violation of this act, may assert such violation as a claim or defense in a judicial proceeding. A court may grant appropriate relief as may be necessary including:

(1) Injunctive relief;

(2) protective order;

(3) writ of mandamus or prohibition;

(4) declaratory relief;

(5) actual damages; or

(6) costs and attorney fees determined by the court.

(c) Any person found by a court of competent jurisdiction to have abused the protection of this act by making a fraudulent claim may be enjoined from filing further claims under this act without leave of court.

Sec. 3. In determining whether a compelling governmental interest is sufficient to justify a substantial burden on a person's exercise of religion pursuant to section 2, and amendments thereto, only those interests of the highest order and not otherwise served can overbalance the fundamental right to the exercise of religion preserved by this act. In order to prevail under the standard established pursuant to subsection (a) of section 2, and amendments thereto, the government shall demonstrate that such standard is satisfied through application of the asserted violation of this act to the particular claimant whose sincere exercise of religion

has been burdened. The religious liberty interest protected by this act is an independent liberty that occupies a preferred position, and no encroachments upon this liberty shall be permitted, whether direct or indirect, unless required by clear and compelling governmental interests of the highest order.

Sec. 4. (a) Nothing in this act shall be construed to:

(1) Impair the fundamental right of every parent to control the care and custody of such parent's minor children, including, but not limited to, control over education, discipline, religious and moral instruction, health, medical care, welfare, place of habitation, counseling and psychological and emotional well-being of such minor children as set forth in the laws and constitution of the state of Kansas and of the United States;

(2) authorize any relationship, marital or otherwise, that would violate section 16 of article 15 of the constitution of the state of Kansas;

(3) authorize the application or enforcement, in the courts of the state of Kansas, of any law, rule, code or legal system other than the laws of the state of Kansas and of the United States;

(4) limit any religious organization from receiving any funding or other assistance from a government, or of any person to receive government funding for a religious activity to the extent permitted by the laws and constitution of the state of Kansas and of the United States; or

(5) protect actions or decisions to end the life of any adult or child, born or unborn.

(b) Except as provided in subsection (c), this act applies to all government action including, but not limited to, all state and local laws, ordinances, rules, regulations and policies and to their implementation, whether enacted or adopted before, on or after the effective date of this act.

(c) This act shall not apply to penological rules and regulations, conditions or policies established by a jail, correctional institution, juvenile correctional facility or juvenile detention facility or an entity supervising offenders in the community that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised offenders or the public, or to maintenance of good order and discipline in any jail, correctional institution, juvenile correctional facility or juvenile detention facility.

Sec. 5. Sections 1 through 5, and amendments thereto, shall be known and may be cited as the Kansas preservation of religious freedom act.

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

Approved April 10, 2013.

CHAPTER 48

SENATE BILL No. 142

AN ACT concerning abortion; relating to civil actions related to the performance of abortions; amending K.S.A. 60-1901 and repealing the existing section.

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

New Section 1. (a) No civil action may be commenced in any court for a claim of wrongful life or wrongful birth, and no damages may be recovered in any civil action for any physical condition of a minor that existed at the time of such minor's birth if the damages sought arise out of a claim that a person's action or omission contributed to such minor's mother not obtaining an abortion.

(b) Nothing in this section shall be deemed to create any new cause of action, nor preclude any otherwise proper cause of action based on a claim that, but for a person's wrongful action or omission, the death or physical injury of the mother would not have occurred, or the handicap, disease or disability of an individual prior to birth would have been prevented, cured or ameliorated in a manner that preserved the health and life of such individual.

(c) If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(d) As used in this section:

(1) "Abortion" has the same meaning as such term is defined in K.S.A. 65-6701, and amendments thereto.

(2) "Claim of wrongful birth" means a cause of action brought by a parent, legal guardian or other individual legally required to provide for the support of a minor, which seeks damages, whether economic or non-economic, as a result of a physical condition of such minor that existed at the time of such minor's birth, and which is based on a claim that a person's action or omission contributed to such minor's mother not obtaining an abortion.

(3) "Claim of wrongful life" means a cause of action brought by, or on behalf of, a minor, which seeks damages, whether economic or non-economic, for such minor as a result of a physical condition of such minor that existed at the time of such minor's birth, and which is based on a claim that a person's action or omission contributed to such minor's mother not obtaining an abortion.

Sec. 2. K.S.A. 60-1901 is hereby amended to read as follows: 60-1901. (a) If the death of a person is caused by the wrongful act or omission of another, an action may be maintained for the damages resulting therefrom if the former might have maintained the action had ~~he or she~~ *he or she* such

person lived, in accordance with the provisions of this article, against the wrongdoer, or ~~his or her~~ *such wrongdoer's* personal representative if ~~he or she~~ *such wrongdoer* is deceased.

(b) *As used in article 19 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, the term "person" includes an unborn child.*

(c) *As used in this section, the term "unborn child" means a living individual organism of the species homo sapiens, in utero, at any stage of gestation from fertilization to birth.*

(d) *The provisions of this section shall not apply to a wrongful death action if the death is of an unborn child by means of:*

(1) *Any act committed by the mother of the unborn child;*

(2) *any lawful medical procedure performed by a physician or other licensed medical professional at the request of the pregnant woman or her legal guardian;*

(3) *the lawful dispensation or administration of lawfully prescribed medication; or*

(4) *a legal abortion.*

(e) *If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.*

Sec. 3. K.S.A. 60-1901 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 10, 2013.

CHAPTER 49

SENATE BILL No. 74°

AN ACT concerning the prison-made goods act; relating to the manufacture or production of manufactured homes or modular homes.

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

Section 1. (a) Notwithstanding any provision of the prison-made goods act of Kansas to the contrary, the secretary shall not establish or maintain a home building program which manufacturers or produces housing units which would compete with the:

(1) (A) Manufactured homes or modular homes manufactured, assembled or sold by manufactured home manufacturers; or

(B) manufactured homes or modular homes sold by manufactured home dealers; or

(2) (A) modular homes manufactured, assembled or sold by modular home manufacturers; or

(B) modular homes sold by modular home dealers.

(b) As used in this section:

(1) “Manufactured home” has the meaning ascribed to such term by K.S.A. 58-4202, and amendments thereto;

(2) “manufactured home dealer” has the meaning ascribed to such term by K.S.A. 58-4202, and amendments thereto;

(3) “manufactured home manufacturer” has the meaning ascribed to such term by K.S.A. 58-4202, and amendments thereto;

(4) “modular home” has the meaning ascribed to such term by K.S.A. 58-4202, and amendments thereto; and

(5) “secretary” means the secretary of corrections.

(6) “Vocational building program” means the vocational building program operated by the secretary to provide individual, freestanding buildings, not to exceed 1,000 square feet in size, to state agencies for use by such agencies.

(c) The provisions of this section shall not apply to a vocational building program.

(d) This section shall be a part of and supplemental to the prison-made goods act of Kansas.

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

Approved April 10, 2013.

CHAPTER 50

HOUSE BILL No. 2012
(Amended by Chapter 133)

AN ACT concerning public records; relating to legislative review of exceptions to disclosure; amending K.S.A. 2012 Supp. 45-229 and repealing the existing section.

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

Section 1. K.S.A. 2012 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 subsections (g) and (h),~~ any new exception to disclosure or substantial amendment of an existing exception shall expire on July 1 of the fifth year after enactment of the new exception or substantial amendment, unless the legislature acts to continue the exception. A law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and that the exception shall be reviewed by the legislature before the scheduled date.

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

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

(e) In the year before the expiration of an exception, the revisor of statutes shall certify to the president of the senate and the speaker of the house of representatives, by July 15, the language and statutory citation of each exception 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;
 (3) *has been reviewed and continued in existence twice by the legislature; or*

(4) *has been reviewed and continued in existence by the legislature during the 2013 legislative session and thereafter.*

(h) (1) The legislature shall review the exception before its scheduled expiration and consider as part of the review process the following:

(A) What specific records are affected by the exception;

(B) whom does the exception uniquely affect, as opposed to the general public;

(C) what is the identifiable public purpose or goal of the exception;

(D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) an exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.

(i) (1) Exceptions contained in the following statutes as continued in existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas ~~and 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 (c) of this section during~~

~~2009~~ and which have been reviewed and continued in existence twice by the legislature as provided in subsection (g) 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.

(2) *Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2009 are hereby continued in existence until July 1, 2015, at which time such exceptions shall expire: 17-2036, 40-5301, subsections (a)(45) and (a)(46) of 45-221, 60-3351, 72-972a, 74-99d05 and 75-53,105.*

(j) (1) *Exceptions contained in the following statutes as continued in existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas and 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 (c) of this section during 2010, and which have been reviewed and continued in existence twice by the legislature as provided in subsection (g) are hereby continued in existence until July 1, 2016, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, ~~12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326~~, 39-970, ~~44-1132, 60-3333~~, 65-525, 65-5117, 65-6016,*

65-6017, ~~65-6154~~, ~~71-218~~, and 74-7508, ~~75-457~~, ~~75-712c~~, ~~75-723~~ and ~~75-7c06~~.

(2) *Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2010 are hereby continued in existence until July 1, 2016, at which time such exceptions shall expire: 12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 44-1132, 60-3333, 65-6154, 71-218, 75-457, 75-712c, 75-723 and 75-7c06.*

(k) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2006, 2007 and 2008 are hereby continued in existence until July 1, 2014, at which time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46) and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-50,184, 74-8134, 74-99b06 and 82a-2210.

(l) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2011 are hereby continued in existence until July 1, 2017, at which time such exceptions shall expire: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-8772 and 75-7427.

(m) *Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2012 and which have been reviewed during the 2013 legislative session and continued in existence by the legislature as provided in subsection (g) are hereby continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a, 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-712 and 75-5366.*

Sec. 2. K.S.A. 2012 Supp. 45-229 is hereby repealed.

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

Approved April 10, 2013.

CHAPTER 51

HOUSE BILL No. 2144
(Amended by Chapter 133)

AN ACT concerning children and minors; relating to the repeal of outdated provisions concerning juveniles; amending K.S.A. 2012 Supp. 45-229 and repealing the existing section; also repealing K.S.A. 2012 Supp. 38-1604, 38-1608 and 38-1664.

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

Section 1. K.S.A. 2012 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;
- and*

(D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) an exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further

a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.

(i) Exceptions contained in the following statutes as continued in existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas and exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section during 2009 are hereby continued in existence until July 1, 2015, at which time such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-1312e, 17-2036, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, ~~38-1664~~, 38-2212, 39-709b, 39-719e, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 40-5301, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (43), (a)(45) and (a)(46) of 45-221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3336, 60-3351, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-972a, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805, 74-99d05, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-53,105, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

(j) Exceptions contained in the following statutes as continued in existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas and exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of

representatives pursuant to subsection (e) of this section during 2010, are hereby continued in existence until July 1, 2016, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, 12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 39-970, 44-1132, 60-3333, 65-525, 65-5117, 65-6016, 65-6017, 65-6154, 71-218, 74-7508, 75-457, 75-712c, 75-723 and 75-7c06.

(k) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2006, 2007 and 2008 are hereby continued in existence until July 1, 2014, at which time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46) and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-50,184, 74-8134, 74-99b06 and 82a-2210.

(l) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2011 are hereby continued in existence until July 1, 2017, at which time such exceptions shall expire: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-8772 and 75-7427.

Sec. 2. K.S.A. 2012 Supp. 38-1604, 38-1608, 38-1664 and 45-229 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 10, 2013.

CHAPTER 52

HOUSE BILL No. 2221

AN ACT concerning professional negotiations; establishing the equal access act; amending K.S.A. 2012 Supp. 72-5413 and repealing the existing section.

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

New Section 1. (a) This section shall be known as the equal access act.

(b) A board of education shall not grant access to any professional employee or school employee's physical or electronic mailboxes to a professional employees' organization without giving equal access to any other professional employees' organization which requests such access.

(c) If a professional employees' organization is permitted to attend new professional employee, other professional employee or school em-

ployee orientation meetings in an effort to recruit new members, then any other professional employees' organization which requests permission to attend the meeting shall be granted such permission.

(d) A board of education shall not designate any day or break in the school calendar by naming or referring to the day or break in school calendar as the name of any professional employees' organization.

(e) As used in the equal access act, the term "school employee" includes administrative employees, persons who hold student teaching licenses, paraprofessional and any other person employed by a board of education.

(f) The equal access act shall be a part of and supplemental to the professional negotiations act, K.S.A. 72-5413 et seq., and amendments thereto.

Sec. 2. K.S.A. 2012 Supp. 72-5413 is hereby amended to read as follows: 72-5413. As used in this act and in acts amendatory thereof or supplemental thereto:

(a) The term "persons" includes one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(b) "Board of education" means the state board of education pursuant to its authority under K.S.A. 76-1001a and 76-1101a, and amendments thereto, the board of education of any school district, the board of control of any area vocational-technical school and the board of trustees of any community college.

(c) "Professional employee" means any person employed by a board of education in a position which requires a certificate issued by the state board of education or employed by a board of education in a professional, educational or instructional capacity, but shall not mean any such person who is an administrative employee and, commencing in the 2006-2007 school year, shall not mean any person who is a retirant from school employment of the Kansas public employees retirement system, regardless of whether an agreement between a board of education and an exclusive representative of professional employees that covers terms and conditions of professional service provides to the contrary.

(d) "Administrative employee" means, in the case of a school district, any person who is employed by a board of education in an administrative capacity and who is fulfilling duties for which an administrator's certificate is required under K.S.A. 72-7513, and amendments thereto; and, in the case of an area vocational-technical school or community college, any person who is employed by the board of control or the board of trustees in an administrative capacity and who is acting in that capacity and who has authority, in the interest of the board of control or the board of trustees, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them

or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(e) “Professional employees’ organizations” means any one or more organizations, agencies, committees, councils or groups of any kind in which professional employees participate, and which exist for the purpose, in whole or part, of engaging in professional negotiation with boards of education with respect to the terms and conditions of professional service *or for the purpose of professional development or liability protection*.

(f) “Representative” means any professional employees’ organization or any person it authorizes or designates to act in its behalf or any person a board of education authorizes or designates to act in its behalf.

(g) “Professional negotiation” means meeting, conferring, consulting and discussing in a good faith effort by both parties to reach agreement with respect to the terms and conditions of professional service.

(h) “Mediation” means the effort through interpretation and advice by an impartial third party to assist in reconciling a dispute concerning terms and conditions of professional service which arose in the course of professional negotiation between a board of education or its representatives and representatives of the recognized professional employees’ organization.

(i) “Fact-finding” means the investigation by an individual or board of a dispute concerning terms and conditions of professional service which arose in the course of professional negotiation, and the submission of a report by such individual or board to the parties to such dispute which includes a determination of the issues involved, findings of fact regarding such issues, and the recommendation of the fact-finding individual or board for resolution of the dispute.

(j) “Strike” means an action taken for the purpose of coercing a change in the terms and conditions of professional service or the rights, privileges or obligations thereof, through any failure by concerted action with others to report for duty including, but not limited to, any work stoppage, slowdown, or refusal to work.

(k) “Lockout” means action taken by a board of education to provoke interruptions of or prevent the continuity of work normally and usually performed by the professional employees for the purpose of coercing professional employees into relinquishing rights guaranteed by this act and the act of which this section is amendatory.

(l) (1) “Terms and conditions of professional service” means: (A) Salaries and wages, including pay for duties under supplemental contracts; hours and amounts of work; vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty; grievance proce-

dures; including binding arbitration of grievances; disciplinary procedure; resignations; termination and nonrenewal of contracts; reemployment of professional employees; terms and form of the individual professional employee contract; probationary period; professional employee appraisal procedures; each of the foregoing being a term and condition of professional service, regardless of its impact on the employee or on the operation of the educational system; (B) matters which relate to privileges to be granted the recognized professional employees' organization including, but not limited to, voluntary payroll deductions; ~~use of school or college facilities for meetings;~~ dissemination of information regarding the professional negotiation process and related matters to members of the bargaining unit on school or college premises through direct contact with members of the bargaining unit, ~~the use of bulletin boards on or about the facility, and the use of the school or college mail system to the extent permitted by law;~~ reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiation and partaking of instructional programs properly related to the representation of the bargaining unit; any of the foregoing privileges which are granted the recognized professional employees' organization through the professional negotiation process shall not be granted to any other professional employees' organization; and (C) such other matters as the parties mutually agree upon as properly related to professional service including, but not limited to, employment incentive or retention bonuses authorized under K.S.A. 72-8246, and amendments thereto.

(2) *Nothing in this act, and amendments thereto, shall authorize any professional employees' organization to be granted the exclusive privilege of access to the use of school or college facilities for meetings, the use of bulletin boards on or about the facility or the use of school or college mail systems.*

~~(2)~~(3) Nothing in this act, and amendments thereto, shall authorize the diminution of any right, duty or obligation of either the professional employee or the board of education which have been fixed by statute or by the constitution of this state. Except as otherwise expressly provided in this subsection (1), the fact that any matter may be the subject of a statute or the constitution of this state does not preclude negotiation thereon so long as the negotiation proposal would not prevent the fulfillment of the statutory or constitutional objective.

~~(3)~~(4) Matters which relate to the duration of the school term, and specifically to consideration and determination by a board of education of the question of the development and adoption of a policy to provide for a school term consisting of school hours, are not included within the meaning of terms and conditions of professional service and are not subject to professional negotiation.

(m) "Secretary" means the secretary of labor or a designee thereof.

(n) “Statutory declaration of impasse date” means June 1 in the current school year.

(o) “Supplemental contracts” means contracts for employment duties other than those services covered in the principal or primary contract of employment of the professional employee and shall include, but not be limited to, such services as coaching, supervising, directing and assisting extracurricular activities, chaperoning, ticket-taking, lunchroom supervision, and other similar and related activities.

Sec. 3. K.S.A. 2012 Supp. 72-5413 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 10, 2013.

CHAPTER 53

HOUSE BILL No. 2212

AN ACT concerning the Kansas commission on veterans affairs; relating to the veterans claims assistance program; relating to the requirements of service grants; amending K.S.A. 2012 Supp. 73-1234 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 73-1234 is hereby amended to read as follows: 73-1234. (a) The Kansas commission on veterans affairs shall establish and administer a veterans claims assistance program in accordance with this section to improve the coordination of veterans benefits counseling in Kansas to maximize the effective and efficient use of taxpayer dollars and to ensure that every veteran is served and receives claims counseling and assistance. The Kansas commission on veterans affairs shall establish and commence operations under the veterans claims assistance program in accordance with this section on or before August 1, 2006. The Kansas commission on veterans affairs shall appoint the director of the veterans claims assistance program, who shall be in the classified service under the Kansas civil service act. No employee of the Kansas commission on veterans affairs shall act as an agent with power of attorney for any claimant.

(b) The veterans claims assistance program shall implement and administer annual service grants to eligible veterans service organizations pursuant to grant agreements entered into with the Kansas commission on veterans affairs in accordance with this section. *All grant agreements shall include any match requirements described in subsection (g).* All service grants and grant agreements shall be subject to the provisions of appropriation acts.

(c) The Kansas commission on veterans affairs shall adopt rules and regulations to implement and administer the veterans claims assistance program and the service grant program. The rules and regulations shall include: (1) The detailed requirements of the veterans claims assistance program and grant agreements; (2) the responsibilities of all parties to the grant agreements; (3) the duration of the grants; (4) any insurance or bonding requirements; (5) the format and frequency of progress and final reports; (6) the initial and continuing training requirements for veterans claims assistance representatives; (7) the provisions of a quality assurance program for the veterans claims assistance program and the services performed by veterans service organizations receiving grants under this section; and (8) any other information or requirements deemed necessary or appropriate by the commission.

(d) All moneys provided to veterans service organizations through service grants shall be used only for salaries, wages, related employer contributions and personnel costs, and operating and capital outlay expenditures for training and equipment for veterans claims assistance representatives and necessary support and managerial staff.

(e) Training activities for veterans claims assistance representatives shall be the responsibility of the veterans service organization employing the veterans claims assistance representatives and shall be conducted by qualified veterans claims assistance representatives.

(f) To receive a service grant under this section to perform services under the veterans claims assistance program, a veterans service organization shall satisfy the following eligibility requirements:

(1) The veterans service organization shall be congressionally chartered by the United States Congress;

(2) the veterans service organization shall agree to cross-accredit the officers and employees of the Kansas commission on veterans affairs who are veterans and who work in the veteran services program, as well as veterans claims assistance representatives of other veterans service organizations who are performing services under the veterans claims assistance program, subject to the following:

(A) The person to be cross-accredited shall provide proof to the director that the person has successfully completed the national association of county veterans service officers training or equivalent, as determined by the director and that such person shall participate in a minimum of one annual training session as approved by the director as well as maintain the continuing education requirements of the cross-accrediting veterans service organization; and

(B) the cross-accrediting veterans service organization has reserved the right to terminate the accreditation if the person fails to meet the continuing education requirement of the veterans service organization or participate in a minimum of one annual training session as approved by the director;

(3) agree to participate in one-stop veterans service centers at the federal veterans administration regional office and each federal veterans administration medical center in Kansas;

(4) demonstrate the receipt of monetary or service support from its own organization for the veterans claims assistance program;

(5) demonstrate the ability to comply with the requirements prescribed by this section or adopted by the Kansas commission on veterans affairs under this statute for accounting, service work activity and other satisfactory performance requirements and measures;

(6) have established state headquarters in Kansas;

(7) have staff present in the federal veterans administration regional office and the United States department of veterans affairs medical centers located in Topeka and Leavenworth;

(8) have membership residency in at least 50% of the Kansas counties;

(9) have had an established office presence in the United States department of veterans affairs regional office in Kansas for at least the three most recent state fiscal years;

(10) have assisted in filing a minimum of 300 claims for veterans for which the veterans service organization has power of attorney in the past 12-month period;

(11) agree to make no reference to membership eligibility on claims documentation and not solicit membership due to information received on claim forms;

(12) agree to cross-accredit service officers participating in the service grant program to include service officers of partnered veterans service organizations and Kansas commission on veterans affairs staff located in the federal veterans administration regional office and the United States department of veterans affairs medical centers in Leavenworth and Topeka; *and*

(13) ~~agree that grant funding will not replace the monetary support currently provided by the veterans service organization to offices in the federal veterans administration regional office and the United States department of veterans affairs medical centers in Leavenworth and Topeka for veterans claims assistance but will supplement the veterans service organization's monetary support currently in place, and (14) agree that the veterans service organization's monetary support currently provided for veterans claims assistance in the federal veterans administration regional office and the United States department of veterans affairs medical centers in Leavenworth and Topeka will be equal to or greater than the monetary support that the veterans service organization provided in the previous year~~ *organization shall continue to provide monetary support for the veterans claims assistance program pursuant to the requirements in subsection (g).*

For the purposes of this subsection, “director” means the *director of the veterans claims assistance program*~~director~~.

(g) *Any monetary support provided under subsection (f)(13) shall be in a combination of monetary and non-monetary support, herein called “match.” The veterans claims assistance advisory board shall determine the percentage of the match as a percent of the amount of the service grant provided to the veterans service organization, and submit such determination to the Kansas commission on veterans affairs for approval.*

~~(g)~~(h) Each veterans service organization receiving a service grant under this section shall file with the Kansas commission on veterans affairs, within 90 days after the end of the veterans service organization’s fiscal year, a detailed statement prepared by a certified public accountant which sets forth an accounting of all expenditures of moneys received under the service grant. Each veterans service organization receiving a service grant under this section shall apply for the grant funding on an annual basis, shall demonstrate satisfactory performance based on completion of minimum requirements during the preceding annual period and shall certify that all veterans service representatives funded with service grant moneys meet minimum training requirements to provide for core competencies.

~~(h)~~(i) The Kansas commission on veterans affairs shall develop and maintain a central database registry regarding claims outcome data received from veterans claims assistance representatives under the veterans claims assistance program.

Sec. 2. K.S.A. 2012 Supp. 73-1234 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 10, 2013.

CHAPTER 54

HOUSE BILL No. 2368

AN ACT concerning social welfare; relating to the governor’s mental health services planning council; amending K.S.A. 39-1606 and K.S.A. 2012 Supp. 39-1605 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 39-1605 is hereby amended to read as follows: 39-1605. (a) There is hereby established the governor’s ~~mental~~ *behavioral* health services planning council. The council shall consist of ~~25~~ 33 members.

(b) So the composition of the council is in compliance with the

requirements of public law 102-321 and supplementary federal acts, persons appointed to the council will be in accordance with the following:

(1) Nine members shall be state agency representatives who shall include:

(A) ~~The commissioner of mental health and developmental disabilities~~ *secretary for aging and disability services or the secretary's designee;*

(B) ~~the secretary of social and rehabilitation services for children and families~~ shall appoint one member for each of the following areas: Vocational rehabilitation, ~~alcohol and drug abuse services, medical services~~ and children and family services;

(C) the commissioner of juvenile justice, *or the commissioner's designee;*

(D) the commissioner of education;

(E) the secretary of corrections; ~~and~~

(F) the secretary of commerce. If a commissioner or secretary is unable to participate, the commissioner or secretary shall appoint a designee as the official member of the council; *and*

(G) *the secretary for aging and disability services shall appoint one member for each of the following areas: Substance use disorder services and medical services.*

(2) The governor shall appoint the following persons to the council:

(A) One member shall be a person licensed to practice medicine and surgery with board certification in psychiatry;

(B) two members shall be executive directors of mental health centers; ~~and~~

(C) *one member shall be a representative of a behavioral health advocacy group;*

(D) *one member shall be a substance use disorder prevention professional;*

(E) *one member shall be an executive director of a substance use disorder treatment center;*

~~(C) 13~~ (F) *one member shall be a judge of the district court or a district magistrate judge;*

(G) 17 members shall be individuals who are not state employees or providers of ~~mental~~ behavioral health services. Of the ~~13~~ 17 members, four members shall be adult consumers with serious and persistent mental illness; ~~three~~ two members shall be immediate family members of adult consumers with serious and persistent mental illnesses; four members shall be family members of minor children or youth with severe emotional ~~disturbances, disturbance;~~ *one member shall be a youth at least 16 years of age but not more than 18 years of age at the time of appointment with severe emotional disturbance; two members shall be adults in recovery from substance use disorders; one member shall be a family member of an adult with a substance use disorder; one member shall be a mentor to*

an adult with a substance use disorder; and two members shall be members of the general public.

(c) ~~The terms of members who are currently serving on the council shall expire on the effective date of this act. At that time, appointees of the governor under subsection (b)(2) shall be appointed to the council by the governor with 1/2 appointed for a term of two years and the other 1/2 for a term of four years as specified by the governor. Thereafter, A member of the council prior to the effective date of this act whose term expires after June 30, 2013, shall continue to serve as a member of the council until the expiration of the term of the member. Except as otherwise provided in this subsection and in subsection (d), each member appointed to the council by the governor on and after July 1, 2013, shall be appointed for a term of four years. Of the nine new members authorized by this act, four shall be appointed for an initial term of two years and five shall be appointed for an initial term of four years as specified by the governor.~~

(d) Each member of the council shall serve until a successor is appointed and qualified. In the case of a vacancy on the council, a successor of like qualifications shall be appointed or designated to fill the unexpired term in accordance with ~~subsections (b)(1) and (2)~~ subsection (b).

(e) The governor shall designate the chairperson of the council. The members of the council shall elect a vice-chairperson.

(f) Members of the governor's ~~mental~~ behavioral health services planning council attending meetings of the council, or attending a subcommittee meeting thereof authorized by the council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto, *from the administration account of the state general fund appropriated for the Kansas department for aging and disability services.*

(g) *Whenever the governor's mental health services planning council, or words of like effect, are referred to in a statute, contract or other document, such reference or designation shall be deemed to apply to the governor's behavioral health services planning council.*

Sec. 2. K.S.A. 39-1606 is hereby amended to read as follows: 39-1606.

(a) The governor's ~~mental~~ behavioral health services planning council shall hold regular quarterly meetings and such other meetings as the chairperson of such council deems advisable, and in addition shall meet at such other times upon the call of the secretary.

(b) It is the duty of the governor's ~~mental~~ behavioral health services planning council to:

(1) Confer, advise and consult with the secretary with respect to the policies governing the management and operation of all state psychiatric hospitals and facilities and community based ~~mental~~ behavioral health services;

(2) serve as an advocate for targeted population members and other individuals with mental illness, *behavioral health* or emotional problems;

(3) monitor, review and evaluate, not less than once each year, the allocation and adequacy of ~~mental~~ *behavioral* health services within the state;

(4) perform such other planning, reviewing and evaluating of ~~mental~~ *behavioral* health services in this state, as may be requested by the secretary or as may be prescribed by law; and

(5) consult with and advise the governor, from time to time, with reference to the management, conduct and operation of state psychiatric hospitals and ~~mental~~ *behavioral* health programs.

(c) A member or members of the governor's ~~mental~~ *behavioral* health services planning council, at least once each year, shall visit each state psychiatric hospital and may visit other providers of community based ~~mental~~ *behavioral* health services for the purpose of inspecting the state psychiatric hospital, mental health center or the facility of other such providers of community based ~~mental~~ *behavioral* health services. Such visits shall be made at such times and in such manner as the council determines at a regular meeting.

(d) The governor's ~~mental~~ *behavioral* health services planning council shall make annual reports to the governor and the members of the legislature and may make such recommendations as it deems advisable for appropriate legislation.

Sec. 3. K.S.A. 39-1606 and K.S.A. 2012 Supp. 39-1605 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 10, 2013.

CHAPTER 55

HOUSE BILL No. 2160

AN ACT concerning quality care assessment on skilled nursing care facilities; amending K.S.A. 2012 Supp. 75-7435 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 75-7435 is hereby amended to read as follows: 75-7435. (a) As used in this section, ~~and amendments thereto~~, unless the context requires otherwise:

(1) Words and phrases have the meanings respectively ascribed thereto by K.S.A. 39-923, and amendments thereto.

(2) "Skilled nursing care facility" means a licensed nursing facility, nursing facility for mental health as defined in K.S.A. 39-923, and amendments thereto, or a hospital long-term care unit licensed by the depart-

ment of health and environment, providing skilled nursing care, but shall not include the Kansas soldiers' home or the Kansas veterans' home.

(3) "Licensed bed" means those beds within a skilled nursing care facility which the facility is licensed to operate.

(4) "Agent" means the Kansas department ~~on aging~~ *for aging and disability services*.

(5) "Continuing care retirement facility" means a facility holding a certificate of registration issued by the commissioner of insurance pursuant to K.S.A. 40-2235, and amendments thereto.

(b) (1) Except as otherwise provided in this section and in subsection (f), there is hereby imposed and the secretary of health and environment shall assess an annual assessment per licensed bed, hereinafter called a quality care assessment, on each skilled nursing care facility. The assessment on all facilities in the aggregate shall be an amount fixed by rules and regulations of the secretary of health and environment, shall not exceed \$1,950 annually per licensed bed, shall be imposed as an amount per licensed bed and shall be imposed uniformly on all skilled nursing care facilities except that the assessment rate for skilled nursing care facilities that are part of a continuing care retirement facility, small skilled nursing care facilities and high medicaid volume skilled nursing care facilities shall not exceed 1/6 of the actual amount assessed all other skilled nursing care facilities. No rules and regulations of the secretary of health and environment shall grant any exception to or exemption from the quality care assessment. The assessment shall be paid quarterly, with one fourth of the annual amount due by the 30th day after the end of the month of each calendar quarter. The secretary of health and environment is authorized to establish delayed payment schedules for skilled nursing care facilities which are unable to make quarterly payments when due under this section due to financial difficulties, as determined by the secretary of health and environment. ~~The assessment made for years subsequent to the third year from the date the provisions of this section are implemented shall not exceed 60% of the first assessment made under this section.~~ As used in this subsection (b)(1), the terms "small skilled nursing care facilities" and "high medicaid volume skilled nursing care facilities" shall have the meanings ascribed thereto by the secretary of health and environment by rules and regulations, except that the definition of small skilled nursing care facility shall not be lower than 40 beds.

(2) Beds licensed after July 1 each year shall pay a prorated amount of the applicable annual assessment so that the assessment applies only for the days such new beds are licensed. The proration shall be calculated by multiplying the applicable assessment by the percentage of days the beds are licensed during the year. Any change which reduces the number of licensed beds in a facility shall not result in a refund being issued to the skilled nursing care facility.

(3) If an entity conducts, operates or maintains more than one li-

censed skilled nursing care facility, the entity shall pay the nursing facility assessment for each facility separately. No skilled nursing care facility shall create a separate line-item charge for the purpose of passing through the quality care assessment to residents. No skilled nursing care facility shall be guaranteed, expressly or otherwise, that any additional moneys paid to the facility under this section will equal or exceed the amount of its quality care assessment.

(4) The payment of the quality care assessment to the secretary of health and environment shall be an allowable cost for medicaid reimbursement purposes. A rate adjustment pursuant to paragraph (5) of subsection (d) shall be made effective on the date of imposition of the assessment, to reimburse the portion of this cost imposed on medicaid days.

(5) The secretary of health and environment shall seek a waiver from the United States department of health and human services to allow the state to impose varying levels of assessments on skilled nursing care facilities based on specified criteria. It is the intent of the legislature that the waiver sought by the secretary of health and environment be structured to minimize the negative fiscal impact on certain classes of skilled nursing care facilities.

(c) Each skilled nursing care facility shall prepare and submit to the secretary of health and environment any additional information required and requested by the secretary of health and environment to implement or administer the provisions of this section. Each skilled nursing care facility shall prepare and submit quarterly to the secretary ~~of aging for aging and disability services~~ the rate the facility charges to private pay residents, and the secretary shall cause this information to be posted on the web site of the department ~~on aging for aging and disability services~~.

(d) (1) There is hereby created in the state treasury the quality care fund, which shall be administered by the secretary of health and environment. All moneys received for the assessments imposed pursuant to subsection (b), including any penalty assessments imposed thereon pursuant to subsection (e), shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the quality care fund. All expenditures from the quality care fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment or the secretary's agent.

(2) All moneys in the quality care fund shall be used to finance initiatives to maintain or improve the quantity and quality of skilled nursing care in skilled nursing care facilities in Kansas. No moneys credited to the quality care fund shall be transferred to or otherwise revert to the state general fund at any time. Notwithstanding the provisions of any other law to the contrary, if any moneys credited to the quality care fund

are transferred or otherwise revert to the state general fund, 30 days following the transfer or reversion the quality care assessment shall terminate and the secretary of health and environment shall discontinue the imposition, assessment and collection of the assessment. Upon termination of the assessment, all collected assessment revenues, including the moneys inappropriately transferred or reverting to the state general fund, less any amounts expended by the secretary of health and environment, shall be returned on a pro rata basis to skilled nursing care facilities that paid the assessment.

(3) Any moneys received by the state of Kansas from the federal government as a result of federal financial participation in the state medicaid program that are derived from the quality care assessment shall be deposited in the quality care fund and used to finance actions to maintain or increase healthcare in skilled nursing care facilities.

(4) Moneys in the fund shall be used exclusively for the following purposes:

(A) To pay administrative expenses incurred by the secretary of health and environment or the agent in performing the activities authorized by this section, except that such expenses shall not exceed a total of 1% of the aggregate assessment funds collected pursuant to subsection (b) for the prior fiscal year;

(B) to increase nursing facility payments to fund covered services to medicaid beneficiaries within medicare upper payment limits, as may be negotiated;

(C) to reimburse the medicaid share of the quality care assessment as a pass-through medicaid allowable cost;

(D) to restore the medicaid rate reductions implemented January 1, 2010;

(E) to restore funding for fiscal year 2010, including rebasing and inflation to be applied to rates in fiscal year 2011;

(F) the remaining amount, if any, shall be expended first to increase the direct health care costs center limitation up to 150% of the case mix adjusted median, and then, if there are remaining amounts, for other quality care enhancement of skilled nursing care facilities as approved by the quality care improvement panel but shall not be used directly or indirectly to replace existing state expenditures for payments to skilled nursing care facilities for providing services pursuant to the state medicaid program.

(5) Any moneys received by a skilled nursing care facility from the quality care fund shall not be expended by any skilled nursing care facility to provide for bonuses or profit-sharing for any officer, employee or parent corporation but may be used to pay to employees who are providing direct care to a resident of such facility.

(6) Adjustment payments may be paid quarterly or within the daily

medicaid rate to reimburse covered medicaid expenditures in the aggregate within the upper payment limits.

(7) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the quality care fund interest earnings based on:

(A) The average daily balance of moneys in the quality care fund for the preceding month; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) If a skilled nursing care facility fails to pay the full amount of the quality care assessment imposed pursuant to subsection (b), when due and payable, including any extensions of time granted under that subsection, the secretary of health and environment shall assess a penalty in the amount of the lesser of \$500 per day or 2% of the quality care assessment owed for each day the assessment is delinquent. The secretary of health and environment is authorized to establish delayed payment schedules for skilled nursing care facilities that are unable to make installment payments when due under this section because of financial difficulties, as determined by the secretary of health and environment.

(f) (1) The secretary of health and environment shall assess and collect quality care assessments imposed pursuant to subsection (b), including any penalty assessments imposed thereon pursuant to subsection (e), from skilled nursing care facilities on and after July 1, 2010, except that no assessments or penalties shall be assessed under subsections (a) through (h) until:

(A) An amendment to the state plan for medicaid, which increases the rates of payments made to skilled nursing care facilities for providing services pursuant to the federal medicaid program and which is proposed for approval for purposes of subsections (a) through (h) is approved by the federal government in which case the initial assessment is due no earlier than 60 days after state plan approval; and

(B) the skilled nursing care facilities have been compensated retroactively within 60 days after state plan approval at the increased rate for services provided pursuant to the federal medicaid program for the period commencing on and after July 1, 2010.

(2) The secretary of health and environment shall implement and administer the provisions of subsections (a) through (h) in a manner consistent with applicable federal medicaid laws and regulations. The secretary of health and environment shall seek any necessary approvals by the federal government that are required for the implementation of subsections (a) through (h).

(3) The provisions of subsections (a) through (h) shall be null and void and shall have no force and effect if one of the following occur:

(A) The medicaid plan amendment, which increases the rates of payments made to skilled nursing care facilities for providing services pur-

suant to the federal medicaid program and which is proposed for approval for purposes of subsections (a) through (h) is not approved by the federal centers for medicare and medicaid services;

(B) the rates of payments made to skilled nursing care facilities for providing services pursuant to the federal medicaid program are reduced below the rates calculated on December 31, 2009, increased by revenues in the quality care fund and matched by federal financial participation and rebasing as provided for in K.S.A. 2012 Supp. 75-5958, and amendments thereto;

(C) any funds are utilized to supplant funding for skilled nursing care facilities as required by subsection (g);

(D) any funds are diverted from those purposes set forth in subsection (d)(4); or

(E) upon the governor signing, or allowing to become law without signature, legislation which by proviso or otherwise directs any funds from those purposes set forth in subsection (d)(4) or which would propose to suspend the operation of this section.

(g) On and after July 1, 2010, reimbursement rates for skilled nursing care facilities shall be restored to those in effect during December 2009. No funds generated by the assessments or federal funds generated therefrom shall be utilized for such restoration, but such funds may be used to restore the rate reduction in effect from January 1, 2010, to June 30, 2010.

(h) Rates of reimbursement shall not be limited by private pay charges.

(i) If the provisions of subsections (a) through (h) are repealed, expire or become null and void and have no further force and effect, all moneys in the quality care fund which were paid under the provisions of subsections (a) through (h) shall be returned to the skilled nursing care facilities which paid such moneys on the basis on which such payments were assessed and paid pursuant to subsections (a) through (h).

(j) The department of health and environment may adopt rules and regulations necessary to implement the provisions of this section.

(k) For purposes of administering and selecting the reimbursements of moneys in the quality care assessment fund, the quality care improvement panel is hereby established. The panel shall consist of the following members: Two persons appointed by Kansas homes and services for the aging; two persons appointed by the Kansas health care association; one person appointed by Kansas advocates for better care; one person appointed by the Kansas hospital association; one person appointed by the governor who is a member of the Kansas adult care executives association; one person appointed by the governor who is a skilled nursing care facility resident or the family member of such a resident; one person appointed by the Kansas foundation for medical care; one person appointed by the governor from the department ~~on aging~~ *for aging and disability services*;

and one person appointed by the governor from the department of health and environment. The person appointed by the governor from the department ~~on aging~~ *for aging and disability services* and the person appointed by the governor from the department of health and environment shall be nonvoting members of the panel. The panel shall meet as soon as possible subsequent to the effective date of this act and shall elect a chairperson from among the members appointed by the trade organizations specified in this subsection. The members of the quality care improvement panel shall serve without compensation or expenses. The quality care improvement panel shall report annually on or before January 10 to ~~the joint committee on health policy oversight and the legislature~~ concerning the activities of the panel during the preceding calendar year and any recommendations which the panel may have concerning the administration of and expenditures from the quality care assessment fund.

(l) ~~The department of health and environment shall certify to the director of the budget of the department of administration the date upon which the provisions of this section are implemented. The provisions of this section shall expire four years subsequent to the implementation of this section on July 1, 2016.~~

Sec. 2. K.S.A. 2012 Supp. 75-7435 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 10, 2013.

CHAPTER 56

HOUSE BILL No. 2135
(Amended by Chapter 135)

AN ACT concerning property taxation; relating to exemptions; certain housing on military installations; amending K.S.A. 2012 Supp. 79-201a and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 79-201a is hereby amended to read as follows: 79-201a. The following described property, to the extent herein specified, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All property belonging exclusively to the United States, except property which congress has expressly declared to be subject to state and local taxation.

Second. All property used exclusively by the state or any municipality or political subdivision of the state. All property owned, being acquired pursuant to a lease-purchase agreement or operated by the state or any municipality or political subdivision of the state, including property which

is vacant or lying dormant, which is used or is to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be used exclusively by the state, municipality or political subdivision for the purposes of this section. The lease by a municipality or political subdivision of the state of any real property owned or being acquired pursuant to a lease-purchase agreement for the purpose of providing office space necessary for the performance of medical services by a person licensed to practice medicine and surgery or osteopathic medicine by the board of healing arts pursuant to K.S.A. 65-2801 et seq., and amendments thereto, dentistry services by a person licensed by the Kansas dental board pursuant to K.S.A. 65-1401 et seq., and amendments thereto, optometry services by a person licensed by the board of examiners in optometry pursuant to K.S.A. 65-1501 et seq., and amendments thereto, or K.S.A. 74-1501 et seq., and amendments thereto, podiatry services by a person licensed by the board of healing arts pursuant to K.S.A. 65-2001 et seq., and amendments thereto, or the practice of psychology by a person licensed by the behavioral sciences regulatory board pursuant to K.S.A. 74-5301 et seq., and amendments thereto, shall be construed to be a governmental function, and such property actually and regularly used for such purpose shall be deemed to be used exclusively for the purposes of this paragraph. The lease by a municipality or political subdivision of the state of any real property, or portion thereof, owned or being acquired pursuant to a lease-purchase agreement to any entity for the exclusive use by it for an exempt purpose, including the purpose of displaying or exhibiting personal property by a museum or historical society, if no portion of the lease payments include compensation for return on the investment in such leased property shall be deemed to be used exclusively for the purposes of this paragraph. All property leased, other than motor vehicles leased for a period of at least one year and property being acquired pursuant to a lease-purchase agreement, to the state or any municipality or political subdivision of the state by any private entity shall not be considered to be used exclusively by the state or any municipality or political subdivision of the state for the purposes of this section except that the provisions of this sentence shall not apply to any such property subject to lease on the effective date of this act until the term of such lease expires but property taxes levied upon any such property prior to tax year 1989, shall not be abated or refunded. Any property constructed or purchased with the proceeds of industrial revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 12-1740 through 12-1749, and amendments thereto, or purchased with proceeds of improvement district bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-2776, and amendments thereto, or with proceeds of bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-3815a and 19-3815b, and amendments thereto, or any property improved, purchased, constructed, reconstructed or repaired with the

proceeds of revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 13-1238 to 13-1245, inclusive, and amendments thereto, or any property improved, reimproved, reconstructed or repaired with the proceeds of revenue bonds issued after July 1, 1963, under the authority of K.S.A. 13-1238 to 13-1245, inclusive, and amendments thereto, which had previously been improved, reconstructed or repaired with the proceeds of revenue bonds issued under such act on or before July 1, 1963, shall be exempt from taxation for so long as any of the revenue bonds issued to finance such construction, reconstruction, improvement, repair or purchase shall be outstanding and unpaid. Any property constructed or purchased with the proceeds of any revenue bonds authorized by K.S.A. 13-1238 to 13-1245, inclusive, and amendments thereto, 19-2776, 19-3815a and 19-3815b, and amendments thereto, issued on or after July 1, 1963, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Any property, all or any portion of which is constructed or purchased with the proceeds of revenue bonds authorized by K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, issued on or after July 1, 1963 and prior to July 1, 1981, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased wholly with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued. The exemption of that portion of the property constructed or purchased with the proceeds of revenue bonds shall terminate upon the failure to pay all taxes levied on that portion of the property which is not exempt and the entire property shall be subject to sale in the manner prescribed by K.S.A. 79-2301 et seq., and amendments thereto. Property constructed or purchased in whole or in part with the proceeds of revenue bonds issued on or after January 1, 1995, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, and used in any retail enterprise identified under NAICS sectors 44 and 45, except facilities used exclusively to house the headquarters or back office operations of such retail enterprises identified thereunder, shall not be exempt from taxation. For the purposes of the preceding provision "NAICS" means the North American industry classification system, as developed under the authority of the office of management and

budget of the office of the president of the United States. "Headquarters or back office operations" means a facility from which the enterprise is provided direction, management, administrative services, or distribution or warehousing functions in support of transactions made by the enterprise. Property purchased, constructed, reconstructed, equipped, maintained or repaired with the proceeds of industrial revenue bonds issued under the authority of K.S.A. 12-1740 et seq., and amendments thereto, which is located in a redevelopment project area established under the authority of K.S.A. 12-1770 et seq., and amendments thereto, shall not be exempt from taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for any poultry confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903, and amendments thereto, shall not be exempt from such taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under the authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for a rabbit confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903, and amendments thereto, shall not be exempt from such taxation.

Third. All works, machinery and fixtures used exclusively by any rural water district or township water district for conveying or production of potable water in such rural water district or township water district, and all works, machinery and fixtures used exclusively by any entity which performed the functions of a rural water district on and after January 1, 1990, and the works, machinery and equipment of which were exempted hereunder on March 13, 1995.

Fourth. All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof, and for the meeting of fire companies, whether belonging to any rural fire district, township fire district, town, city or village, or to any fire company organized therein or therefor.

Fifth. All property, real and personal, owned by county fair associations organized and operating under the provisions of K.S.A. 2-125 et seq., and amendments thereto.

Sixth. Property acquired and held by any municipality under the municipal housing law, K.S.A. 17-2337 et seq., and amendments thereto, except that such exemption shall not apply to any portion of the project used by a nondwelling facility for profit making enterprise.

Seventh. All property of a municipality, acquired or held under and for the purposes of the urban renewal law, K.S.A. 17-4742 et seq., and

amendments thereto, except that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

Eighth. All property acquired and held by the Kansas armory board for armory purposes under the provisions of K.S.A. 48-317, and amendments thereto.

Ninth. All property acquired and used by the Kansas turnpike authority under the authority of K.S.A. 68-2001 et seq., and amendments thereto, K.S.A. 68-2030 et seq., and amendments thereto, K.S.A. 68-2051 et seq., and amendments thereto, and K.S.A. 68-2070 et seq., and amendments thereto.

Tenth. All property acquired and used for state park purposes by the Kansas department of wildlife, parks and tourism.

Eleventh. The state office building constructed under authority of K.S.A. 75-3607 et seq., and amendments thereto, and the site upon which such building is located.

Twelfth. All buildings erected under the authority of K.S.A. 76-6a01 et seq., and amendments thereto, and all other student union buildings and student dormitories erected upon the campus of any institution mentioned in K.S.A. 76-6a01, and amendments thereto, by any other non-profit corporation.

Thirteenth. All buildings, as the same is defined in subsection (c) of K.S.A. 76-6a13, and amendments thereto, which are erected, constructed or acquired under the authority of K.S.A. 76-6a13 et seq., and amendments thereto, and building sites acquired therefor.

Fourteenth. All that portion of the waterworks plant and system of the city of Kansas City, Missouri, now or hereafter located within the territory of the state of Kansas pursuant to the compact and agreement adopted by K.S.A. 79-205, and amendments thereto.

Fifteenth. All property, real and personal, owned by a groundwater management district organized and operating pursuant to K.S.A. 82a-1020, and amendments thereto.

Sixteenth. All property, real and personal, owned by the joint water district organized and operating pursuant to K.S.A. 80-1616 et seq., and amendments thereto.

Seventeenth. All property, including interests less than fee ownership, acquired for the state of Kansas by the secretary of transportation or a predecessor in interest which is used in the administration, construction, maintenance or operation of the state system of highways, regardless of how or when acquired.

Eighteenth. Any building used primarily as an industrial training center for academic or vocational education programs designed for and operated under contract with private industry, and located upon a site owned, leased or being acquired by or for an area vocational school, an area

vocational-technical school, a technical college, or a community college, as defined by K.S.A. 72-4412, and amendments thereto, and the site upon which any such building is located.

Nineteenth. For all taxable years commencing after December 31, 1997, all buildings of an area vocational school, an area vocational-technical school, a technical college or a community college, as defined by K.S.A. 72-4412, and amendments thereto, which are owned and operated by any such school or college as a student union or dormitory and the site upon which any such building is located.

Twentieth. For all taxable years commencing after December 31, 1997, all personal property which is contained within a dormitory that is exempt from property taxation and which is necessary for the accommodation of the students residing therein.

Twenty-First. All real property from and after the date of its transfer by the city of Olathe, Kansas, to the Kansas state university foundation, all buildings and improvements thereafter erected and located on such property, and all tangible personal property, which is held, used or operated for educational and research purposes at the Kansas state university Olathe innovation campus located in the city of Olathe, Kansas.

Twenty-Second. All real property, and all tangible personal property, owned by postsecondary educational institutions, as that term is defined in K.S.A. 74-3201b, and amendments thereto, or by the board of regents on behalf of the postsecondary educational institutions, which is leased by a for profit company and is actually and regularly used exclusively for research and development purposes so long as any rental income received by such postsecondary educational institution or the board of regents from such a company is used exclusively for educational or scientific purposes. Any such lease or occupancy described in this section shall be for a term of no more than five years.

Twenty-Third. For all taxable years commencing after December 31, 2005, any and all housing developments and related improvements located on United States department of defense military installations in the state of Kansas, which are developed pursuant to the military housing privatization initiative, 10 U.S.C. § 2871 et seq., or any successor thereto, and which are provided exclusively or primarily for use by military personnel of the United States and their families.

Except as otherwise specifically provided, the provisions of this section shall apply to all taxable years commencing after December 31, 2010.

Sec. 2. K.S.A. 2012 Supp. 79-201a is hereby repealed.

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

CHAPTER 57

HOUSE BILL No. 2228

AN ACT concerning the Kansas public employees retirement system; relating to death and long-term disability benefits; employer payments to group insurance reserve fund; amending K.S.A. 2012 Supp. 74-4927 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 74-4927 is hereby amended to read as follows: 74-4927. (1) The board may establish a plan of death and long-term disability benefits to be paid to the members of the retirement system as provided by this section. The long-term disability benefit shall be payable in accordance with the terms of such plan as established by the board, except that for any member who is disabled prior to the effective date of this act, the annual disability benefit amount shall be an amount equal to 66 $\frac{2}{3}$ % of the member's annual rate of compensation on the date such disability commenced. Such plan shall provide that:

(A) For deaths occurring prior to January 1, 1987, the right to receive such death benefit shall cease upon the member's attainment of age 70 or date of retirement whichever first occurs. The right to receive such long-term disability benefit shall cease (i) for a member who becomes eligible for such benefit before attaining age 60, upon the date that such member attains age 65 or the date of such member's retirement, whichever first occurs, and (ii) for a member who becomes eligible for such benefit at or after attaining age 60, the date that such member has received such benefit for a period of five years, or upon the date of such member's retirement, whichever first occurs.

(B) Long-term disability benefit payments shall be in lieu of any accidental total disability benefit that a member may be eligible to receive under subsection (3) of K.S.A. 74-4916, and amendments thereto. The member must make an initial application for social security disability benefits and, if denied such benefits, the member must pursue and exhaust all administrative remedies of the social security administration which include, but are not limited to, reconsideration and hearings. Such plan may provide that any amount which a member receives as a social security benefit or a disability benefit or compensation from any source by reason of any employment including, but not limited to, workers compensation benefits may be deducted from the amount of long-term disability benefit payments under such plan. However, in no event shall the amount of long-term disability benefit payments under such plan be reduced by any amounts a member receives as a supplemental disability benefit or compensation from any source by reason of the member's employment, provided such supplemental disability benefit or compensation is based solely upon the portion of the member's monthly compensation that exceeds the maximum monthly compensation taken into account under such plan. As used in this paragraph, "maximum monthly compensation" means the

dollar amount that results from dividing the maximum monthly disability benefit payable under such plan by the percentage of compensation that is used to calculate disability benefit payments under such plan. During the period in which such member is pursuing such administrative remedies prior to a final decision of the social security administration, social security disability benefits may be estimated and may be deducted from the amount of long-term disability benefit payments under such plan. If the social security benefit, workers compensation benefit, other income or wages or other disability benefit by reason of employment other than a supplemental benefit based solely on compensation in excess of the maximum monthly compensation taken into account under such plan, or any part thereof, is paid in a lump-sum, the amount of the reduction shall be calculated on a monthly basis over the period of time for which the lump-sum is given. As used in this section, "workers compensation benefits" means the total award of disability benefit payments under the workers compensation act notwithstanding any payment of attorney fees from such benefits as provided in the workers compensation act.

(C) The plan may include other provisions relating to qualifications for benefits; schedules and graduation of benefits; limitations of eligibility for benefits by reason of termination of employment or membership; conversion privileges; limitations of eligibility for benefits by reason of leaves of absence, military service or other interruptions in service; limitations on the condition of long-term disability benefit payment by reason of improved health; requirements for medical examinations or reports; or any other reasonable provisions as established by rule and regulation of uniform application adopted by the board.

(D) Any visually impaired person who is in training at and employed by a sheltered workshop for the blind operated by the secretary of social and rehabilitation services and who would otherwise be eligible for the long-term disability benefit as described in this section shall not be eligible to receive such benefit due to visual impairment as such impairment shall be determined to be a preexisting condition.

(2) (A) In the event that a member becomes eligible for a long-term disability benefit under the plan authorized by this section such member shall be given participating service credit for the entire period of such disability. Such member's final average salary shall be computed in accordance with subsection (17) of K.S.A. 74-4902, and amendments thereto, except that the years of participating service used in such computation shall be the years of salaried participating service.

(B) In the event that a member eligible for a long-term disability benefit under the plan authorized by this section shall be disabled for a period of five years or more immediately preceding retirement, such member's final average salary shall be adjusted upon retirement by the actuarial salary assumption rates in existence during such period of disability. Effective July 1, 1993, such member's final average salary shall be

adjusted upon retirement by 5% for each year of disability after July 1, 1993, but before July 1, 1998. Effective July 1, 1998, such member's final average salary shall be adjusted upon retirement by an amount equal to the lesser of: (i) The percentage increase in the consumer price index for all urban consumers as published by the bureau of labor statistics of the United States department of labor minus 1%; or (ii) four percent per annum, measured from the member's last day on the payroll to the month that is two months prior to the month of retirement, for each year of disability after July 1, 1998.

(C) In the event that a member eligible for a long-term disability benefit under the plan authorized by this section shall be disabled for a period of five years or more immediately preceding death, such member's current annual rate shall be adjusted by the actuarial salary assumption rates in existence during such period of disability. Effective July 1, 1993, such member's current annual rate shall be adjusted upon death by 5% for each year of disability after July 1, 1993, but before July 1, 1998. Effective July 1, 1998, such member's current annual rate shall be adjusted upon death by an amount equal to the lesser of: (i) The percentage increase in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor minus 1%; or (ii) four percent per annum, measured from the member's last day on the payroll to the month that is two months prior to the month of death, for each year of disability after July 1, 1998.

(3) (A) To carry out the legislative intent to provide, within the funds made available therefor, the broadest possible coverage for members who are in active employment or involuntarily absent from such active employment, the plan of death and long-term disability benefits shall be subject to adjustment from time to time by the board within the limitations of this section. The plan may include terms and provisions which are consistent with the terms and provisions of group life and long-term disability policies usually issued to those employers who employ a large number of employees. The board shall have the authority to establish and adjust from time to time the procedures for financing and administering the plan of death and long-term disability benefits authorized by this section. Either the insured death benefit or the insured disability benefit or both such benefits may be financed directly by the system or by one or more insurance companies authorized and licensed to transact group life and group accident and health insurance in this state.

(B) The board may contract with one or more insurance companies, which are authorized and licensed to transact group life and group accident and health insurance in Kansas, to underwrite or to administer or to both underwrite and administer either the insured death benefit or the long-term disability benefit or both such benefits. Each such contract with an insurance company under this subsection shall be entered into on the

basis of competitive bids solicited and administered by the board. Such competitive bids shall be based on specifications prepared by the board.

(i) In the event the board purchases one or more policies of group insurance from such company or companies to provide either the insured death benefit or the long-term disability benefit or both such benefits, the board shall have the authority to subsequently cancel one or more of such policies and, notwithstanding any other provision of law, to release each company which issued any such canceled policy from any liability for future benefits under any such policy and to have the reserves established by such company under any such canceled policy returned to the system for deposit in the group insurance reserve of the fund.

(ii) In addition, the board shall have the authority to cancel any policy or policies of group life and long-term disability insurance in existence on the effective date of this act and, notwithstanding any other provision of law, to release each company which issued any such canceled policy from any liability for future benefits under any such policy and to have the reserves established by such company under any such canceled policy returned to the system for deposit in the group insurance reserve of the fund. Notwithstanding any other provision of law, no premium tax shall be due or payable by any such company or companies on any such policy or policies purchased by the board nor shall any brokerage fees or commissions be paid thereon.

(4) (A) There is hereby created in the state treasury the group insurance reserve fund. Investment income of the fund shall be added or credited to the fund as provided by law. The cost of the plan of death and long-term disability benefits shall be paid from the group insurance reserve fund, which shall be administered by the board. ~~Except as otherwise provided by this subsection,~~ For the period commencing July 1, ~~2005~~ 2013, and ending June 30, ~~2006~~ 2015, each participating employer shall appropriate and pay to the system in such manner as the board shall prescribe in addition to the employee and employer retirement contributions an amount equal to ~~8%~~ .85% of the amount of compensation on which the members' contributions to the Kansas public employees retirement system are based for deposit in the group insurance reserve fund. For the period commencing July 1, ~~2006~~ 2015, and all periods thereafter, each participating employer shall appropriate and pay to the system in such manner as the board shall prescribe in addition to the employee and employer retirement contributions an amount equal to 1.0% of the amount of compensation on which the members' contributions to the Kansas public employees retirement system are based for deposit in the group insurance reserve fund. Notwithstanding the provisions of this subsection, no participating employer shall appropriate and pay to the system any amount provided for by this subsection for deposit in the group insurance reserve fund for the period commencing on April 1, ~~2012~~ 2013, and ending on June 30, ~~2012~~ 2013.

(B) The director of the budget and the governor shall include in the budget and in the budget request for appropriations for personal services a sum to pay the state's contribution to the group insurance reserve fund as provided by this section and shall present the same to the legislature for allowances and appropriation.

(C) The provisions of subsection (4) of K.S.A. 74-4920, and amendments thereto, shall apply for the purpose of providing the funds to make the contributions to be deposited to the group insurance reserve fund.

(D) Any dividend or retrospective rate credit allowed by an insurance company or companies shall be credited to the group insurance reserve fund and the board may take such amounts into consideration in determining the amounts of the benefits under the plan authorized by this section.

(5) The death benefit provided under the plan of death and long-term disability benefits authorized by this section shall be known and referred to as insured death benefit. The long-term disability benefit provided under the plan of death and long-term disability benefits authorized by this section shall be known and referred to as long-term disability benefit.

(6) The board is hereby authorized to establish an optional death benefit plan for employees and spouses and dependents of employees. Except as provided in subsection (7), such optional death benefit plan shall be made available to all employees who are covered or may hereafter become covered by the plan of death and long-term disability benefits authorized by this section. The cost of the optional death benefit plan shall be paid by the applicant either by means of a system of payroll deductions or direct payment to the board. The board shall have the authority and discretion to establish such terms, conditions, specifications and coverages as it may deem to be in the best interest of the state of Kansas and its employees which should include term death benefits for the person's period of active state employment regardless of age, but in no case, shall the maximum allowable coverage be less than \$200,000. The cost of the optional death benefit plan shall not be established on such a basis as to unreasonably discriminate against any particular age group. The board shall have full administrative responsibility, discretion and authority to establish and continue such optional death benefit plan and the director of accounts and reports of the department of administration shall when requested by the board and from funds appropriated or available for such purpose establish a system to make periodic deductions from state payrolls to cover the cost of the optional death benefit plan coverage under the provisions of this subsection (6) and shall remit all deductions together with appropriate accounting reports to the system. There is hereby created in the state treasury the optional death benefit plan reserve fund. Investment income of the fund shall be added or credited to the fund as provided by law. All funds received by the board,

whether in the form of direct payments, payroll deductions or otherwise, shall be accounted for separately from all other funds of the retirement system and shall be paid into the optional death benefit plan reserve fund, from which the board is authorized to make the appropriate payments and to pay the ongoing costs of administration of such optional death benefit plan as may be incurred in carrying out the provisions of this subsection (6).

(7) Any employer other than the state of Kansas which is currently a participating employer of the Kansas public employees retirement system or is in the process of affiliating with the Kansas public employees retirement system may also elect to affiliate for the purposes of subsection (6). All such employers shall make application for affiliation with such system, to be effective on January 1 or July 1 next following application.

(8) For purposes of the death benefit provided under the plan of death and long-term disability benefits authorized by this section and the optional death benefit plan authorized by subsection (6), commencing on the effective date of this act, in the case of medical or financial hardship of the member as determined by the executive director, or otherwise commencing January 1, 2005, the member may name a beneficiary or beneficiaries other than the beneficiary or beneficiaries named by the member to receive other benefits as provided by the provisions of K.S.A. 74-4901 et seq., and amendments thereto.

Sec. 2. K.S.A. 2012 Supp. 74-4927 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 10, 2013.

CHAPTER 58

HOUSE BILL No. 2302
(Amended by Chapter 133)

AN ACT concerning the Kansas department of health and environment; relating to drug screening, criminal history record check and fingerprinting of certain persons and employees; amending K.S.A. 2012 Supp. 75-4362 and repealing the existing section.

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

New Section 1. (a) The secretary of health and environment shall require any person offered a position of employment in and any employee of the office of laboratory services of the Kansas department of health and environment that will have access to a secured biological laboratory to be fingerprinted and submit to a state and national criminal history record check. Such person offered a position of employment or employee shall be given written notice that a fingerprinting and state and national

criminal history record check is required as a condition of initial and continued employment. The fingerprints shall be used to identify such person offered a position of employment or employee and to determine whether such person offered a position of employment or employee has a record of criminal history in this state or other jurisdiction. The secretary of health and environment shall submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. Local and state law enforcement officers and agencies shall assist the secretary of health and environment in the taking and processing of fingerprints of such persons offered positions of employment or employees.

(b) The secretary of health and environment shall use the information obtained from fingerprinting and criminal history for the purposes of verifying the identification of any person offered a position of employment or employee in the official determination of the eligibility of such person or employee to perform tasks within the office of laboratory services. If criminal history record information or results of drug screening is used to disqualify a person offered a position of employment or terminate an employee, such person offered a position of employment or employee shall be informed in writing of the purpose of such disqualification or termination from employment.

(c) As a condition of continued employment, any employee who has access to a secured biological laboratory in the office of laboratory services of the Kansas department of health and environment shall be subject to state and national criminal history record checks at a frequency determined by the secretary.

Sec. 2. K.S.A. 2012 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; or

(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) *Except for a person who has access to a secured biological laboratory in the office of laboratory services of the department of health and environment*, 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 institution, as defined in K.S.A. 2012 Supp. 21-5914, and amendments thereto;

(6) all employees of a juvenile correctional facility, as defined in K.S.A. 2012 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; *and*

(8) *all employees who have access to a secured biological laboratory*

in the office of laboratory services of the department of health and environment.

Sec. 3. K.S.A. 2012 Supp. 75-4362 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 10, 2013.

CHAPTER 59

HOUSE BILL No. 2322

AN ACT concerning the department of health and environment; relating to the division of health; amending K.S.A. 65-102, 65-118, 65-153 and 75-5621 and K.S.A. 2012 Supp. 65-2402, 65-2422d, 75-5601, 75-5603 and 75-5664 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 75-7411 and 75-7412.

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

Section 1. K.S.A. 65-102 is hereby amended to read as follows: 65-102. The secretary of health and environment shall supervise the registration of marriages, births and deaths, and also the registration of forms of disease prevalent in the state; and the director of the division of *public* health shall superintend the registration of the vital statistics of the state. The secretary of health and environment shall prepare the blank forms necessary for obtaining and preserving such records, and forward them to the health officers of local boards as may be required by physicians, appraisers, local boards; and others whose duty it is to gather information in relation to the vital statistics of the state.

Sec. 2. K.S.A. 65-118 is hereby amended to read as follows: 65-118. (a) Whenever any person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse administrator of a hospital, licensed adult care home-administrator, licensed physician assistant, licensed social worker, teacher or school administrator knows or has information indicating that a person is suffering from or has died from a reportable infectious or contagious disease as defined in rules and regulations, such knowledge or information shall be reported immediately to the county or joint board of health or the local health officer, together with the name and address of the person who has or is suspected of having the infectious or contagious disease, or the name and former address of the deceased individual who had or was suspected of having such a disease. In the case of a licensed hospital or adult care home, the administrator may designate an individual to receive and make such reports. The secretary of health and environment shall, through rules

and regulations, make provision for the consolidation of reports required to be made under this section when the person required to make the report is working in a licensed hospital or adult care home. Laboratories certified under the federal clinical laboratories improvement act pursuant to 42 code of federal regulations, 493 shall report the results of microbiologic cultures, examinations, immunologic essays for the presence of antigens and antibodies and any other laboratory tests which are indicative of the presence of a reportable infectious or contagious disease to the department of health and environment. The director of the division of *public* health may use information from death certificates for disease investigation purposes.

(b) Any person who is an individual member of a class of persons designated under subsection (a) of this section and who reports the information required to be reported under such subsection in good faith and without malice to a county or joint board of health, a local health officer or the department of health and environment shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(c) Information required to be reported under subsection (a) of this section shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the requirements of subsection (a) of this section or subsection (a) of K.S.A. 65-119, *and amendments thereto*, except such information may be disclosed: (1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes;

(2) if all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;

(3) if the disclosure is necessary, and only to the extent necessary, to protect the public health;

(4) if a medical emergency exists and the disclosure is to medical personnel qualified to treat infectious or contagious diseases. Any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party; or

(5) if the information to be disclosed is required in a court proceeding involving child abuse and the information is disclosed in camera.

Sec. 3. K.S.A. 65-153 is hereby amended to read as follows: 65-153. The general duties of the division of *public* health of the department of health and environment shall include the issuance of educational literature on the care of the baby and the hygiene of the child, the study of the causes of infant mortality and the application of preventive measures for the prevention and the suppression of the diseases of infancy and early childhood.

Sec. 4. K.S.A. 2012 Supp. 65-2402 is hereby amended to read as follows: 65-2402. (a) The secretary shall: (1) Establish within the division of *public* health suitable offices properly equipped for the preservation of official records; (2) maintain a complete cross-index on all records filed under the provisions of this act; (3) install a statewide system of vital statistics; (4) make and may amend, after notice and hearing, necessary regulations, give instructions and prescribe forms for collection, transcribing, compiling and preserving vital statistics; and (5) enforce this act and the regulations made pursuant thereto.

(b) Any person offered a position of employment in the office of vital statistics, subject to a criminal history records check, shall be given a written notice that a criminal history records check is required. The secretary shall require such applicant to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or another jurisdiction. The secretary shall submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. Local and state law enforcement officers and agencies shall assist the secretary in taking and processing of fingerprints of applicants. The secretary may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the applicant and in the official determination of the eligibility of the applicant to perform tasks within the office of vital statistics. If the criminal history record information is used to disqualify an applicant, the applicant shall be informed in writing of that decision.

Sec. 5. K.S.A. 2012 Supp. 65-2422d is hereby amended to read as follows: 65-2422d. (a) The records and files of the division of *public* health pertaining to vital statistics shall be open to inspection, subject to the provisions of the uniform vital statistics act and rules and regulations of the secretary. It shall be unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized by the uniform vital statistics act and the secretary, and it shall be unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized by law.

(b) No information concerning the birth of a child shall be disclosed in a manner that enables determination that the child was born out of wedlock, except upon order of a court in a case where the information is necessary for the determination of personal or property rights and then only for that purpose, or except that employees of the office of child support enforcement of the federal department of health and human services shall be provided information when the information is necessary to ensure compliance with federal reporting and audit requirements pur-

suant to title IV-D of the federal social security act or except that the secretary of social and rehabilitation services or the secretary's designee performing child support enforcement functions pursuant to title IV-D of the federal social security act shall be provided information and copies of birth certificates when the information is necessary to establish parentage in legal actions or to ensure compliance with federal reporting and audit requirements pursuant to title IV-D of the federal social security act. Nothing in this subsection shall be construed as exempting such employees of the federal department of health and human services or the secretary of social and rehabilitation services or the secretary's designee from the fees prescribed by K.S.A. 65-2418, and amendments thereto.

(c) Except as provided in subsection (b), and amendments thereto, the state registrar shall not permit inspection of the records or issue a certified copy or abstract of a certificate or part thereof unless the state registrar is satisfied the applicant therefor has a direct interest in the matter recorded and the information contained in the record is necessary for the determination of personal or property rights. The state registrar's decision shall be subject, however, to review by the secretary or by a court in accordance with the Kansas judicial review act, subject to the limitations of this section.

(d) The secretary shall permit the use of data contained in vital statistical records for research purposes only, but no identifying use of them shall be made. The secretary shall permit the use of birth, death and still birth certificates as identifiable data for purposes of maternal and child health surveillance and monitoring. The secretary or the secretary's designee may interview individuals for purposes of maternal and child health surveillance and monitoring only with an approval of the health and environmental institutional review board as provided in title 45, part 46 of the code of federal regulations. The secretary shall inform such individuals that the participation in such surveillance and monitoring is voluntary and may only be conducted with the written consent of the person who is the subject of the information or with the informed consent of a parent or legal guardian if the person is under 18 years of age. Informed consent is not required if the person who is the subject of the information is deceased.

(e) Subject to the provisions of this section the secretary may direct the state registrar to release birth, death and stillbirth certificate data to federal, state or municipal agencies.

(f) On or before the 20th day of each month, the state registrar shall furnish to the county election officer of each county and the clerk of the district court in each county, without charge, a list of deceased residents of the county who were at least 18 years of age and for whom death certificates have been filed in the office of the state registrar during the preceding calendar month. The list shall include the name, age or date of birth, address and date of death of each of the deceased persons and

shall be used solely by the election officer for the purpose of correcting records of their offices and by the clerk of the district court in each county for the purpose of correcting juror information for such county. Information provided under this subsection to the clerk of the district court shall be considered confidential and shall not be disclosed to the public. The provisions of subsection (b) of K.S.A. 45-229, and amendments thereto, shall not apply to the provisions of this subsection.

(g) No person shall prepare or issue any certificate which purports to be an original, certified copy or abstract or copy of a certificate of birth, death or fetal death, except as authorized in this act or rules and regulations adopted under this act.

(h) Records of births, deaths or marriages which are not in the custody of the secretary of health and environment and which were created before July 1, 1911, pursuant to chapter 129 of the 1885 Session Laws of Kansas, and any copies of such records, shall be open to inspection by any person and the provisions of this section shall not apply to such records.

(i) Social security numbers furnished pursuant to K.S.A. 65-2409a, and amendments thereto, shall only be used as permitted by title IV-D of the federal social security act, and amendments thereto, or as permitted by section 7(a) of the federal privacy act of 1974, and amendments thereto. The secretary shall make social security numbers furnished pursuant to K.S.A. 65-2409a, and amendments thereto, available to the department of social and rehabilitation services for purposes permitted under title IV-D of the federal social security act.

(j) Fact of death information may be disseminated to state and federal agencies administering benefit programs. Such information shall be used for file clearance purposes only.

Sec. 6. K.S.A. 2012 Supp. 75-5601 is hereby amended to read as follows: 75-5601. (a) There is hereby created a department of health and environment, the head of which shall be the secretary of health and environment, which office is hereby created. The governor shall appoint the secretary of health and environment, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, and the secretary shall serve at the pleasure of the governor. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed as secretary shall exercise any power, duty or function as secretary until confirmed by the senate. The department of health and environment shall consist of the division of *public* health, the division of health care finance and the division of environment. The secretary of health and environment shall receive an annual salary fixed by the governor.

(b) The provisions of the Kansas governmental operations accountability law apply to the department of health and environment, and the department is subject to audit, review and evaluation under such law.

Sec. 7. K.S.A. 2012 Supp. 75-5603 is hereby amended to read as follows: 75-5603. (a) There is hereby established within and as a part of the department of health and environment a division of *public health*, the head of which shall be the director of the division of *public health*. Under the supervision of the secretary of health and environment, the director of the division of *public health* shall administer the division of *public health*. The director shall be a physician, hold a valid license to practice medicine and surgery, and have experience and educational training in the field of public health. The secretary of health and environment shall appoint the director of the division of *public health* who shall serve at the pleasure of the secretary. The director shall be in the unclassified service and shall receive an annual salary fixed by the secretary and approved by the governor.

(b) *Whenever the division of health, or words of like effect, are referred to or designated by statute, contract or other document, such reference or designation shall be deemed to apply to the division of public health.*

Sec. 8. K.S.A. 2012 Supp. 75-5664 is hereby amended to read as follows: 75-5664. (a) There is hereby established an advisory committee on trauma. The advisory committee on trauma shall be advisory to the secretary of health and environment and shall be within the division of *public health* of the department of health and environment as a part thereof.

(b) On July 1, 2001, the advisory committee on trauma in existence immediately prior to July 1, 2001, is hereby abolished and a new advisory committee on trauma is created in accordance with this section. The terms of all members of the advisory committee on trauma in existence prior to July 1, 2001, are hereby terminated. On and after July 1, 2001, the advisory committee on trauma shall be composed of 24 members representing both rural and urban areas of the state appointed as follows:

(1) Two members shall be persons licensed to practice medicine and surgery appointed by the governor. At least 30 days prior to the expiration of terms described in this section, for each member to be appointed under this section, the Kansas medical society shall submit to the governor a list of three names of persons of recognized ability and qualification. The governor shall consider such list of persons in making appointments to the board under this paragraph.

(2) One member shall be licensed to practice osteopathic medicine appointed by the governor. At least 30 days prior to the expiration of the term of the member appointed under this section, the Kansas association of osteopathic medicine shall submit to the governor a list of three persons of recognized ability and qualification. The governor shall consider such list of persons in making appointments to the board under this paragraph.

(3) Three members shall be representatives of hospitals appointed by

the governor. At least 30 days before the expiration of terms described in this section, for each member to be appointed under this section, the Kansas hospital association shall submit to the governor a list of three names of persons of recognized ability and qualification. The governor shall consider such list of persons in making appointments to the board under this paragraph.

(4) Two members shall be licensed professional nurses specializing in trauma care or emergency nursing appointed by the governor. At least 30 days before the expiration of terms described in this section, for each member to be appointed under this section, the Kansas state nurses association shall submit to the governor a list of three names of persons of recognized ability and qualification. The governor shall consider such list of persons in making appointments to the board under this paragraph.

(5) Two members shall be attendants as defined in K.S.A. 65-6112, and amendments thereto, who are on the roster of an ambulance service permitted by the board of emergency medical services. At least 30 days prior to the expiration of one of these positions, the Kansas emergency medical services association shall submit to the governor a list of three persons of recognized ability and qualification. The governor shall consider such list of persons in making this appointment to the board. For the other member appointed under this section, at least 30 days prior to the expiration of the term of such member, the Kansas emergency medical technician association shall submit a list of three persons of recognized ability and qualification. The governor shall consider such list of persons in making appointments to the board under this paragraph.

(6) Two members shall be administrators of ambulance services, one rural and one urban, appointed by the governor. At least 30 days prior to the expiration of the terms of such members, the Kansas emergency medical services association and Kansas emergency medical technician association in consultation shall submit to the governor a list of four persons of recognized ability and qualification. The governor shall consider such list of persons in making this appointment to the board under this paragraph.

(7) Six members shall be representatives of regional trauma councils, one per council, appointed by the governor. At least 30 days prior to the expiration of one of these positions, the relevant regional trauma council shall submit to the governor a list of three persons of recognized ability and qualification. The governor shall consider such list of persons in making these appointments to the board.

(8) The secretary of health and environment or the secretary's designee of an appropriately qualified person shall be an ex officio representative of the department of health and environment.

(9) The chairperson of the board of emergency medical services or the chairperson's designee shall be an ex officio member.

(10) Four legislators selected as follows shall be members: The chair-

person and ranking minority member or their designees of the committee on health and human services of the house of representatives, and the chairperson and ranking minority member or their designees from the committee on public health and welfare of the senate shall be members.

(c) All members shall be residents of the state of Kansas. Particular attention shall be given so that rural and urban interests and geography are balanced in representation. Organizations that submit lists of names to be considered for appointment by the governor under this section shall insure that names of people who reside in both rural and urban areas of the state are among those submitted. At least one person from each congressional district shall be among the members. Of the members appointed under paragraphs (1) through (7) of subsection (b), six shall be appointed to initial terms of two years; six shall be appointed to initial terms of three years; and six shall be appointed to initial terms of four years. Thereafter members shall serve terms of four years and until a successor is appointed and qualified. In the case of a vacancy in the membership of the advisory committee, the vacancy shall be filled for the unexpired term in like manner as that provided in subsection (b).

(d) The advisory committee shall meet quarterly and at the call of the chairperson or at the request of a majority of the members. At the first meeting of the advisory committee after July 1 each year, the members shall elect a chairperson and vice-chairperson who shall serve for terms of one year. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson. The chairperson and vice-chairperson serving on the effective date of this act shall be among the members appointed to the advisory committee under subsection (b) and shall continue to serve as chairperson and vice-chairperson of the advisory committee until the first meeting of the advisory committee after July 1, 2002.

(e) The advisory committee shall be advisory to the secretary of health and environment on all matters relating to the implementation and administration of this act.

(f) (1) Any meeting of the advisory committee or any part of a meeting of the advisory committee during which a review of incidents of trauma injury or trauma care takes place shall be conducted in closed session. The advisory committee and officers thereof when acting in their official capacity in considering incidents of trauma injury or trauma care shall constitute a peer review committee and peer review officers for all purposes of K.S.A. 65-4915, and amendments thereto.

(2) The advisory committee or an officer thereof may advise, report to and discuss activities, information and findings of the committee which relate to incidents of trauma injury or trauma care with the secretary of health and environment as provided in subsections (a) and (e) without waiver of the privilege provided by this subsection (f) and K.S.A. 65-4915, and amendments thereto, and the records and findings of such committee

or officer which are privileged under this subsection (f) and K.S.A. 65-4915, and amendments thereto, shall remain privileged as provided by this subsection (f) and K.S.A. 65-4915, and amendments thereto, prior to July 1, 2016.

(3) The provisions of this subsection (f) shall expire on July 1, 2016, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto.

(g) Members of the advisory committee attending meetings of the advisory committee or attending a subcommittee of the advisory committee or other authorized meeting of the advisory committee shall not be paid compensation but shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

Sec. 9. K.S.A. 65-102, 65-118, 65-153 and 75-5621 and K.S.A. 2012 Supp. 65-2402, 65-2422d, 75-5601, 75-5603, 75-5664, 75-7411 and 75-7412 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 10, 2013.

CHAPTER 60

HOUSE BILL No. 2106

AN ACT concerning insurance on portable electronics; amending K.S.A. 2012 Supp. 40-5607 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 40-5607 is hereby amended to read as follows: 40-5607. Notwithstanding any other provision of law:

(a) ~~An insurer may not change the terms and conditions of a policy of portable electronics insurance more than once in any six-month period.~~

~~(b)~~—An insurer may not terminate an individually enrolled customer based solely upon the age of such enrolled customer's covered portable electronic device.

~~(e)~~(b) 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)~~(c) ~~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;

~~(c)(d)~~ 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)(e)~~ 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)(f)~~ Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor, as the case may be, by the supervising entity appointed by the insurer.

~~(h)(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. A return or refund of any applicable unearned premium may be accomplished by crediting the billing mechanism used to pay the premium so long as there is a balance for which to apply the credit.

Sec. 2. K.S.A. 2012 Supp. 40-5607 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 10, 2013.

CHAPTER 61

HOUSE BILL No. 2083

AN ACT concerning the public employee relations board; amending K.S.A. 75-4327 and K.S.A. 2012 Supp. 75-4332 and repealing the existing sections.

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

Section 1. K.S.A. 75-4327 is hereby amended to read as follows: 75-4327. (a) Public employers shall recognize employee organizations for the purpose of representing their members in relations with public agencies as to grievances and conditions of employment. Employee organizations may establish reasonable provisions for an individual's admission to or dismissal from membership.

(b) Where an employee organization has been certified by the board as representing a majority of the employees in an appropriate unit, or recognized formally by the public employer pursuant to the provisions of this act, the appropriate employer shall meet and confer in good faith with such employee organization in the determination of conditions of employment of the public employees as provided in this act, and may enter into a memorandum of agreement with such recognized employee organization.

(c) A recognized employee organization shall represent not less than a majority of the employees of an appropriate unit. When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization or by five or more employees, the public employee relations board, at the request of any of the parties, shall investigate such question and, after a hearing in accordance with the provisions of the Kansas administrative procedure act, rule on the definition of the appropriate unit in accordance with subsection (e) ~~of this section~~.

(d) Following determination of the appropriate unit of employees, the public employee relations board, at the request of the public employer or on petition of employees, shall investigate questions and certify to the parties in writing, the names of the representatives that have been designated for an appropriate unit. The filing of a petition for the investigation or certification of a representative of employees shall show the names of not less than 30% of the employees within an appropriate unit. In any such investigation, the board may provide for an appropriate hearing, shall determine voting eligibility and shall take a secret ballot of employees in the appropriate unit involved to ascertain such representatives

for the purpose of formal recognition. Recognition shall be granted only to an employee organization that has been selected as a representative of an appropriate unit, in a secret ballot election, by a majority of the employees in an appropriate unit who voted at such election. Each employee eligible to vote shall be provided the opportunity to choose the employee organization such employee wishes to represent such employee, from among those on the ballot, or to choose “no representation.” When an election in which the ballot provided for three or more choices between representatives and no representation resulted in no choice receiving a majority of the valid votes cast, the board shall conduct a run-off election by secret ballot. The ballot in a run-off election shall only provide for a selection between the two choices receiving the largest and second largest number of votes in the original election. The board is authorized to hold elections to determine whether: (1) An employee organization should be recognized as the formal representative of employees in a unit; (2) an employee organization should replace another employee organization as the formal representative of employees in a unit; (3) a recognized employee organization should be decertified.

Any petition calling for an election in accordance with this section shall be dismissed by the board without determining the questions raised therein if such petition is filed more than 150 days or less than 90 days prior to the expiration date of an existing memorandum of agreement which governs the terms and conditions of employment of the employees within the appropriate unit.

If the board has certified a formally recognized representative in an appropriate unit, it shall not be required to consider the matter again for a period of one year, unless the board determines that sufficient reason exists. The board may promulgate such rules and regulations as may be appropriate to carry out the provisions of subsections (c) and (d) ~~of this section.~~

(e) Any group of public employees considering the formation of an employee organization for formal recognition, any public employer considering the recognition of an employee organization on its own volition and the board, in investigating questions at the request of the parties as specified in this section, shall take into consideration, along with other relevant factors: (1) The principle of efficient administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of overfragmentation and the splintering of a work organization; (6) the provisions of K.S.A. 75-4325, and amendments thereto; and (7) the recommendations of the parties involved.

(f) A recognized employee organization shall not include: (1) Both professional and other employees, unless a majority of the professional employees vote for inclusion in the organization; (2) uniform police employees and public property security guards with any other public em-

ployees, but such employees may form their own separate homogenous units; or (3) uniformed firemen with any other public employees, but such employees may form their own separate homogenous units. The employees of a public safety department of cities which has both police and fire protection duties shall be an appropriate unit.

(g) It is the intent of this act that employer-employee relations affecting the finances of a public employer shall be conducted at such times as will permit any resultant memorandum of agreement to be duly implemented in the budget preparation and adoption process. A public employer, during the 60 days immediately prior to its budget submission date, shall not be required to recognize an employee organization not previously recognized, nor shall it be obligated to initiate or begin meet and confer proceedings with any recognized employee organization for a period of 30 days before and 30 days after its budget submission date.

(h) No employee organization shall be recognized unless it establishes and maintains standards of conduct providing for: (1) The maintenance of democratic procedures and practices, including periodic elections by secret ballot and the fair and equal treatment of all members; and (2) the maintenance of fiscal integrity, including accurate accounting and periodic financial reports open to all members and the prohibition of business or financial interests by officers which conflict with their fiduciary responsibilities.

(i) *The board shall assess the reasonable costs for conducting a secret ballot of the employees against the party seeking the election. For the purposes of this subsection, the term "costs" shall include amounts expended by the board for printing of ballots and necessary postage.*

Sec. 2. K.S.A. 2012 Supp. 75-4332 is hereby amended to read as follows: 75-4332. (a) Public employers may include in memoranda of agreement concluded with recognized employee organizations a provision setting forth the procedures to be invoked in the event of disputes which reach an impasse in the course of meet and confer proceedings. Such memorandum shall define conditions under which an impasse exists, and if the employer is bound by the budget law set forth in K.S.A. 79-2925 et seq., and amendments thereto, the memorandum shall provide that an impasse is deemed to exist if the parties fail to achieve agreement at least 14 days prior to budget submission date.

(b) In the absence of such memorandum of procedures, or upon the failure of such procedures resulting in an impasse, either party may request the assistance of the public employee relations board, or the board may render such assistance on its own motion. In either event, if the board determines an impasse exists in meet and confer proceedings between a public employer and a recognized employee organization, the board shall aid the parties in effecting a voluntary resolution of the dispute, and request the appointment of a mediator or mediators, represen-

tative of the public, from a list of qualified persons maintained by the secretary of labor, and such appointment of a mediator or mediators shall be made forthwith by the secretary.

(c) All verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 et seq., and amendments thereto, shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party, including the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.

(d) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the mediator or staff of an approved program conducting the proceeding in the case of an action against the mediator or staff of an approved program that is filed by a party to the mediation;

(2) any information that the mediator is required to report under K.S.A. 2012 Supp. 38-2223, and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court.

(e) If the impasse persists seven days after the mediators have been appointed, the board shall request the appointment of a fact-finding board of not more than three members, each representative of the public, from a list of qualified persons maintained by the secretary of labor. The fact-finding board shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas. It shall make written findings of facts and recommendations for resolution of the dispute and, not later than 21 days from the day of appointment, shall serve such findings on the public employer and the recognized employee organization. The board may make this report public seven days after it is submitted to the parties. If the dispute continues 14 days after the report is submitted to the parties, the report shall be made public.

(f) If the parties have not resolved the impasse by the end of a 40-day period, commencing with the appointment of the fact-finding board,

or by a date not later than 14 days prior to the budget submission date, whichever date occurs first: (1) The representative of the public employer involved shall submit to the governing body of the public employer involved a copy of the findings of fact and recommendations of the fact-finding board, together with the representative's recommendations for settling the dispute; (2) the employee organization may submit to such governing body its recommendations for settling the dispute; (3) the governing body or a duly authorized committee thereof shall forthwith conduct a hearing at which the parties shall be required to explain their positions; and (4) thereafter, the governing body shall take such action as it deems to be in the public interest, including the interest of the public employees involved. The provisions of this subsection shall not be applicable to the state and its agencies and employees.

(g) ~~The cost for the mediation and fact-finding services provided by the secretary of labor upon request of the board shall be borne by the secretary of labor. All other costs, including that of a neutral arbitrator, The cost for the fees of court reporters and fact finders provided by the secretary of labor upon the request of the board shall be borne equally by the parties to a dispute.~~

Sec. 3. K.S.A. 75-4327 and K.S.A. 2012 Supp. 75-4332 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 10, 2013.

CHAPTER 62

HOUSE BILL No. 2200

AN ACT concerning the executive branch chief information technology officer; relating to duties; transferring certain powers, duties and functions of the director of information systems and communications, the division of information systems and communications and the secretary of administration to the executive chief information technology officer and the office of information technology services; amending K.S.A. 48-937, 65-6138, 65-6139, 65-6140, 74-9302, 74-9303, 74-9605, 75-37,102, 75-4701, 75-4702, 75-4702c, 75-4704, 75-4704b, 75-4705, 75-4710, 75-4712, 75-4713, 75-4714, 75-4715, 75-4716, 75-6512 and 76-389 and K.S.A. 2012 Supp. 46-1503, 74-9304, 74-9306, 75-3707e, 75-4703, 75-4704a, 75-4709, 75-7202, 75-7204 and 75-7205 and repealing the existing sections.

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

New Section 1. (a) The executive chief information technology officer shall submit to the governor proposed rules and regulations with respect to the manner of performance of any power or duty of the office of information technology services, the execution of any business of such

office and its relations to and business with other state agencies, appeals from the final decisions or final actions of the executive chief information technology officer, and such other matters as are provided by law. Before any such proposed rules and regulations are submitted to the governor, the same shall have received the approval required by K.S.A. 77-420, and amendments thereto, the attorney general shall have made the finding required by K.S.A. 77-420, and amendments thereto, and the executive chief information technology officer shall have held the hearing thereon required by K.S.A. 77-421, and amendments thereto. The governor shall either approve, modify and approve or reject any such proposed rules and regulations. The executive chief information technology officer shall adopt such rules and regulations so approved or so modified and approved by the governor.

(b) All rules and regulations, orders and directives of the secretary of administration, the department of administration, the director of information systems and communications, or the division of information systems and communications which relate to the powers, duties and functions transferred from the director of information systems and communications and the division of information systems and communications of the department of administration to the executive chief information technology officer and office of information technology services by this act and which are in effect on the effective date of this act shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the executive chief information technology officer and office of information technology services until revised, amended, revoked or nullified pursuant to law.

Sec. 2. K.S.A. 2012 Supp. 46-1503 is hereby amended to read as follows: 46-1503. (a) The revisor of statutes shall contract in the name of the legislative coordinating council, and with approval of such council, for such computer programs and other computer services as cannot be suitably obtained from state agencies, and in like manner, the revisor shall acquire such computer and communications components as may be needed for this system. Purchases and other contracts authorized by the statutes contained in article 15 of chapter 46 of Kansas Statutes Annotated, *and amendments thereto*, shall not be subject to K.S.A. 75-3739, and amendments thereto, nor shall the same be subject to approval under any statute other than those contained in article 15 of chapter 46. ~~The director of information systems and communications~~ *executive chief information technology officer* and the director of purchases shall render such assistance in implementation of this system as is requested by the legislative coordinating council or the revisor of statutes.

(b) When authorized by the legislative coordinating council, the revisor of statutes may provide to or share with any other state agency computer services through the operation of the comprehensive legislative

information system. Such services may be provided without charge or, when directed by the council, shall be provided at cost as the same is determined by the council. The furnishing of computer services under this subsection (b) for which a charge is made shall be a transaction to be settled in accordance with the provisions of K.S.A. 75-5516, and amendments thereto. All receipts for charges made under this subsection (b) 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 legislative special revenue fund.

(c) When authorized by the legislative coordinating council, the revisor of statutes may provide information regarding legislation to state agencies and to private individuals, companies and organizations through access to the legislative information system. The primary purpose for the legislative information system shall be to provide necessary information and service to the legislature and offices of the legislative branch of government and the revisor of statutes shall impose such conditions and restrictions upon the receipt of information from such system by agencies, persons and organizations not a part of the legislative branch of government as may be necessary to protect such system and services for the purpose for which established. The legislative coordinating council may fix a charge for the receipt of information regarding legislation through access to the legislative information system by state agencies, private individuals, companies and organizations not a part of the legislative branch of government. Such charges shall be collected by the director of legislative administrative services upon certification by the revisor of statutes. All amounts received from charges imposed 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 legislative special revenue fund.

Sec. 3. K.S.A. 48-937 is hereby amended to read as follows: 48-937. The division of emergency management shall ascertain what means exist for rapid and efficient communications during a disaster. The division of emergency management shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or state and federal telecommunications or other communications system which may be established for purposes of emergency management. In studying the character and feasibility of any such system or its several parts, the division of emergency management shall consult thereon with the secretary of administration *and the executive chief information technology officer* and evaluate the possibility of the multi-purpose use of such a system for general state and local government purposes. The division of emergency management shall make recom-

mendations regarding such communications systems to the governor as appropriate.

Sec. 4. K.S.A. 65-6138 is hereby amended to read as follows: 65-6138. In order to provide adequate emergency medical care for the people of this state, the emergency medical services board is hereby authorized to establish, maintain and operate an emergency medical services communications system, subject to approval by the ~~secretary of administration~~ *executive chief information technology officer* under K.S.A. 75-4709, and amendments thereto. The emergency medical services board shall establish communication centers, to be known as medical communications centers, in various locations in the state to be determined by the emergency medical services board, for the purposes of receiving requests for emergency medical assistance and for coordinating the activities of ambulances with medical care facilities and other emergency public safety agencies. Subject to approval by the ~~secretary of administration~~ *executive chief information technology officer* under K.S.A. 75-4709, and amendments thereto, the emergency medical services board may provide mobile radio units to ambulance services, as hereinafter provided, which will provide such ambulance services with direct communication to or from medical communication centers established for such purpose.

Sec. 5. K.S.A. 65-6139 is hereby amended to read as follows: 65-6139. For the purpose of establishing, operating and maintaining the emergency medical services communications system, the board may enter into contracts with any state agency, and any such agency is authorized to contract for such purpose with the board. The board also may enter into contracts or other agreements with any city, county, township, fire district or hospital district, or any person, firm or corporation for the establishment of an emergency medical services communications system or the establishment or operation of any part thereof including placement, operation and maintenance of equipment. In accordance with the authority of the ~~secretary of administration~~ *executive chief information technology officer* under K.S.A. 75-4709, and amendments thereto, all contracts entered into by the board under this section shall be subject to approval by the ~~secretary of administration~~ *executive chief information technology officer*.

Any contract or agreement for the placement or operation of equipment with any ambulance service shall provide that the person, firm, corporation or municipality operating such ambulance service shall maintain such equipment in accordance with terms and conditions established by the board. The contracts, agreements or contracts for the placement of equipment in medical communication centers shall provide that such equipment shall only be used for the purpose of operating the emergency medical services communications system and that the board or the board's designated agent may inspect such equipment at any time. Ownership of any such equipment shall remain with the state and any contracts for the

placement of such equipment may be withdrawn or canceled at any time, at the option of the board and the ~~secretary of administration~~ *executive chief information technology officer* under K.S.A. 75-4709, and amendments thereto.

Sec. 6. K.S.A. 65-6140 is hereby amended to read as follows: 65-6140. For the purposes of establishing, operating and maintaining an emergency medical services communications system, the emergency medical services board may accept any grant of money or property, including any federal moneys available therefor. Within the limits of appropriations available therefor and subject to approval by the ~~secretary of administration~~ *executive chief information technology officer* under K.S.A. 75-4709, and amendments thereto, the emergency medical services board may acquire, in the name of the state, any equipment necessary for such communications system.

Sec. 7. K.S.A. 74-9302 is hereby amended to read as follows: 74-9302. It shall be the purpose of INK to perform the following duties:

(a) Provide electronic access for members of the public to public information of agencies via a gateway service;

(b) develop a dial-in gateway or electronic network for access to public information;

(c) provide appropriate oversight of any network manager;

(d) explore ways and means of expanding the amount and kind of public information provided, increasing the utility of the public information provided and the form in which provided, expanding the base of users who access such public information and, where appropriate, implementing such changes;

(e) cooperate with the ~~division of information systems and communications~~ *office of information technology services* in seeking to achieve the purposes of INK;

(f) explore technological ways and means of improving citizen and business access to public information and, where appropriate, implement such technological improvements; and

(g) explore options of expanding such network and its services to citizens and businesses by providing add-on services such as access to other for-profit information and databases and by providing electronic mail and calendaring to subscribers.

Sec. 8. K.S.A. 74-9303 is hereby amended to read as follows: 74-9303.

(a) There is hereby created a body politic and corporate to be known as the information network of Kansas, Inc. INK is hereby constituted as a public instrumentality and the exercise by INK of the authority and powers conferred by this act shall be deemed and held to be the performance of an essential governmental function.

(b) INK shall be governed by a board consisting of ~~10~~ *nine* members as follows:

- (1) ~~The president of Kansas, Inc.;~~
~~(2) The secretary of state;~~
~~(3)~~(2) two members who are chief executive officers of agencies of the executive branch, appointed by the governor who shall serve at the pleasure of the governor;
~~(4)~~(3) one member appointed by the governor from a list of three Kansas bar association members submitted by such association. Such member shall serve a three-year term;
~~(5)~~(4) three members from other user associations of a statewide character appointed by the governor from a list of not less than nine individuals and their respective user associations compiled initially by the president of Kansas, Inc. and thereafter by the board of INK and submitted to the governor. No two members appointed pursuant to this paragraph shall represent the same user association. The terms for such members shall be for a period of three years, except initially, when the terms shall be for one, two and three years, respectively;
~~(6)~~(5) one member appointed by the governor from a list submitted by the president of the Kansas public libraries association and comprised of three librarians employed by public libraries. Following the initial appointment hereunder, such list shall be comprised of librarians of public libraries which subscribe to INK. Such member shall serve a three-year term; and
~~(7)~~(6) the director of information systems and communications executive chief information technology officer who shall serve as a nonvoting member.

(c) The board shall annually elect one member from the board as chairperson of INK, another as vice-chairperson and another as secretary.

(d) Five members of the board shall constitute a quorum and the affirmative vote of five members shall be necessary for any action taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

Sec. 9. K.S.A. 2012 Supp. 74-9304 is hereby amended to read as follows: 74-9304. (a) In order to achieve its purpose as provided in this act, INK shall:

(1) Serve in an advisory capacity to the secretary of administration, ~~division of information services and communications~~ *office of information technology services* and other state agencies regarding the provision of state data to the citizens and businesses of Kansas;

(2) seek advice from the general public, its subscribers, professional associations, academic groups and institutions and individuals with knowledge of and interest in areas of networking, electronic mail, public information access, gateway services, add-on services and electronic filing of information; and

(3) develop charges for the services provided to subscribers, which include the actual costs of providing such services.

(b) All state agencies shall cooperate with INK in providing such assistance as may be requested for the achievement of its purpose. Agencies may recover actual costs incurred by providing such assistance. Services and information to be provided by any agency shall be specified pursuant to contract between INK and such agency and shall comply with the provisions of K.S.A. 45-215 et seq. and K.S.A. 2012 Supp. 45-230, and amendments thereto.

Sec. 10. K.S.A. 74-9605 is hereby amended to read as follows: 74-9605. (a) The board of directors of the Kansas guardianship program shall employ a person to serve as executive director who shall direct and supervise the general management of the corporation. The executive director shall employ persons needed to perform duties of the Kansas guardianship program as directed by the board of directors.

(b) Employees of the Kansas guardianship program shall not be considered to be state employees except that such employees may participate in the Kansas public employees retirement system. Employees of the Kansas guardianship program shall not be considered to be state employees, except for the purposes specified in this subsection (b). The ~~secretary of administration~~ *executive chief information technology officer* shall extend the use of state intercity telecommunications facilities and services under control of the ~~secretary~~ *executive chief information technology officer* pursuant to K.S.A. 75-4709, and amendments thereto, to the Kansas guardianship program. The Kansas guardianship program shall be considered to be a state agency only for the purposes specified in this subsection.

(c) The provisions of article 32 of chapter 75 of the Kansas Statutes Annotated, ~~any acts amendatory thereof or supplemental and amendments~~ thereto, and any rules and regulations adopted thereunder, shall not apply to officers or employees of the Kansas guardianship program. Subject to policies established by the Kansas guardianship program, the chairperson of the board of directors or the chairperson's designee shall approve all travel and travel expenses of such officers and employees.

Sec. 11. K.S.A. 2012 Supp. 75-3707e is hereby amended to read as follows: 75-3707e. As the infrastructure provider for information technology for the state of Kansas, the ~~department of administration~~ *office of information technology services* must insure the highest level of information security and privacy in order to protect law enforcement, state agencies and the citizens of Kansas. Toward this objective, the ~~department of administration~~ *or the office of information technology services* shall require as a condition of employment that individuals who have unescorted physical access to the data center, telecommunications facilities and other security sensitive areas as designated by the secretary of

administration or the executive chief information technology officer be fingerprinted, and such fingerprints shall be submitted to the Kansas bureau of investigation and to the federal bureau of investigation for the purposes of verifying the identity of such individuals and obtaining records of criminal arrests and convictions.

Sec. 12. K.S.A. 75-37,102 is hereby amended to read as follows: 75-37,102. (a) Upon request of the chief administrative officer of a state agency and subject to the approval of the secretary of administration, the director of purchases may convene a procurement negotiating committee to obtain services or technical products for the state agency.

(b) Each procurement negotiating committee shall be composed of: (1) The director of purchases, or a person designated by the director; (2) the chief administrative officer of the state agency desiring to make the procurement, or a person designated by the officer; and (3) the secretary of administration, or a person designated by the secretary *or, if a procurement involves information technology or services, the executive chief information technology officer or a person designated by the executive chief information technology officer.*

(c) The negotiating committee is authorized to negotiate for the procuring state agency contracts with qualified parties to provide services or technical products needed by the state agency.

(d) Prior to negotiating for the procurement, a notice to bidders first shall be published in the Kansas register. Upon receipt of bids or proposals, the committee may negotiate with one or more of the firms submitting bids or proposals and select from among those submitting such bids or proposals the party to contract with to provide the services or technical products.

(e) Contracts entered into pursuant to this section shall not be subject to the provisions of K.S.A. 75-3738 through 75-3740a, and amendments thereto. Meetings to conduct negotiations pursuant to this section shall not be subject to the provisions of K.S.A. 75-4317 through 75-4320a, and amendments thereto. The director of purchases shall submit a report at least once in each calendar quarter to the legislative coordinating council and the chairpersons of the senate committee on ways and means and the house of representatives committee on appropriations of all contracts entered into pursuant to this section. In the event that the negotiating committee selects a bid which is not the lowest bid on a given contract, the directors report shall contain a rationale explaining why the lowest bidder was not awarded the contract.

(f) Nothing in this section shall be construed as requiring either negotiations pursuant to this section or bids pursuant to K.S.A. 75-3739, and amendments thereto, for the procurement of professional services or services for which, in the judgment of the director of purchases, meaningful specifications cannot be determined.

Sec. 13. K.S.A. 75-4701 is hereby amended to read as follows: 75-4701. (a) There is hereby established, ~~within and as a part of the department of administration, a division of information systems and communications, the head of which shall be the director of information systems and communications. Under the supervision of the secretary of administration, the director of information systems and communications shall administer the division of information systems and communications~~ *an office of information technology services, the head of which shall be the executive chief information technology officer. The executive chief information technology officer shall administer the office of information technology services.* The division of information systems and ~~computing communications~~ and the office of the director of information systems and ~~computing communications~~, created by this section prior to its amendment by this act, are hereby abolished.

(b) ~~The director of information systems and communications~~ *executive chief information technology officer* shall be in the unclassified service under the Kansas civil service act and shall be appointed by the ~~secretary of administration~~ *governor*.

(c) There are hereby established, ~~within the division of information systems and communications~~ *office of information technology services*, the offices of the deputy director of information systems and the deputy director of telecommunications who shall be appointed by the ~~director of information systems and communications, subject to approval by the secretary of administration,~~ *executive chief information technology officer* and shall be in the unclassified service under the Kansas civil service act. The deputy director of information systems and the deputy director of telecommunications shall have such powers, duties and functions as are prescribed by the ~~director of information systems and communications~~ *executive chief information technology officer*.

Sec. 14. K.S.A. 75-4702 is hereby amended to read as follows: 75-4702. (a) All of the powers, duties and functions of the existing director of information systems and ~~computing communications~~ and division of information systems and ~~computing communications~~ are hereby transferred to and conferred and imposed upon the ~~director of information systems and communications~~ *executive chief information technology officer*, except as otherwise provided by this act.

(b) ~~The director of information systems and communications~~ *executive chief information technology officer* shall be the successor in every way to the powers, duties and functions of the director of information systems and ~~computing communications~~ and division of information systems and ~~computing communications~~ in which the same were vested prior to July 1, 1984, except as otherwise provided by this act *the effective date of this act*. Every act performed in the exercise of such powers, duties and functions by or under the authority of the ~~director of information~~

~~systems and communications~~ *executive chief information technology officer* shall be deemed to have the same force and effect as if performed by the director of information systems and ~~computing communications~~ and division of information systems and ~~computing communications~~ in which such functions were vested prior to ~~July 1, 1984~~ *the effective date of this act.*

(c) Whenever the director of information systems and computing ~~or~~, the division of information systems and computing, *the division of information systems and communications*, or the director of information systems and communications, 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 ~~director of information systems and communications~~ *executive chief information technology officer.*

Sec. 15. K.S.A. 75-4702c is hereby amended to read as follows: 75-4702c. (a) In all cases under this act where the powers, duties and functions of the division or director of information systems and ~~computing communications~~ are transferred to and imposed upon the ~~secretary of administration or the division or director of information systems and communications~~, *the division of information systems and communications office of information technology services, the executive chief information technology officer* shall succeed to all property and records which were used for, or pertain to, the performance of the powers, duties and functions so transferred by this act. Any conflict as to the proper disposition of such property or records arising under this section and resulting from the transfer or abolishment of any existing state agency, or the powers, duties and functions thereof, shall be determined by the governor, whose decision shall be final.

(b) When any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of any abolishment, transfer, attachment or other change made by ~~this act~~, or under authority of this act, *or the act of which this section is amendatory*, such conflict shall be resolved by the governor, and the decision of the governor shall be final.

(c) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any existing state agency mentioned in this act, *or the act of which this section is amendatory*, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of official duties, shall abate by reason of the taking effect of reorganization under the provisions of this act, *or the act of which this section is amendatory*. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such existing state agency, or any officer affected.

(d) No criminal action commenced or which could have been com-

menced by the state shall abate by the taking effect of this act, *or the act of which this section is amendatory.*

Sec. 16. K.S.A. 2012 Supp. 75-4703 is hereby amended to read as follows: 75-4703. ~~The secretary of administration~~ *executive chief information technology officer* may adopt rules and regulations as provided in ~~K.S.A. 75-3706~~ *section 1*, and amendments thereto, relating to the following:

(a) Establishment of rates and charges for services performed by the ~~division of information systems and communications~~ *office of information technology services* for any other division, department, state agency or governmental unit. Such rates and charges shall be maintained by a cost system in accordance with generally accepted accounting principles. In determining cost rates for billing to agencies or governmental units, overhead expenses shall include but not be limited to light, heat, power, insurance, labor and depreciation. Billings shall include direct and indirect costs and shall be based on the foregoing cost accounting practices.

(b) For determination of priorities for services performed by the ~~division of information systems and communications~~ *office of information technology services*, including authority to decline new projects under specified conditions.

(c) Specification of standards for submission of data to be processed by the ~~division of information systems and communications~~ *office of information technology services* and the programs for processing the data, including authority to decline to process computer programs and projects not conforming to published standards. Such standards shall be consistent with the standards and policies adopted by the information technology executive council under K.S.A. 2012 Supp. 75-7203, and amendments thereto.

(d) Specification of standards and measures relating to security, confidentiality and availability of data processed by the ~~division of information systems and communications~~ *office of information technology services*. Such standards and measures shall be consistent with the standards and policies adopted by the information technology executive council under K.S.A. 2012 Supp. 75-7203, and amendments thereto.

Sec. 17. K.S.A. 2012 Supp. 74-9306 is hereby amended to read as follows: 74-9306. ~~The division of information services and communications~~ *office of information technology services* shall provide to INK such staff and other assistance as may be requested thereby, and the actual costs of such assistance shall be paid for by INK.

Sec. 18. K.S.A. 75-4704 is hereby amended to read as follows: 75-4704. Under the supervision of the ~~secretary of administration, the division of information systems and communications~~ *executive chief information technology officer, the office of information technology services shall provide data processing and appli-*

cation hosting services for other divisions, departments and agencies of the state, and shall make charges for such services in accordance with the cost system established under K.S.A. 75-4703, and amendments thereto. The furnishing of data processing services ~~by the division of information systems and communications~~ and *application hosting by the office of information technology services* shall be a transaction to be settled in accordance with the provisions of K.S.A. 75-5516, and amendments thereto. All receipts for sales of services shall be deposited in the information technology fund created under K.S.A. 75-4715, and amendments thereto. The provisions of K.S.A. 75-4215, and amendments thereto, shall apply to the information technology fund to the extent not in conflict with this act.

Sec. 19. K.S.A. 2012 Supp. 75-4704a is hereby amended to read as follows: 75-4704a. (a) Transfers to the information technology reserve fund shall be made from the information technology fund on a monthly basis and the amounts thereof shall be determined by the ~~director of information systems and communications, subject to approval by the secretary of administration, as charges for depreciation and obsolescence of the division of information systems and communications~~ *executive chief information technology officer as charges for depreciation and obsolescence of the office of information technology services* equipment and programs according to generally accepted accounting principles prescribed by the director of accounts and reports. All recoveries from the sale of surplus, obsolete or unused equipment or of other expenditures from the information technology fund 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 information technology reserve fund. The director of accounts and reports shall transfer each month the amount so determined. No such transfer shall constitute a charge against or decrease in any expenditure limitation then in effect on the information technology fund under any appropriations act of the legislature.

(b) Expenditures from the information technology reserve fund may be made for equipment and programs needed for the operation of the ~~division of information systems and communications~~ *office of information technology services*.

Sec. 20. K.S.A. 75-4704b is hereby amended to read as follows: 75-4704b. Appropriations may be made for capital outlay and other expenses to carry out the purpose of the ~~division of information systems and communications~~ *office of information technology services* for the same period as is authorized by K.S.A. 46-155, and amendments thereto, for capital improvements. The ~~director of information systems and communications, with the approval of the secretary of administration,~~ *executive chief in-*

formation technology officer may enter into multiple year lease or acquisition contracts, subject to state purchasing laws not in conflict with the foregoing authorization and so long as such contracts do not extend beyond the appropriation periods, limitations and restrictions therefor.

Sec. 21. K.S.A. 75-4705 is hereby amended to read as follows: 75-4705. (a) Central processing of data by computer, for all divisions, departments and agencies of the state shall be performed by the ~~division of information systems and communications, under the supervision of the secretary of administration~~ *office of information technology services under the supervision of the executive chief information technology officer*. No other division, department or agency of the state shall perform central processing computer functions or control or possess any central processing unit of a computer, except as otherwise provided in this section.

(b) With the approval of the ~~secretary of administration~~ *executive chief information technology officer*, any division, department or agency of the state may possess and operate central processing units of a computer if the same are adjunct to the central processing computer unit or units of the ~~division of information systems and communications~~ *office of information technology services*.

(c) Data to be centrally processed by the ~~division of information systems and communications~~ *office of information technology services* shall be prepared for such processing by the division, department or agency of the state requesting the same to be processed in accordance with rules and regulations adopted by the ~~secretary of administration~~ *executive chief information technology officer* as provided in K.S.A. 75-4703, and amendments thereto. Programs for processing the data of any division, department or agency of the state shall be prepared by such division, department or agency of the state in accordance with standards prescribed by rules and regulations adopted by the ~~secretary of administration~~ *executive chief information technology officer* as provided in K.S.A. 75-4703, and amendments thereto. Notwithstanding the other provisions of this subsection, the ~~division of information systems and communications~~ *office of information technology services* shall prepare data or programs, or provide technical consultation, when a division, department or agency of the state requests such service of the ~~division of information systems and communications and the director of information systems and communications, subject to the approval of the secretary of administration~~ *office of information technology services and the executive chief information technology officer*.

(d) This section shall not apply to the universities under the jurisdiction and control of the state board of regents.

Sec. 22. K.S.A. 2012 Supp. 75-4709 is hereby amended to read as follows: 75-4709. (a) The ~~secretary of administration~~ *executive chief information technology officer* shall provide for and coordinate all telecom-

munications services for all divisions, departments and agencies of the state pursuant to policies established by the information technology executive council. The ~~secretary of administration~~ *executive chief information technology officer* shall have the authority to control the acquisition, retention and use of all telecommunications services for all divisions, departments and agencies of the state, and to develop and review plans and specifications for telecommunications services throughout the state.

(b) The ~~secretary of administration~~ *executive chief information technology officer*, when feasible, may enter into agreements with any entity defined in this subsection extending to such entity the use of state intercity telecommunications facilities and services under the control of the ~~secretary~~ *executive chief information technology officer*.

As used in this subsection, an “entity” means:

(1) Any governmental unit, including any state agency, taxing subdivision of the state or municipality; or

(2) any hospital or nonprofit corporation which the ~~secretary~~ *executive chief information technology officer* determines to be performing any state function on an ongoing basis through agreement or otherwise, or any function which will assist a governmental unit in attaining an objective or goal, bearing a valid relationship to powers and functions of such unit.

(c) Every record made, maintained or kept by the secretary of administration or the division of information systems and communications, *prior to the effective date of this act, shall be maintained or kept by the executive chief information technology officer or the office of information technology services*, or any agency or instrumentality thereof, which relates to the acquisition, retention or use of telecommunications services provided to any division, department or agency of the state, state officer or governmental unit and which pertains to individually identifiable individuals using such telecommunication services shall constitute for purposes of the open records act a record of the division, department or agency of the state, state officer or governmental unit to which such records relate. The official custodian of such records for the purposes of the open records act shall be the official custodian of the records of such division, department or agency of the state, state officer or governmental unit.

Sec. 23. K.S.A. 75-4710 is hereby amended to read as follows: 75-4710. As used in K.S.A. 75-4709, 75-4712, 75-4713 and 75-4714, and ~~amendments to those sections thereto~~, telecommunications services include, but shall not be limited to, any transmission, emission or reception of signals of any kind containing communications of any nature, by wire, radio, optical or other electromagnetic means, and includes all facilities, equipment, supplies and services for such transmission, emission or reception. Telecommunications services shall include data transmission services and equipment but shall not include data processing services

provided or authorized by the ~~division of information systems and communications~~ *office of information technology services*, or the acquisition, retention or use of any data processing equipment authorized by the ~~division of information systems and communications~~ *office of information technology services*.

Sec. 24. K.S.A. 75-4712 is hereby amended to read as follows: 75-4712. The ~~secretary of administration~~ *executive chief information technology officer* shall adopt rules and regulations as provided in ~~K.S.A. 75-3706~~ *section 1*, and amendments thereto, for the acquisition, retention and use of telecommunications services by all divisions, departments and agencies of the state and by private, nonprofit corporations and governmental units which have entered into agreements with the ~~secretary of administration~~ *executive chief information technology officer* under K.S.A. 75-4709, and amendments thereto, and for the purposes of administering and enforcing the provisions of this act.

Sec. 25. K.S.A. 75-4713 is hereby amended to read as follows: 75-4713. (a) The telecommunications negotiating committee is a three-person committee composed of (1) the ~~secretary of administration~~ *governor*, or a person designated by the ~~secretary of administration~~ *governor*, (2) the director of purchases, or a person designated by the director of purchases, and (3) the ~~director of the division of information systems and communications~~ *executive chief information technology officer*, or a person appointed by the ~~director of information systems and communications~~ *executive chief information technology officer*. The telecommunications negotiating committee may negotiate contracts for telecommunications services to be entered into by the ~~secretary of administration~~ *executive chief information technology officer* for state agencies and other entities as provided in K.S.A. 75-4709, and amendments thereto.

(b) Prior to negotiating for telecommunications services, the committee shall advertise for sealed proposals. The committee then may negotiate with one or more firms submitting proposals and select from among those submitting such proposals the party to contract with for the purpose of providing telecommunications services.

(c) Contracts entered into pursuant to this section for telecommunications services shall not be subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive, and amendments thereto.

Sec. 26. K.S.A. 75-4714 is hereby amended to read as follows: 75-4714. Except as otherwise provided by law and subject to the provisions of appropriations acts relating thereto, all fees and charges imposed by the ~~secretary of administration~~ *executive chief information technology officer* for telecommunications services provided or contracted for by the ~~secretary~~ *executive chief information technology officer* shall be deposited in the state treasury and credited to the information technology fund.

Sec. 27. K.S.A. 75-4715 is hereby amended to read as follows: 75-

4715. (a) There is hereby created in the state treasury the information technology 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 administration~~ *executive chief information technology officer* or by a person designated by the ~~secretary~~ *executive chief information technology officer*.

(b) On the effective date of this act, the director of accounts and reports shall transfer all moneys in the computer services fund, created under K.S.A. 75-4704, *and amendments thereto*, and the state communications services fund, created under K.S.A. 75-4714, *and amendments thereto*, to the information technology fund.

(c) On the effective date of this act, all liabilities of the computer services fund and the state communications services fund are hereby imposed on the information technology fund, and the computer services fund and the state communications services fund are hereby abolished. Any reference to such funds abolished by this section in any statute, contract or other document shall be deemed to refer to the information technology fund.

Sec. 28. K.S.A. 75-4716 is hereby amended to read as follows: 75-4716. (a) There is hereby created in the state treasury the information technology reserve 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 administration~~ *executive chief information technology officer* or by a person designated by the ~~secretary~~ *executive chief information technology officer*.

(b) On the effective date of this act, the director of accounts and reports shall transfer all moneys in the computer services depreciation reserve fund, created under K.S.A. 75-4704a, *and amendments thereto*, to the information technology reserve fund. On the effective date of this act, all liabilities of the computer services depreciation reserve fund are hereby imposed on the information technology reserve fund, and the computer services depreciation reserve fund is hereby abolished. Any reference to such fund abolished by this section in any statute, contract or other document shall be deemed to refer to the information technology reserve fund.

Sec. 29. K.S.A. 75-6512 is hereby amended to read as follows: 75-6512. (a) Subject to the provisions of appropriations acts, the secretary of administration is hereby authorized to establish and administer a cafeteria plan pursuant to the provisions of section 125 of the federal internal revenue code of 1986 which shall be available to persons who are officers or employees of the state and who are qualified to participate in the state health care benefits program and which shall include, but not be limited

to, provisions under which such officers and employees may agree to receive reduced compensation and: (1) Have the state's contribution under K.S.A. 75-6508, and amendments thereto, cover costs of dependent benefit coverage or other benefits under the state health care benefits program which would otherwise be payable by such officers and employees; and (2) receive benefits under the state employee dependent care assistance program under K.S.A. 75-6520, *and amendments thereto*.

(b) Any reduction in compensation for any person pursuant to any such cafeteria plan shall not reduce the compensation of such person for purposes of the employment security law, workers compensation act or the purposes of determining contributions and benefits under the Kansas public employees retirement system or any retirement system administered by the board of trustees of the Kansas public employees retirement system.

(c) Implementation of any such cafeteria plan and any additions or deletions thereto shall be subject to approval of the secretary of administration *and the office of information technology services* to assure adequate data processing resources therefor within the ~~division of information systems and communications of the department of administration~~ *office of information technology services*.

Sec. 30. K.S.A. 2012 Supp. 75-7202 is hereby amended to read as follows: 75-7202. (a) There is hereby established the information technology executive council which shall be attached to the ~~department of administration~~ *office of information technology services* for purposes of administrative functions.

(b) The council shall be composed of 17 voting members as follows: The secretary of administration; two cabinet agency heads; one noncabinet agency head; the director of the budget; the executive chief information technology officer; the legislative chief information technology officer; the judicial chief information technology officer and the judicial administrator of the Kansas supreme court; the executive director of the Kansas board of regents; the commissioner of education; ~~one representative~~ *two representatives* of cities; ~~one representative~~ *two representatives* of counties; the network manager of the information network of Kansas (INK); and ~~three representatives~~ *one representative* from the private sector who ~~are~~ *is* a chief executive ~~officers~~ *officer* or chief information technology ~~officers~~ *officer*. The chief information technology architect shall be a nonvoting member of the council. The two cabinet agency heads, the noncabinet agency head, the ~~representative~~ *representatives* of cities, the ~~representative~~ *representatives* of counties and the ~~representatives~~ *representative* from the private sector shall be appointed by the governor for a term not to exceed 18 months. Upon expiration of an appointed member's term, the member shall continue to hold office until the appointment of a successor. Nonappointed members shall serve ex officio.

(c) ~~The secretary of administration shall serve as the chairperson of the council.~~ *The chairperson of the council shall be drawn from the chief information technology officers, with each chief information technology officer serving a one-year term. The term of chairperson shall rotate among the chief information technology officers on an annual basis.*

(d) The council shall hold meetings and hearings in the city of Topeka or at such other places as the council designates, on call of the chairperson or on request of four or more members.

(e) Members of the council may not appoint an individual to represent them on the council and only members of the council may vote.

(f) Members of the council shall receive mileage, tolls and parking as provided in K.S.A. 75-3223, and amendments thereto, for attendance at any meeting of the council or any subcommittee meeting authorized by the council.

Sec. 31. K.S.A. 2012 Supp. 75-7204 is hereby amended to read as follows: 75-7204. (a) There is hereby established, within and as a part of the ~~department of administration, the office of chief information technology architect, the head of which shall be the chief information technology architect. Under the supervision of the secretary of administration, the chief information technology architect shall administer the office of the chief information technology architect~~ *office of information technology services, the position of chief information technology architect whose duties shall be performed under the supervision of the executive chief information technology officer.* The chief information technology architect shall be in the unclassified service under the Kansas civil service act, shall be appointed by the ~~secretary of administration~~ *executive chief information technology officer*, subject to approval of the governor and shall receive compensation in an amount fixed by the ~~secretary of administration~~ *executive chief information technology officer*, subject to approval of the governor.

(b) The chief information technology architect shall:

(1) Propose to the information technology executive council: (A) Information technology resource policies and procedures and project management methodologies for all state agencies; (B) an information technology architecture, including telecommunications systems, networks and equipment, that covers all state agencies; (C) standards for data management for all state agencies; and (D) a strategic information technology management plan for the state;

(2) serve as secretary to the information technology executive council; and

(3) perform such other functions and duties as provided by law or as directed by the ~~secretary of administration~~ *executive chief information technology officer.*

Sec. 32. K.S.A. 2012 Supp. 75-7205 is hereby amended to read as

follows: 75-7205. (a) There is hereby established within and as a part of the ~~department of administration~~ *office of information technology services* the position of executive chief information technology officer. The executive chief information technology officer shall be in the unclassified service under the Kansas civil service act, shall be appointed by the ~~secretary of administration, subject to approval of the~~ governor, and shall receive compensation in an amount fixed by the ~~secretary of administration, subject to approval of the~~ governor. The executive chief information technology officer shall maintain a presence in any cabinet established by the governor and shall report to ~~both the governor and the secretary of administration.~~

(b) The executive chief information technology officer shall:

(1) Review and consult with each executive agency regarding information technology plans, deviations from the state information technology architecture, information technology project estimates and information technology project changes and overruns submitted by such agency pursuant to K.S.A. 2012 Supp. 75-7209, and amendments thereto, to determine whether the agency has complied with: (A) The information technology resource policies and procedures and project management methodologies adopted by the information technology executive council; (B) the information technology architecture adopted by the information technology executive council; (C) the standards for data management adopted by the information technology executive council; and (D) the strategic information technology management plan adopted by the information technology executive council;

(2) report to the chief information technology architect all deviations from the state information architecture that are reported to the executive information technology officer by executive agencies;

(3) submit recommendations to the division of the budget as to the technical and management merit of information technology project estimates and information technology project changes and overruns submitted by executive agencies pursuant to K.S.A. 2012 Supp. 75-7209, and amendments thereto, based on the determinations made pursuant to subsection (b)(1);

(4) monitor executive agencies' compliance with: (A) The information technology resource policies and procedures and project management methodologies adopted by the information technology executive council; (B) the information technology architecture adopted by the information technology executive council; (C) the standards for data management adopted by the information technology executive council; and (D) the strategic information technology management plan adopted by the information technology executive council;

(5) coordinate implementation of new information technology among executive agencies and with the judicial and legislative chief information technology officers;

(6) designate the ownership of information resource processes and the lead agency for implementation of new technologies and networks shared by multiple agencies within the executive branch of state government; and

(7) perform such other functions and duties as provided by law or as directed by the ~~secretary of administration~~ *governor*.

Sec. 33. K.S.A. 76-389 is hereby amended to read as follows: 76-389.

(a) Within the limits of appropriations therefor, the university of Kansas medical center is hereby authorized to establish, maintain and operate a telemedicine communications system, subject to the approval by the ~~secretary of administration~~ *executive chief information technology officer* under K.S.A. 75-4709, and amendments thereto. The telemedicine communications system shall apply telecommunications technology to the practice of medicine through compressed, full-motion, high-resolution, two-way interactive video communication and information transfer over long distances within a medical setting.

(b) For the purpose of establishing, operating and maintaining the telemedicine communications system, the university of Kansas medical center may enter into contracts with any state agency, and any such agency is authorized to contract for such purpose with the university of Kansas medical center. The university of Kansas medical center in addition may enter into contracts or other agreements with any municipality as defined under K.S.A. 75-1117, and amendments thereto, medical facility as defined under K.S.A. 65-411, and amendments thereto, individual, firm, partnership, corporation or other business entity for the establishment of the telemedicine communications system or the establishment or operation of any part thereof including placement, operation and maintenance of equipment. In accordance with the authority of the ~~secretary of administration~~ *executive chief information technology officer* under K.S.A. 75-4709, and amendments thereto, all contracts entered into by the university of Kansas school of medicine under this section shall be subject to approval by the ~~secretary of administration~~ *executive chief information technology officer*. Standards and qualifications for utilization of the telemedicine communications system shall be established by the telemedicine advisory committee.

(c) For the purpose of establishing, operating and maintaining the telemedicine communications system, the university of Kansas medical center may accept any grant of money or property, including any federal moneys available therefor. Within the limits of appropriations therefor and subject to approval by the ~~secretary of administration~~ *executive chief information technology officer* under K.S.A. 75-4709, and amendments thereto, the university of Kansas medical center may acquire, in the name of the state, any equipment necessary for the telemedicine communications system.

(d) As part of the telemedicine communications system under this section and within the limits of appropriations therefor, the university of Kansas medical center may provide and may fix, charge and collect fees, which shall be deposited in the state treasury to the credit of one or more special revenue funds as specified by the vice-chancellor, for the following services:

- (1) Clinical and educational telemedicine services;
- (2) consulting services pertaining to the technology, system capability, clinical services supported and basic telemedicine information;
- (3) system design information;
- (4) advice and assistance on equipment and acquisition installation;
- (5) coordination with serving telephone companies and attachment to telecommunications networks;
- (6) system training;
- (7) coordination of system upgrades;
- (8) clearinghouse for telemedicine information; and
- (9) such other services as may be necessary in establishing, operating and maintaining the telemedicine communications system.

(e) There is hereby established the telemedicine advisory committee to consist of five members. The members of the telemedicine advisory committee shall be appointed by the chancellor of the university of Kansas. Of the members of the telemedicine advisory committee, one member shall be a representative of the Kansas medical society and one member shall be a representative of the Kansas hospital association. The chancellor shall designate the member who is chairperson of the telemedicine advisory committee. Vacancies on the telemedicine advisory committee shall be filled in like manner as original appointments. The telemedicine advisory committee shall meet periodically upon the call of the chairperson of the telemedicine advisory committee. Members of the telemedicine advisory committee attending meetings of the committee, or attending a subcommittee meeting thereof authorized by the committee, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto. The telemedicine advisory committee shall make recommendations to the university of Kansas medical center in regard to the administration of the provisions of this section, shall establish standards and qualifications for utilization of the telemedicine communications system in accordance with subsection (b) and shall perform such other duties as may be required by law.

Sec. 34. K.S.A. 48-937, 65-6138, 65-6139, 65-6140, 74-9302, 74-9303, 74-9605, 75-37,102, 75-4701, 75-4702, 75-4702c, 75-4704, 75-4704b, 75-4705, 75-4710, 75-4712, 75-4713, 75-4714, 75-4715, 75-4716, 75-6512 and 76-389 and K.S.A. 2012 Supp. 46-1503, 74-9304, 74-9306, 75-3707e, 75-4703, 75-4704a, 75-4709, 75-7202, 75-7204 and 75-7205 are hereby repealed.

Sec. 35. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 10, 2013.

CHAPTER 63

HOUSE BILL No. 2217°

AN ACT concerning crimes, criminal procedure and punishment;
relating to female genital mutilation.

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

Section 1. (a) Female genital mutilation is:

(1) Knowingly circumcising, excising, or infibulating the whole or any part of the labia majora, labia minora or clitoris of a female under 18 years of age;

(2) removing a female under 18 years of age from this state for the purpose of circumcising, excising, or infibulating the whole or any part of the labia majora, labia minora or clitoris of such female; or

(3) causing or permitting another to perform the conduct described in subsection (a)(1) or (a)(2) when the person causing or permitting such conduct is the parent, legal guardian or caretaker of the victim.

(b) Female genital mutilation is a severity level 3, person felony.

(c) The provisions of this section shall not apply if:

(1) The physical health of the female under 18 years of age makes circumcising, excising or infibulating the whole or any part of her labia majora, labia minora or clitoris medically necessary pursuant to the order of a physician, and such procedure is performed by a physician; or

(2) the female under 18 years of age is in labor or has just given birth, and such labor or birth makes circumcising, excising or infibulating the whole or any part of her labia majora, labia minora or clitoris medically necessary pursuant to the order of a physician, and such procedure is performed by a physician.

(d) It shall not be a defense that the conduct described in subsection (a):

(1) Is required as a matter of custom, ritual or religious practice; or

(2) that the victim, or such victim's parent, legal guardian or caretaker consented to the procedure.

(e) As used in this section:

(1) "Caretaker" means any person that willfully assumes responsibility for the care of a female under the age of 18; and

(2) "physician" means any person licensed by the state board of healing arts to practice medicine and surgery.

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

Approved April 10, 2013.

CHAPTER 64
HOUSE BILL No. 2278

AN ACT concerning crimes, criminal procedure and punishment; relating to theft, burglary and criminal deprivation; relating to firearms; amending K.S.A. 2012 Supp. 21-5801, 21-5803 and 21-5807 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 21-5801 is hereby amended to read as follows: 21-5801. (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, *except as provided in subsection (b)(7)*;

(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) *or* (b)(7);

(5) property ~~regardless~~ of the value of *less than \$1,000* 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; *and*

(7) *property which is a firearm of the value of less than \$25,000 is a severity level 9 nonperson felony.*

(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. 2012 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. 2. K.S.A. 2012 Supp. 21-5803 is hereby amended to read as follows: 21-5803. (a) Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to temporarily deprive the owner of the use thereof, without the owner’s consent but not with the intent of permanently depriving the owner of the possession, use or benefit of such owner’s property.

(b) (1) (A) Criminal deprivation of property that is a motor vehicle is a:

(i) Class A nonperson misdemeanor, except as provided in subsection (b)(1)(A)(ii); and

(ii) severity level 9, nonperson felony upon a third or subsequent conviction.

(B) Upon a first conviction of subsection (b)(1)(A), a person shall be sentenced to not less than 30 days nor more than one year’s imprisonment and fined not less than \$100. Upon a second conviction of subsection (b)(1)(A), a person shall be sentenced to not less than 60 days nor more than one year’s imprisonment and fined not less than \$200. 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.

(2) *Criminal deprivation of property that is a firearm is a severity level 9, nonperson felony.*

~~(2)~~(3) Criminal deprivation of property other than a motor vehicle *or a firearm* is a class A nonperson misdemeanor. Upon a second or subsequent conviction of this paragraph, a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100.

~~(2)~~(4) The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice.

(c) As used in this section, “motor vehicle” means the same as in K.S.A. 8-1437, and amendments thereto.

Sec. 3. K.S.A. 2012 Supp. 21-5807 is hereby amended to read as follows: 21-5807. (a) Burglary is, without authority, entering into or remaining within any:

(1) Dwelling, with intent to commit a felony, theft or sexually motivated crime therein;

(2) building, manufactured home, mobile home, tent or other structure which is not a dwelling, with intent to commit a felony, theft or sexually motivated crime therein; or

(3) vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony, theft or sexually motivated crime therein.

(b) Aggravated burglary is, without authority, entering into or remaining within any building, manufactured home, mobile home, tent or other structure, or any vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property in which there is a human being with intent to commit a felony, theft or sexually motivated crime therein.

(c) (1) Burglary as defined in:

(A) Subsection (a)(1) is a severity level 7, person felony, *except as provided in subsection (c)(2)*;

(B) subsection (a)(2) is a severity level 7, nonperson felony, *except as provided in subsection (c)(2)*; ~~and~~

(C) subsection (a)(3) is a severity level 9, nonperson felony, *except as provided in subsection (c)(2)*; and

(2) *subsection (a)(1), (a)(2) or (a)(3) with the intent to commit the theft of a firearm is a severity level 5, nonperson felony.*

~~(2)~~(3) Aggravated burglary is a severity level 5, person felony.

(d) As used 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.

Sec. 4. K.S.A. 2012 Supp. 21-5801, 21-5803 and 21-5807 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 10, 2013.

CHAPTER 65

HOUSE BILL No. 2294

AN ACT concerning the Kansas uniform securities act; amending K.S.A. 17-12a302, 17-12a402 and 17-12a411 and repealing the existing sections.

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

Section 1. K.S.A. 17-12a302 is hereby amended to read as follows: 17-12a302. (a) *Required filing of records.* With respect to a federal covered security, as defined in section 18(b)(2) of the securities act of 1933 (15 U.S.C. ~~section~~ § 77r(b)(2)), that is not otherwise exempt under K.S.A. 17-12a201 through 17-12a203, and amendments thereto, a rule adopted or order issued under this act may require the filing of any or all of the following records:

(1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the securities act of 1933 and a consent to service of process complying with K.S.A. 17-12a611, and amendments thereto, signed by the issuer and the payment of a fee not to exceed \$2,500;

(2) after the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the securities act of 1933; and

(3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the securities and exchange commission and payment of a fee not to exceed \$2,500.

(b) *Notice filing effectiveness and renewal.* A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this act to be filed and by paying a renewal fee not to exceed \$2,500. A previously filed consent to service of process complying with K.S.A. 17-12a611, and amendments thereto, may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) *Notice filings for federal covered securities under Section 18(b)(4)(~~D~~)(E).* With respect to a security that is a federal covered security under section 18(b)(4)(~~D~~)(E) of the securities act of 1933 (15 U.S.C. ~~section~~ § 77r(b)(4)(~~D~~)(E)), a rule under this act may require: (1) A notice filing by or on behalf of an issuer to include a copy of form D,

including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with K.S.A. 17-12a611, and amendments thereto, signed by the issuer, not later than 15 days after the first sale of the federal covered security in this state; and (2) the payment of a fee not to exceed \$2,500 for a timely filing and the payment of a fee not to exceed \$5,000 for any late filing.

(d) *Stop orders.* Except with respect to a federal security under section 18(b)(1) of the securities act of 1933 (15 U.S.C. ~~section~~ § 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator other than a late filing fee.

Sec. 2. K.S.A. 17-12a402 is hereby amended to read as follows: 17-12a402. (a) *Registration requirement.* It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection (b).

(b) *Exemptions from registration.* The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(~~h~~)(~~2~~)(i)(3) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78(~~o~~)(~~2~~)(i)(3));

(2) an individual who represents a broker-dealer that is exempt under K.S.A. 17-12a401(b) or (d), and amendments thereto;

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by K.S.A. 17-12a202, and amendments thereto, other than K.S.A. 17-12a202 (11) and (14), and amendments thereto;

(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(~~D~~)(E) of the securities act of 1933 (15 U.S.C. ~~section~~ § 77r(b)(3) or 77r(b)(4)(~~D~~)(E)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) an individual who represents a broker-dealer registered in this state under K.S.A. 17-12a401(a), and amendments thereto, or exempt from registration under K.S.A. 17-12a401(b), and amendments thereto, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) any other individual exempted by rule adopted or order issued under this act.

(c) *Registration effective only while employed or associated.* The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this act or an issuer that is offering, selling, or purchasing its securities in this state.

(d) *Limit on employment or association.* It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) *Limit on affiliations.* An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this act.

Sec. 3. K.S.A. 17-12a411 is hereby amended to read as follows: 17-12a411. (a) *Financial requirements.* Subject to section 15(h)(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o(h)(i)) or section 222 of the investment advisers act of 1940 (15 U.S.C. ~~section 80b-22~~ § 80b-18a), a rule adopted or order issued under this act may establish minimum financial requirements for broker-dealers registered or required to be registered under this act and investment advisers registered or required to be registered under this act.

(b) *Financial reports.* Subject to section 15(h)(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o(h)(i)) or section 222(b) of the investment advisers act of 1940 (15 U.S.C. ~~section 80b-22~~ § 80b-18a), a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall file such financial reports as are required by a rule adopted or order issued under this act. If the information contained in a record filed

under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) *Recordkeeping.* Subject to section 15(~~4~~)(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o(~~4~~)(i)) or section 222 of the investment advisers act of 1940 (15 U.S.C. ~~section 80b-22~~ § 80b-18a):

(1) A broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this act;

(2) broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under section 17(a) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78q(a)) if they are readily accessible to the administrator; and

(3) investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this act.

(d) *Audits or inspections.* The records of every person issuing or guaranteeing any securities subject to the provisions of this act and of every broker-dealer, agent, investment adviser or investment adviser representative registered or required to be registered under this act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) *Custody and discretionary authority bond or insurance.* Subject to section 15(~~4~~)(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o(~~4~~)(i)) or section 222 of the investment advisers act of 1940 (15 U.S.C. ~~section 80b-22~~ § 80b-18a), a rule adopted or order issued under this act may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this act whose net capital exceeds, or of an investment adviser registered under this act whose minimum financial requirements exceed, the amounts required by rule or order under this act. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond,

or other satisfactory form of security if instituted within the time limitations in K.S.A. 17-12a509(j)(2), and amendments thereto.

(f) *Requirements for custody.* Subject to section 1541(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o(h)(i)) or section 222 of the investment advisers act of 1940 (15 U.S.C. ~~section~~ 80b-22 § 80b-18a), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this act may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) *Investment adviser brochure rule.* With respect to an investment adviser registered or required to be registered under this act, a rule adopted or order issued under this act may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) *Continuing education.* A rule adopted or order issued under this act may require an individual registered under K.S.A. 17-12a402 or 17-12a404, and amendments thereto, to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this act may require continuing education for an individual registered under K.S.A. 17-12a404, and amendments thereto.

Sec. 4. K.S.A. 17-12a302, 17-12a402 and 17-12a411 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 10, 2013.

CHAPTER 66

HOUSE BILL No. 2326*

AN ACT concerning certain internet protocol enabled services.

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

Section 1. (a) Except as otherwise provided in this section, no VoIP service, IP-enabled service, or any combination thereof, shall be subject

to the jurisdiction of, regulation by, supervision of or control by any state agency or political subdivision of the state.

(b) VoIP services shall be subject to:

(1) The requirements of K.S.A. 66-2008, and amendments thereto, pertaining to the Kansas universal service fund (KUSF). The provisions of subsection (a) shall not affect or restrict eligibility for KUSF support; and

(2) the requirements of the Kansas 911 act, K.S.A. 2012 Supp. 12-5362 et seq., and amendments thereto.

(c) No provision of this section shall be construed to modify:

(1) The requirements of the video competition act, K.S.A. 2012 Supp. 12-2021 et seq., and amendments thereto;

(2) the state corporation commission's authority under 47 U.S.C. §§ 251 and 252, as in effect on the effective date of this act. For the purposes of this paragraph, the term "state commission" used in 47 U.S.C. §§ 251 and 252 shall mean the state corporation commission established pursuant to K.S.A. 74-601, and amendments thereto;

(3) the authority of the state of Kansas or a political subdivision thereof to manage the use of public rights of way pursuant to K.S.A. 17-1902, and amendments thereto; or

(4) the rights and obligations of subsection (y) of K.S.A. 66-2005, and amendments thereto.

(d) For the purposes of this section:

(1) "Internet protocol enabled service" or "IP-enabled service" means any service, capability, functionality, or application using an internet protocol (IP) that enables an end user to send or receive a voice, data or video communication in an IP format.

(2) "Political subdivision" shall have the meaning ascribed to such term in K.S.A. 28-137b, and amendments thereto.

(3) "State agency" shall have the meaning ascribed to such term in K.S.A. 75-3701, and amendments thereto.

(4) "Voice over Internet Protocol" or "VoIP" is any service that:

(A) Uses an internet protocol (IP) to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in an IP;

(B) utilizes a broadband connection from the user's location; and

(C) permits a user to receive a call that originates on the public switched telephone network (PSTN) and to terminate a call to the PSTN.

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

CHAPTER 67

HOUSE BILL No. 2353

AN ACT concerning controlled substances; amending K.S.A. 2012 Supp. 65-4105 and repealing the existing section.

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

Section 1. K.S.A. 2012 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) 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) 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-piperidyl]-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-piperidyl]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-piperidyl]-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) Acetorphin	9319
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- (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) 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-methylphenethylamine; 2,5-DMA.
- (3) 4-methoxyamphetamine 7411
Some trade or other names: 4-methoxy-alpha-methylphenethylamine; 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-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-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]azepino [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) Ethylamine analog of phencyclidine 7455
Some trade or other names: N-ethyl-1-phenyl-cyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE.
- (25) Pyrrolidine analog of phencyclidine 7458
Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; PHP.
- (26) Thiophene analog of phencyclidine 7470
Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TCP; TCP.
- (27) 1-[1-(2-thienyl)-cyclohexyl] pyrrolidine 7473
Some other names: TCPy.

- (28) 2,5-dimethoxy-4-ethylamphetamine 7399
Some trade or other names: DOET.
- (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.
- (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.
- (31) N-benzylpiperazine 7493
Some trade or other names: BZP.
- (32) 1-(3-[trifluoromethylphenyl])piperazine
Some trade or other names: TFMPP.
- (33) 4-Bromo-2,5-dimethoxyphenethylamine 7392
- (34) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-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) 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-benzeneethanamine; 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 (thethylfentanyl), its optical isomers, salts and salts of isomers 9834
- (3) 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
- (4) 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.

(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 its 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, 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.

(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) Naphthylmethylindenenes

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.
- (11) *Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent.*

Sec. 2. K.S.A. 2012 Supp. 65-4105 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 10, 2013.

CHAPTER 68

Substitute for HOUSE BILL No. 2207

AN ACT concerning public health; relating to confined feeding facilities; registration; amending K.S.A. 2012 Supp. 65-171d and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 65-171d is hereby amended to read as follows: 65-171d. (a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect designated uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) Protect the soil and waters of the state from pollution resulting from underground storage of liquid petroleum gas and hydrocarbons, other than underground porosity storage of natural gas; (2) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164, and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (3) establish water quality standards for the waters of the state to protect their designated uses. In no event shall the secretary's authority be interpreted to include authority over the beneficial use of water, water quantity allocations, protection against water use impairment of a beneficial use, or any other function or authority under the jurisdiction of the Kansas water appropriation act, K.S.A. 82a-701, and amendments thereto.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act, and amendments thereto, as in effect on January 1, 1989, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and rules and regulations adopted pursuant thereto:

(1) "Pollution" means: (A) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful,

detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated uses; or (B) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(2) “Confined feeding facility” means any lot, pen, pool or pond: (A) Which is used for the confined feeding of animals or fowl for food, fur or pleasure purposes; (B) which is not normally used for raising crops; and (C) in which no vegetation intended for animal food is growing.

(3) “Animal unit” means a unit of measurement calculated by adding the following numbers: The number of beef cattle weighing more than 700 pounds multiplied by 1.0; plus the number of cattle weighing less than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing more than 55 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or less multiplied by 0.1; plus the number of sheep or lambs multiplied by 0.1; plus the number of horses multiplied by 2.0; plus the number of turkeys multiplied by 0.018; plus the number of laying hens or broilers, if the facility has continuous overflow watering, multiplied by 0.01; plus the number of laying hens or broilers, if the facility has a liquid manure system, multiplied by 0.033; plus the number of ducks multiplied by 0.2. However, each head of cattle will be counted as one full animal unit for the purpose of determining the need for a federal permit. “Animal unit” also includes the number of swine weighing 55 pounds or less multiplied by 0.1 for the purpose of determining applicable requirements for new construction of a confined feeding facility for which a permit or registration has not been issued before January 1, 1998, and for which an application for a permit or registration and plans have not been filed with the secretary of health and environment before January 1, 1998, or for the purpose of determining applicable requirements for expansion of such facility. ~~However, each head of swine weighing 55 pounds or less shall be counted as 0.0 animal unit for the purpose of determining the need for a federal permit.~~ Except as otherwise provided, animal units for public livestock markets shall be determined by using the average annual animal units sold by the market during the past five calendar years divided by 365. Such animal unit determination may be adjusted by the department if the public livestock market submits documentation that demonstrates that such adjustment is appropriate based on the amount of time in 24-hour increments or partials thereof that animals are at the market.

(4) “Animal unit capacity” means the maximum number of animal units which a confined feeding facility is designed to accommodate at any one time.

(5) “Habitable structure” means any of the following structures which is occupied or maintained in a condition which may be occupied and which, in the case of a confined feeding facility for swine, is owned by a person other than the operator of such facility: A dwelling, church, school,

adult care home, medical care facility, child care facility, library, community center, public building, office building or licensed food service or lodging establishment.

(6) “Wildlife refuge” means Cheyenne Bottoms wildlife management area, Cheyenne Bottoms preserve and Flint Hills, Quivera, Marais des Cygnes and Kirwin national wildlife refuges.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent pollution. If a freshwater reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir or pond is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir or pond to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or waters therefrom.

(e) (1) Whenever the secretary of health and environment or the secretary’s duly authorized agents find that storage or disposal of salt water not regulated by the state corporation commission or refuse in any surface pond not regulated by the state corporation commission is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary’s duly authorized agents shall issue an order prohibiting such storage or disposal of salt water or refuse. Any person aggrieved by such order may within 15 days of service of the order request in writing a hearing on the order.

(2) Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(3) Any action of the secretary pursuant to this subsection is subject to review in accordance with the Kansas judicial review act.

(f) The secretary may adopt rules and regulations establishing fees for plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place.

(g) (1) Prior to any new construction of a confined feeding facility with an animal unit capacity of ~~300 to 999~~ *or more*, such facility shall register with the secretary of health and environment. *Such registration shall be accompanied by a \$25 fee. The secretary shall acknowledge the receipt of the registration in a form as designated by the secretary and publish a notice of such receipt.*

(2) *Such registration shall indicate that the proposed construction will occur within the prescribed tract of land and that the separation distances from the tract boundaries or proposed facility footprint comply with the*

requirements described in subsections (j), (l) and (m) or exceptions described in (k).

(3) Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential or separation distance violations pursuant to subsection (j).

(A) (i) If the proposed facility has an animal unit capacity of 1,000 or more, or if there is identified a significant water pollution potential for a facility of less than 1,000 but more than 300, such facility shall be required to obtain a permit from the secretary.

(ii) If there is no identified water pollution potential posed by a facility with an animal unit capacity of 300 or more but less than 1,000, the secretary shall certify that no permit is required.

(B) If the secretary certifies that no permit is necessary pursuant to subsection (g)(3)(A)(ii), the secretary shall take the following action in regard to separation distances of such facility:

(i) If the separation distances comply with the requirements for separation distances, the secretary shall certify the registration; or

(ii) if the separation distances do not comply with the requirements for separation distances, the secretary:

(a) May reduce the separation distance requirements pursuant to subsection (k) and certify the registration based on such reduction of separation distances; or

(b) shall report the conditions necessary to receive certification to the registrant.

(h) (1) Facilities with a capacity of less than 300 animal units may register with the secretary of health and environment. ~~Any~~ Such registration shall be accompanied by a \$25 fee.

(2) Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential ~~or separation distance violations pursuant to subsection (h)~~. If there is identified a significant water pollution potential, such facility shall be required to obtain a permit from the secretary. If there is no water pollution potential posed by ~~a such facility with an animal unit capacity of less than 300~~, the secretary may certify that no permit is required. ~~If there is no water pollution potential nor any violation of separation distances posed by a facility with an animal unit capacity of 300 to 999, the secretary shall certify that no permit is required and that there are no certification conditions pertaining to separation distances. If a separation distance violation is identified, the secretary may reduce the separation distance in accordance with subsection (i) and shall certify any such reduction of separation distances.~~

(i) (1) If a facility requires a permit pursuant to subsection (g)(3) or (h)(2), the registrant shall submit an application for such permit not later than 18 months after the date of receipt of registration or the registration shall expire.

(2) Upon petition by the registrant, the secretary may extend the application period, by no more than an additional 18 months, if the secretary believes such an extension is reasonable under the circumstances.

(3) Within 30 days of receipt of an application, the secretary shall notify the registrant of whether the application is complete or incomplete. If the application is incomplete, such notice shall state the reasons why such application is incomplete. Once such registrant submits an application properly addressing each reason listed as a basis for the determination that the application is incomplete, the secretary shall issue an acknowledgment of receipt of the completed application within 30 days of properly addressing such reasons.

(4) Upon expiration of the application period or any extension thereof, the secretary shall not accept any further registrations pertaining to the same location for a period of not less than 180 days.

~~(h)~~(j) (1) Any new construction or new expansion of a confined feeding facility, other than a confined feeding facility for swine, shall meet or exceed the following requirements in separation distances from any habitable structure in existence when the ~~application for a permit is submitted~~ registration is received:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999; and

(B) 4,000 feet for facilities with an animal unit capacity of 1,000 or more.

(2) A confined feeding facility for swine shall meet or exceed the following requirements in separation distances from any habitable structure or city, county, state or federal park in existence when the ~~application for a permit is submitted~~ registration is received:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999;

(B) 4,000 feet for facilities with an animal unit capacity of 1,000 to 3,724;

(C) 4,000 feet for expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion is within the perimeter from which separation distances are determined pursuant to subsection ~~(k)~~ (m) for the existing facility; and

(D) 5,000 feet for: (i) Construction of new facilities with an animal unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion extends outside the perimeter from which separation distances are determined pursuant to subsection ~~(k)~~ (m) for the existing facility.

(3) Any construction of new confined feeding facilities for swine shall meet or exceed the following requirements in separation distances from any wildlife refuge:

(A) 10,000 feet for facilities with an animal unit capacity of 1,000 to 3,724; and

(B) 16,000 feet for facilities with an animal unit capacity of 3,725 or more.

~~(i)~~(k) (1) The separation distance requirements of subsections ~~(h)~~(j)(1) and (2) shall not apply if the applicant for a permit registrant obtains a written agreement from all owners of habitable structures which are within the separation distance stating such owners are aware of the construction or expansion and have no objections to such construction or expansion. The written agreement shall be filed in the register of deeds office of the county in which the habitable structure is located.

(2) (A) The secretary may reduce the separation distance requirements of subsection ~~(h)~~(j)(1) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice; or (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances.

(B) The secretary may reduce the separation distance requirements of subsection ~~(h)~~(j)(2)(A) or (B) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection ~~(h)~~(n); (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances; or (iii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(C) The secretary may reduce the separation distance requirements of subsection ~~(h)~~(j)(2)(C) or (D) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (I); or (ii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

~~(j)~~(l) (1) The separation distances required pursuant to subsection ~~(h)~~(j)(1) shall not apply to:

(A) Confined feeding facilities which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility, including any expansion for which an application was pending on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable struc-

ture prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(2) The separation distances required pursuant to subsections ~~(h)~~ (j)(2)(A) and (B) shall not apply to:

(A) Confined feeding facilities for swine which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities for swine which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility which existed on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(3) The separation distances required pursuant to subsections ~~(h)~~ (j)(2)(C) and (D) and (h)(3) shall not apply to the following, as determined in accordance with subsections (a), (e) and (f) of K.S.A. 65-1,178, and amendments thereto:

(A) Expansion of an existing confined feeding facility for swine if an application for such expansion has been received by the department before March 1, 1998; and

(B) construction of a new confined feeding facility for swine if an application for such facility has been received by the department before March 1, 1998.

~~(k)~~(m) The separation distances required by this section for confined feeding facilities for swine shall be determined from the exterior perimeter of any buildings utilized for housing swine, any lots containing swine, any swine waste retention lagoons or ponds or other manure or wastewater storage structures and any additional areas designated by the ~~applicant~~ *registrant* for future expansion. Such separation distances shall not apply to offices, dwellings and feed production facilities of a confined feeding facility for swine.

~~(l)~~(n) The ~~applicant~~ *registrant* shall give the notice required by subsections ~~(i)(2)(B)~~ (k)(2)(B) and (C) by certified mail, return receipt requested, to all owners of habitable structures within the separation distance. The ~~applicant~~ *registrant* shall submit to the department evidence, satisfactory to the department, that such notice has been given.

~~(m)~~(o) All plans and specifications submitted to the department for new construction or new expansion of confined feeding facilities may be, but are not required to be, prepared by a professional engineer or a consultant, as approved by the department. Before approval by the department, any consultant preparing such plans and specifications shall

submit to the department evidence, satisfactory to the department, of adequate general commercial liability insurance coverage.

Sec. 2. K.S.A. 2012 Supp. 65-171d 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 10, 2013.

CHAPTER 69

SENATE BILL No. 27

AN ACT concerning the military service scholarship program act; relating to qualified students; amending K.S.A. 2012 Supp. 74-32,228 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 74-32,228 is hereby amended to read as follows: 74-32,228. As used in the military service scholarship program act:

(a) “Executive officer” means the chief executive officer of the state board of regents appointed under K.S.A. 74-3203a, and amendments thereto.

(b) “Qualified student” means a person who: (1) Is a resident of the state of Kansas; (2) (A) has served, after September 11, 2001, in military service ~~in Iraq or Afghanistan~~ *international waters or on foreign soil in support of military operations* for at least 90 days or for less than 90 days because of injuries received ~~in Iraq or Afghanistan~~ *during such military service*; ~~or (B) has served, after September 11, 2001, in military service in international waters or on foreign soil in support of military operations in Iraq or Afghanistan for at least 90 days or for less than 90 days because of injuries received during such service;~~ (C) ~~(B)~~ has received an honorable discharge *or under honorable conditions (general) discharge* from military service or is still in military service; and ~~(D) (C) has provided copies of military discharge papers (DD Form 214) or active duty orders that, whichever such paper or order indicate the location of such person’s deployment and indicate the person has served after September 11, 2001, in one or more of the following military operations: (i) Enduring Freedom, (ii) Noble Eagle, or (iii) Iraqi Freedom; any military operation for which the person received hostile fire pay;~~ (3) has been accepted for admission to or is enrolled in a course of instruction in a *Kansas* postsecondary educational institution; and (4) ~~has qualified for the award of a scholarship under the military service scholarship program on the basis of having demonstrated scholastic ability; or. Any student who has previously so qualified and remains qualified received a scholarship under~~

this act may qualify for renewal of the scholarship on the basis of remaining in good standing and making satisfactory progress toward completion of the requirements of the course of instruction in which *the student is enrolled*.

(c) “State board” means the state board of regents.

(d) “Postsecondary educational institution” has the meaning ascribed thereto by K.S.A. 74-3201b, and amendments thereto.

(e) “Military service” means any active service in any armed service of the United States and any service as a member in good standing in the Kansas army or air national guard.

(f) “Program” means the military service scholarship program.

Sec. 2. K.S.A. 2012 Supp. 74-32,228 is hereby repealed.

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

Approved April 11, 2013.

CHAPTER 70

SENATE BILL No. 128

AN ACT concerning career technical education; amending K.S.A. 2012 Supp. 72-4484 and 72-4489 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 72-4484 is hereby amended to read as follows: 72-4484. The provisions of K.S.A. 2012 Supp. 72-4481, 72-4482 and 72-4483, and amendments thereto, shall expire on June 30, ~~2014~~ 2017.

Sec. 2. K.S.A. 2012 Supp. 72-4489 is hereby amended to read as follows: 72-4489. (a) The state board of regents shall establish the career technical education incentive program.

(b) (1) Each school year, to the extent there are sufficient moneys appropriated to the career technical education incentive program, the state board of regents shall make an award to those school districts who have at least one pupil who graduates from a high school in the school district having obtained an industry-recognized credential *either prior to graduation from high school or by December 31 immediately following graduation from high school* in an occupation that has been identified by the secretary of labor, in consultation with the state board of regents and the state board of education, as an occupation in highest need of additional skilled employees at the time the pupil entered the career technical education course or program in the school district. Such school districts shall receive an award in an amount equal to \$1,000 for each such pupil

graduating from a high school in the school district. Such awards shall be paid at such times as established by the state board of regents. Such awards shall be expended for the expenses incurred by the board of education of the school district under *this* subsection ~~(b)(2)~~, and any moneys remaining after distribution in accordance with *this* subsection ~~(b)(2)~~ may be expended as determined by the board of education of a school district towards operating the school from which the pupils graduated. Upon receipt of such award and application by a pupil who has not attained a high school diploma and is currently or was previously enrolled in a career technical education course or program in the school district, the board of education of each school district shall pay $\frac{1}{2}$ of the costs of the industry-recognized credential assessment specified in such application in an amount not to exceed \$1,000. Such industry-recognized credential assessment shall be related to the career technical education course or program which such pupil is currently or was previously enrolled as determined by the board of education. No board of education shall be required to pay $\frac{1}{2}$ of the cost of three or more industry-recognized credential assessments for the same or substantially the same industry-recognized credential for a pupil if such pupil fails to earn the industry-recognized credential within two attempts of taking the industry-recognized credential assessment.

(2) The state board of education shall certify to the state board of regents and the director of accounts and reports the amounts due to each school district pursuant to this subsection. Such certification, and the amount payable, shall be approved by the director of the budget. The director of accounts and reports shall draw warrants on the state treasurer payable to the district treasurer of each school district entitled to payment of such award amount, pursuant to vouchers approved by the state board of regents. Upon receipt of such warrant, each district treasurer shall deposit the amount of such award in the general fund of the school district.

(c) (1) Each school year, to the extent there are sufficient moneys appropriated to the career technical education incentive program, the state board of regents shall make an award to a community college, technical college or institute of technology who has at least one secondary student who is currently or was previously admitted to a career technical education course or program in accordance with subsection (c) of K.S.A. 72-4417, and amendments thereto, and such secondary student is regularly enrolled in and attending a private secondary school. The purpose of such award is to reimburse such community college, technical college or institute of technology for paying $\frac{1}{2}$ of the costs of an industry-recognized credential assessment in an occupation that has been identified by the secretary of labor, in consultation with the state board of regents and the state board of education, as an occupation in highest need of additional skilled employees at the time the secondary student was ad-

mitted into such career technical education course or program. Upon receipt of such award and application by a secondary student who is currently or was previously enrolled in a career technical education course or program in accordance with subsection (c) of K.S.A. 72-4417, and amendments thereto, and is regularly enrolled in and attending a private secondary school, the governing body of the community college, technical college or the institute of technology which admitted such secondary student shall pay $\frac{1}{2}$ of the costs of the industry-recognized credential assessment specified in such application in an amount not to exceed \$1,000. Such industry-recognized credential assessment shall be related to the career technical education course or program in which such secondary student is currently or was previously enrolled as determined by such governing body of a community college, technical college or institute of technology. No governing body of a community college, technical college or institute of technology shall be required to pay $\frac{1}{2}$ of the cost of three or more industry-recognized credential assessments for the same or substantially the same industry-recognized credential for a secondary student if such secondary student fails to earn the industry-recognized credential within two attempts of taking the industry-recognized credential assessment.

(2) Each governing body of a community college, technical college or institute of technology shall certify to the state board of regents the amount of any payments such community college, technical college or institute of technology will pay based on applications submitted by students pursuant to paragraph (1). The certification shall be on a form prescribed and furnished by the state board of regents, shall contain such information as the state board of regents shall require and shall be filed at the time specified by the state board of regents.

(3) In each school year, each governing body of a community college, technical college or institute of technology is entitled to receive from appropriations for the career technical education incentive program an amount which is equal to the amount certified to the state board of regents in accordance with the provisions of paragraph (2). The state board of regents shall certify to the director of accounts and reports the amount due each governing body of a community college, technical college or institute of technology. The director of accounts and reports shall draw warrants on the state treasurer payable to the treasurer of each governing body of a community college, technical college or institute of technology entitled to payment under this subsection upon vouchers approved by the state board of regents.

(4) Moneys received by a state board of regents under this subsection shall be deposited in the postsecondary technical education fund of each community college and at Washburn university for the Washburn institute of technology or the general operating fund in the technical college in accordance with K.S.A. 2012 Supp. 71-1808, and amendments thereto,

and shall be considered reimbursements to the community college, technical college or institute of technology.

(d) Each school year, at such time as agreed to by the secretary of labor, the president of the state board of regents and the commissioner of education, the secretary shall provide the state board of regents and the state board of education with a list of those occupations in highest need of additional skilled employees. If the occupations identified in such list are not substantially the same as those occupations identified in the list from the prior year, reasonable notice of such changes shall be provided to school districts, community colleges, technical colleges and the institute of technology.

(e) The state board of regents and the state board of education, jointly, may adopt such rules and regulations necessary to implement and carry out the provisions of this section.

Sec. 3. K.S.A. 2012 Supp. 72-4484 and 72-4489 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 11, 2013.

CHAPTER 71

SENATE BILL No. 56

AN ACT concerning county fairs; transferring recognition of county fairs and fair associations from the secretary of agriculture to the board of county commissioners; amending K.S.A. 19-1561b and K.S.A. 2012 Supp. 2-127, 2-129, 2-129i, 2-131b, 2-131d, 2-131e, 2-132, 2-137 and 2-144d and repealing the existing sections.

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

New Section 1. (a) Any county fair association or livestock show association which received official recognition from the secretary of agriculture prior to July 1, 2013, shall remain an officially recognized county fair association or livestock show association unless such recognition is revoked by a vote of the board of county commissioners in the county where such county fair association or livestock show association is located.

(b) Prior to January 1, 2014, the secretary of agriculture shall notify the board of county commissioners of any county in which the secretary of agriculture has recognized an official county fair association.

Sec. 2. K.S.A. 2012 Supp. 2-127 is hereby amended to read as follows: 2-127. (a) To become a county fair association, 25 or more qualified electors representing the majority of the townships of the county shall have been incorporated as a nonprofit corporation with a paid-up capital of not less than \$5,000, and have received recognition as the ~~official~~ *official*

county fair association of such county from the ~~secretary of agriculture board of county commissioners of such county~~. The ~~secretary of agriculture board of county commissioners~~ shall not give official recognition to any fair association until the fair association has submitted satisfactory evidence that it owns land or buildings of an appraised value of at least \$5,000 or has paid-up stock subscriptions in its treasury to this amount appropriated to the purchase of land or buildings or both.

(b) Fair associations located in counties: (1) Which have a population of more than 5,000 and less than 6,000 and an assessed tangible valuation of less than \$40,000,000; or (2) where there are facilities for the holding of fairs which are available to a fair association and the value of such facilities is in excess of \$75,000, may qualify without having lands or buildings of an appraised value of at least \$5,000 or without paid-up stock subscriptions in its treasury in the amount of \$5,000 appropriated to the purchase of lands or buildings or both.

(c) Any incorporated or unincorporated fair association ~~by whatever name now recognized by the secretary of agriculture~~ operating under previous laws may avail itself of the provisions of K.S.A. 2-125 to 2-145a, inclusive, and amendments thereto, without changing its charter, articles of incorporation, name, constitution, organization or methods of operation, except as provided in K.S.A. 2-137, and amendments thereto. The ~~secretary of agriculture board of county commissioners~~ shall not recognize more than one fair association in each county, except where such recognition has already been accorded.

Sec. 3. K.S.A. 2012 Supp. 2-129 is hereby amended to read as follows: 2-129. Each fair association complying with the provisions of K.S.A. 2-127 and 2-128, and amendments thereto, upon filing with the clerk of the county an estimate and a report as provided in K.S.A. 2-130 and 2-131, and amendments thereto, shall be entitled to receive from the county, and the board of county commissioners shall pay to each such fair association, a sum equal to the actual cost of providing and paying for the premiums and rewards actually awarded at its annual fair for the current year including, but not limited to, the actual cost of the printing of the premiums list and the amount to be paid judges of the fair exhibits for the current year. In counties having a population of more than 125,000 and an assessed tangible valuation of more than \$150,000,000, the ~~secretary of agriculture board of county commissioners~~ may give official recognition to both a county fair association and a livestock show association, and where such recognition is given, the county shall pay to each such county fair and livestock show association a sum equal to the actual cost of providing and paying for the premiums and rewards actually awarded at its annual show for the current year including, but not limited to, the actual cost of the printing of the premiums list and the amount to be paid judges of the fair exhibits for the current year. In counties having a pop-

ulation of not less than 17,500 nor more than 22,000 which have an assessed tangible valuation of not less than \$31,000,000 nor more than \$47,000,000 and not adjoining another state, the county may pay additional funds which may be used for the purchase of grounds and the erecting and maintenance of buildings to be used for such fair. In Leavenworth county and counties having a population of not less than 34,000 and not more than 50,000 and having an assessed taxable tangible valuation of more than \$60,000,000, the county, in addition, may pay to another fair in such county, if such fair has been established and in operation for more than 10 years, a sum for the purpose of providing and paying for the premiums and rewards actually awarded at its annual fair for the current year including, but not limited to, the actual cost of the printing of the premiums list and the amount to be paid judges of the fair exhibits for the current year. The board of county commissioners may make an annual tax levy upon all of the assessed taxable tangible valuation of such county to raise the funds for the purposes hereinbefore authorized and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county.

Sec. 4. K.S.A. 2012 Supp. 2-129i is hereby amended to read as follows: 2-129i. The board of county commissioners of any county designated as an urban area by K.S.A. 19-2654, and amendments thereto, and in which there is ~~a~~ *an officially recognized* county fair association ~~officially recognized by the secretary of agriculture~~, upon request of the fair association, may make an annual tax levy of not to exceed $\frac{1}{10}$ mill upon all the taxable tangible property of the county for the purpose of raising funds to be used for the purchase of land and the erection and maintenance of buildings and improvements thereon, including construction of streets and sewers for such fair association and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. No levy shall be made under the provisions of this section until a resolution authorizing the making of such levy is passed by the county commissioners and published for two consecutive issues in the official county paper. Whereupon, such levies may be made unless a petition in opposition thereto signed by not less than 5% of the qualified electors of the county, as determined by the vote for secretary of state at the last preceding election, is filed with the county election officer within 60 days following the last publication of the resolution of the board. In the event such a petition is filed, it shall be the duty of the board of commissioners to submit the question to the voters at an election called for such purpose or at the next general election. If no protest petition is filed or if the question is submitted on a question submitted ballot and those voting on the question shall vote in favor of such tax levy, then the board of county commissioners shall

make such tax levies. The amounts collected by the county for the purposes hereinbefore specified from tax levies, except for an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, shall be paid to the fair association, upon request of the association.

Sec. 5. K.S.A. 2012 Supp. 2-131b is hereby amended to read as follows: 2-131b. The board of county commissioners of any county in which there is a fair association or a society which is organized and operating under the provisions of K.S.A. 2-125 to 2-131, inclusive, and amendments thereto, upon request of such fair association or society is hereby authorized and empowered to make an annual tax levy of not to exceed five-tenths of one mill upon all the taxable tangible property of the county for the purpose of raising funds to be used for the erection and maintenance of buildings of such a fair association having obtained recognition ~~from the secretary of agriculture~~ as an official county fair association and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. No levy shall be made for such purposes until a resolution authorizing the making of such levy is passed by the county commissioners and published for two consecutive issues in the official county paper. Whereupon, such levies may be made unless a petition in opposition thereto signed by not less than five percent of the qualified electors of the county, as determined by the vote for secretary of state at the last preceding election, is filed with the county election officer within sixty days following the last publication of the resolution of the board. In the event such a petition is filed, it shall be the duty of the board of commissioners to submit the question to the voters at an election called for such purpose or at the next general election. If no protest petition is filed or if the question is submitted on a question submitted ballot and those voting on the question shall vote in favor of such tax levy, then the board of county commissioners shall make such tax levies. The board of county commissioners shall determine the amount necessary to be raised by such levy for such purposes. The tax levy authorized by this section shall be in addition to all other tax levies authorized or limited by law and shall be outside the aggregate limitation provided in K.S.A. 79-1947, and amendments thereto, and the amount collected therefrom shall be paid to such association or society for the purposes herein specified, and shall be in addition to the amount allowed to such association or society under the provisions of K.S.A. 2-129, and amendments thereto.

Sec. 6. K.S.A. 2012 Supp. 2-131d is hereby amended to read as follows: 2-131d. The board of county commissioners of any county in which there is ~~a~~ *an officially recognized* county fair association ~~officially recognized by the secretary of agriculture~~, upon the request of such fair asso-

ciation, may make an annual tax levy for the purpose of raising funds to be used for the purchase of grounds and the erection and maintenance of buildings of such fair associations and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. No levy shall exceed a rate, which multiplied by the total assessed tangible valuation of the county, will result in producing more than \$33,000 and an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county in any one year. The tax levy authorized shall be in addition to all other tax levies authorized or limited by law and shall not be subject to or within the aggregate tax levy limit prescribed by K.S.A. 79-1947, and amendments thereto. The amount collected by the county for such purpose, except for an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, shall be paid to such fair associations for the purposes herein specified, upon request of such fair association. The fair association may use any portion of this amount, not needed for purchase of grounds and the erection and maintenance of buildings, to supplement and increase premiums and awards for exhibitions by 4-H members and organized F.F.A. members.

Sec. 7. K.S.A. 2012 Supp. 2-131e is hereby amended to read as follows: 2-131e. Whenever the board of county commissioners of any county in which there is ~~a~~ *an officially recognized* county fair association ~~officially recognized by the secretary of agriculture~~, and having a population of not less than 35,000 nor more than 45,000, and having an assessed tangible valuation of not less than \$50,000,000 and not more than \$80,000,000, shall determine, upon the request of such fair association, that it is in the best interest of the county to raise funds for the purchase of grounds or the erection and maintenance of buildings for such fair association, such board of commissioners is hereby authorized and empowered to issue no-fund warrants in an amount not to exceed, in the aggregate, \$5,000 for the purposes stated hereinbefore. No-fund warrants issued hereunder shall be issued in the manner and form and bear interest and be redeemed as prescribed by K.S.A. 79-2940, and amendments thereto, except that they may be issued without the approval of the state court of tax appeals, and without the notation required by K.S.A. 79-2940, and amendments thereto. The authority to issue no-fund warrants, as provided herein, shall not be exercised by the board of county commissioners more than once in any ten-year period. Such warrants shall mature serially in approximately equal annual installments at such yearly dates as to be payable by not more than five tax levies, and the board of county commissioners issuing such warrants shall make a tax levy at the first tax levying period after such warrants are issued, and at such of the next succeeding tax

levying periods as may be required, sufficient to pay such warrants as they mature and the interest thereon as the same becomes due. The money collected from issuance of such warrants shall be paid to such fair associations for the purposes herein specified. Such tax levy or levies shall be in addition to all other tax levies authorized or limited by law and shall not be subject to or within the aggregate tax levy limit prescribed by K.S.A. 79-1947, and amendments thereto.

Sec. 8. K.S.A. 2012 Supp. 2-132 is hereby amended to read as follows: 2-132. Whenever, in the opinion of the board of county commissioners of any county in this state, the agricultural and industrial interests of such county can be advanced by the establishment and maintenance of a county-owned and operated free fair, and a petition to the same effect, signed by 60% of the landowners of such county, is presented to the board of county commissioners therefor, it shall be the duty of the board of county commissioners to call an election to submit to the voters a proposition to purchase a fairground, and if a majority of the votes cast on that proposition shall be favorable to such purchase it shall be the duty of the board of county commissioners to purchase such grounds. In any county which has established a free fair under this section and in which there is no *officially recognized* county fair association ~~recognized by the secretary of agriculture~~, such county free fair shall be recognized ~~by the secretary of agriculture~~ as the official county fair of such county if the ~~secretary of agriculture~~ *board of county commissioners* shall have first determined that the county within which such county free fair is located: (1) Has fairgrounds, or fairgrounds and buildings combined, with an appraised value of at least \$5,000; (2) has conformed to adequate standards for a "fair" as defined in K.S.A. 2-125, and amendments thereto; and (3) has paid premiums and awards for exhibitors and contestants of at least \$2,000 annually for the two consecutive years last preceding. Nothing in this act shall prevent the board of county commissioners of any county in Kansas from receiving and accepting as a gift, lands to be used as a fairground except that where the board of county commissioners of any county in Kansas has received and accepted lands for uses of fairgrounds as a gift from a fair association organized under the provisions of K.S.A. 2-127 and 2-128, and amendments thereto, and such fair association at the time of such gift had official recognition ~~from the secretary of agriculture~~ as an official county fair association, the board of county commissioners of such county may make an annual tax levy on the equalized assessed valuation of all tangible property in said county in an amount which will produce at least \$2,000 and at least such amount shall be spent by such county for premiums and awards for exhibitors and contestants at such county free fair if there are exhibitors and contestants qualifying for such premiums and awards. When any county has purchased a fairground as provided herein, or when any county has provided a suitable

fairground, either by lease, devise or otherwise, the board of county commissioners shall annually at the time set by law for making levies, levy a tax for the erection, maintenance, upkeep and repair of the equipment, buildings and improvements thereon, the care of the grounds, the payment of premiums and awards, the actual expense of operating the fair, and retiring any indebtedness on lands received through gift, devise or purchase and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county but no part of such levy shall be used for the expense of purses and compensation for all purely entertainment features and racing. No charge shall be made for access and admission entrance to exhibits competing for premiums at any fair operating under the provisions of this section and K.S.A. 2-133, and amendments thereto. Recognition of any such county free fair, as an official county fair ~~by the secretary of agriculture~~, may be forfeited by the ~~secretary of agriculture~~ *board of county commissioners* for failure to comply with this act or for failure to pay at least \$2,000 each year, in premiums and awards for exhibitors and contestants.

Sec. 9. K.S.A. 2012 Supp. 2-137 is hereby amended to read as follows: 2-137. Any county fair association organized and operating under the provisions of this act failing to hold a fair each year shall forfeit all benefits provided in this act, including *official* recognition ~~by the secretary of agriculture~~, and the ~~secretary~~ *board of county commissioners* may, upon application, recognize some other qualified fair in the same county, as provided in K.S.A. 2-127, and amendments thereto. Upon application of the president and secretary, approved by the board of directors of any recognized fair association, the ~~secretary of agriculture~~ *board of county commissioners*, for good cause shown, may exempt such fair association from the provisions of this section for the current year, in which case the fair premium fund for that year shall be used to pay premiums for the next succeeding year's fair, and no levy shall be made for the next succeeding year's fair in excess of the limitations provided in K.S.A. 2-129, and amendments thereto. During the emergency resulting from the United States being engaged in war, *officially recognized* county fair associations, ~~as recognized by the secretary of agriculture~~, may discontinue holding such fairs until the next regular fair date following a twelve months period after the termination of such emergency.

Sec. 10. K.S.A. 2012 Supp. 2-144d is hereby amended to read as follows: 2-144d. Any county free fair established pursuant to K.S.A. 2-142, and amendments thereto, may apply to the ~~secretary of agriculture~~ *board of county commissioners* for designation as an official fair association. If recognized as an official fair association, any county free fair established pursuant to K.S.A. 2-142, and amendments thereto, shall have

all powers and duties as other officially recognized county fair associations.

Sec. 11. K.S.A. 19-1561b is hereby amended to read as follows: 19-1561b. Upon the erection of such building or buildings and furnishings as herein provided, the board of county commissioners of the county wherein such building or buildings and furnishings are located is hereby authorized and empowered to levy annually a tax upon all taxable tangible property within said county for the purpose of purchasing additional equipment, maintaining and repairing such building or buildings and furnishings and for the payment of premiums and rewards awarded at agricultural livestock and 4-H club activities and approved by the board of county commissioners and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. In any county in which there is a fair recognized by the secretary of agriculture as an official county fair, the amount of the payment for premiums and rewards under this section shall not exceed the amount of the payment by the county for premiums and awards for such county fair.

The board of county commissioners is authorized to pay any tax moneys collected and approved by said board for the payment of rewards and premiums to the executive board of the county agricultural extension council, except for an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. The executive board is authorized to accept such payments and upon acceptance of such moneys shall provide for the awarding of rewards and premiums for the authorized activities and shall make reports, under oath, to the county commissioners of the receipts and expenditures of the moneys so received, on or before December 31 of each year.

Sec. 12. K.S.A. 19-1561b and K.S.A. 2012 Supp. 2-127, 2-129, 2-129i, 2-131b, 2-131d, 2-131e, 2-132, 2-137 and 2-144d are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 11, 2013.

CHAPTER 72

SENATE BILL No. 81
(Amended by Chapter 133)

AN ACT concerning open records; relating to requests for criminal justice information; public officials' identifying information; amending K.S.A. 2012 Supp. 45-220 and 45-221 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 45-221j and 45-221k.

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

Section 1. K.S.A. 2012 Supp. 45-220 is hereby amended to read as follows: 45-220. (a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

(b) A public agency may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by subsection (c), a public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A public agency may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.

(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to K.S.A. 45-221 or K.S.A. 2012 Supp. 45-230, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

(1) The requester has a right of access to the records and the basis of that right; or

(2) the requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

(d) A public agency shall establish, for business days when it does not maintain regular office hours, reasonable hours when persons may inspect and obtain copies of the agency's records. The public agency may require

that any person desiring to inspect or obtain copies of the agency's records during such hours so notify the agency, but such notice shall not be required to be in writing and shall not be required to be given more than 24 hours prior to the hours established for inspection and obtaining copies.

(e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties.

(f) Each public agency shall provide, upon request of any person, the following information:

(1) The principal office of the agency, its regular office hours and any additional hours established by the agency pursuant to subsection (c).

(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.

(3) The fees, if any, charged for access to or copies of the agency's records.

(4) The procedures to be followed in requesting access to and obtaining copies of the agency's records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by the agency pursuant to subsection (c).

(g) *Except for requests for summary data compiled from information submitted by multiple criminal justice agencies or as otherwise provided by law, requests for records submitted to the central repository or any other repositories supporting the criminal justice information system which are maintained by the Kansas bureau of investigation pursuant to K.S.A. 22-4704 and 22-4705, and amendments thereto, shall be directed to the criminal justice agency from which the records originated.*

(h) *As used in this section, the terms "central repository," "criminal justice agency" and "criminal justice information system" have the same meanings as defined in K.S.A. 22-4701, and amendments thereto.*

Sec. 2. K.S.A. 2012 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. 2012 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. 2012 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 Anno-

tated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation com-

mission 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 kidnap-

ping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers, DD Form 214. Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safe-house or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.

(51) Records of a public agency *on a public website which are searchable by a keyword search and* identify the home address or home ownership of a law enforcement officer as defined in K.S.A. 2012 Supp. 21-5111, and amendments thereto, parole officer, probation officer, court services officer or community correctional services officer. ~~The agency head of such law enforcement office, parole office, probation office, court services office or community correctional services office or~~ Such individual officer shall file with the custodian of such record a request to have such officer's identifying information ~~removed~~ *restricted* from public access ~~on such public website~~. ~~Within seven~~ *10 business* days of receipt of such requests, the public agency shall ~~remove~~ *restrict* such officer's identifying information from such public access. *Such restriction shall expire after five years and such officer may file with the custodian of such record a new request for restriction at any time.*

(52) Records of a public agency *on a public website which are searchable by a keyword search and* identify the home address or home ownership of a federal judge, a justice of the supreme court, a judge of the court of appeals, a district judge, a district magistrate judge, the United States attorney for the district of Kansas, an assistant United States attorney, the attorney general, an assistant attorney general, a district attorney or county attorney or an assistant district attorney or assistant county attorney. Such person ~~or such person's employer~~ shall file with the custodian of such record a request to have such person's identifying information ~~removed~~ *restricted from public access on such public website.* Within ~~seven~~ *10 business days* of receipt of such requests, the public agency shall ~~remove~~ *restrict* such person's identifying information from such public access. *Such restriction shall expire after five years and such person may file with the custodian of such record a new request for restriction at any time.*

(53) *Records of a public agency that would disclose the name, home address, e-mail address, phone number or cell phone number or other contact information for any person licensed to carry concealed handguns or of any person who enrolled in or completed any weapons training in order to be licensed or has made application for such license under the personal and family protection act, K.S.A. 2012 Supp. 75-7c01 et seq., and amendments thereto, shall not be disclosed unless otherwise required by law.*

(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. 3. K.S.A. 2012 Supp. 45-220, 45-221, 45-221j and 45-221k 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 11, 2013.

CHAPTER 73

SENATE BILL No. 120*

AN ACT concerning agriculture; enacting the Kansas farmers' market promotion act.

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

Section 1. (a) The provisions of sections 1 through 4, and amendments thereto, shall be known and may be cited as the Kansas farmers' market promotion act.

Sec. 2. As used in this act:

(a) "Department" means the Kansas department of agriculture.

(b) "Farmers' market" means a common facility or area where producers or growers gather on a regular, recurring basis to sell fresh fruits, vegetables, meats and other farm products directly to consumers. "Farmers' market" includes, but is not limited to, short-term festivals, roadside stands or other agricultural product sales or other locations or any market, sales event or other related event, series of events or venue that adver-

tises, promotes or uses the term “farmers’ market” or any derivative thereof, as a part of the name of such market, sales event, or other related event or venue.

(c) “Farmers’ market operator” means the person who promotes or manages the activities at a farmers’ market registered under this act.

(d) “Participant” means any person who attends a farmers’ market or who sells, purchases or consumes any products offered or sold at a farmers’ market.

(e) “Secretary” means the secretary of agriculture or the secretary’s authorized representative.

Sec. 3. (a) There is hereby established a central registration of farmers’ markets which shall be maintained by the department. Such central registration of farmers’ markets shall be for the purpose of encouraging and promoting farmers’ markets across the state and shall assist the department in promoting Kansas agriculture by more efficiently connecting producers with consumers. Any farmers’ market operator may register with the secretary on forms provided by the secretary. There shall be no charge for registration. The secretary shall maintain a list of such registered entities for dissemination to members of the public.

(b) The secretary shall be the registration authority for farmers’ markets in the state and may apply for any federal, state, local or private grant programs or other funding opportunities as the secretary may determine will assist in the creation or promotion of farmers’ markets in the state.

Sec. 4. (a) Any participant assumes the inherent risks of attending, buying or selling goods at a farmers’ market registered under this act. If a participant brings an action for damages arising from the operation of a registered farmers’ market, the registered farmers’ market operator may plead an affirmative defense of assumption of risk by the participant.

(b) Any limitation on legal liability afforded to a registered farmers’ market operator by this act shall be in addition to any other limitation of legal liability otherwise provided by law.

(c) Nothing in this act shall prevent or limit the liability of a registered farmers’ market operator if:

(1) The registered farmers’ market operator injures the participant by intentional or willful misconduct; or

(2) the registered farmers’ market operator has actual knowledge of a dangerous condition in the land, facilities or equipment used in the registered farmers’ market activity or the dangerous propensity of a particular animal used in such activity and does not make such dangerous condition known to the participant and such dangerous condition causes the participant to sustain injuries or death.

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

Approved April 11, 2013.

CHAPTER 74

SENATE BILL No. 136

AN ACT concerning the division of vehicles; relating to drivers' licenses and nondriver identification cards; relating to motor vehicle records; amending K.S.A. 2012 Supp. 8-243, 8-1324 and 74-2012 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 8-243 is hereby amended to read as follows: 8-243. (a) Upon payment of the required fee, the division shall issue to every applicant qualifying under the provisions of this act the driver's license as applied for by the applicant. Such license shall bear the class or classes of motor vehicles which the licensee is entitled to drive, a distinguishing number assigned to the licensee, the full legal name, date of birth, gender, address of principal residence and a brief description of the licensee, a colored digital photograph of the licensee, a facsimile of the signature of the licensee and the statement provided for in subsection (b). No driver's license shall be valid until it has been signed by the licensee. All drivers' licenses issued to persons under the age of 21 years shall be readily distinguishable from licenses issued to persons age 21 years or older. In addition, all drivers' licenses issued to persons under the age of 18 years shall also be readily distinguishable from licenses issued to persons age 18 years or older. The secretary of revenue shall implement a vertical format to make drivers' licenses issued to persons under the age of 21 more readily distinguishable. Except as otherwise provided, no driver's license issued by the division shall be valid until a colored digital photograph of such licensee has been taken and verified before being placed on the driver's license. The secretary of revenue shall prescribe a fee of not more than \$8 and upon the payment of such fee, the division shall cause a colored digital photograph of such applicant to be placed on the driver's license. Upon payment of such fee prescribed by the secretary of revenue, plus payment of the fee required by K.S.A. 8-246, and amendments thereto, for issuance of a new license, the division shall issue to such licensee a new license containing a colored digital photograph of such licensee. A driver's license which does not contain the principal address as required may be issued to persons who are program participants pursuant to K.S.A. 2012 Supp. 75-455, and amendments thereto, upon payment of the fee required by K.S.A. 8-246, and amendments thereto. All Kansas drivers' licenses and identification cards

shall have physical security features designed to prevent tampering, counterfeiting or duplication of the document for fraudulent purposes. The secretary of revenue shall incorporate common machine-readable technology into all Kansas drivers' licenses and identification cards.

(b) All Kansas drivers' licenses issued to any person 16 years of age or older shall contain a form which provides a statement for making a gift of all or any part of the body of the licensee in accordance with the revised uniform anatomical gift act, K.S.A. 2012 Supp. 65-3220 through 65-3244, and amendments thereto, except as otherwise provided by this subsection. The statement to be effective shall be signed by the licensee in the presence of two witnesses who shall sign the statement in the presence of the donor. The gift becomes effective upon the death of the donor. Delivery of the license during the donor's lifetime is not necessary to make a valid gift. Any valid gift statement executed prior to July 1, 1994, shall remain effective until invalidated. The word "Donor" shall be placed on the front of a licensee's driver's license, indicating that the statement for making an anatomical gift under this subsection has been executed by such licensee.

(c) Any person who is deaf or hard of hearing may request that the division issue to such person a driver's license which is readily distinguishable from drivers' licenses issued to other drivers and upon such request the division shall issue such license. Drivers' licenses issued to persons who are deaf or hard of hearing and under the age of 21 years shall be readily distinguishable from drivers' licenses issued to persons who are deaf or hard of hearing and 21 years of age or older. Upon satisfaction of subsection (a), the division shall issue a receipt of application permitting the operation of a vehicle consistent with the requested class, if there are no other restrictions or limitations, pending the division's verification of the information and production of a driver's license.

(d) A driver's license issued to a person required to be registered under K.S.A. 22-4901 et seq., and amendments thereto, shall be assigned a distinguishing number by the division which will readily indicate to law enforcement officers that such person is a registered offender. The division shall develop a numbering system to implement the provisions of this subsection.

(e) (1) *Any person who is a veteran may request that the division issue to such person a driver's license which shall include the designation "VETERAN" displayed on the front of the driver's license at a location to be determined by the secretary of revenue. In order to receive a license described in this subsection, the veteran must provide proof of the veteran's military service and honorable discharge or general discharge under honorable conditions, including a copy of the veteran's DD214 form or equivalent.*

(2) *As used in this subsection, "veteran" means a person who:*

(A) *Has served in: The army, navy, marine corps, air force, coast*

guard, air or army national guard or any branch of the military reserves of the United States; and

(B) has been separated from the branch of service in which the person was honorably discharged or received a general discharge under honorable conditions.

(3) The director of vehicles may adopt any rules and regulations necessary to carry out the provisions of this subsection.

Sec. 2. K.S.A. 2012 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 identification 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; and

(B) produce evidence that such person is registered to vote in Kansas.

(3) The secretary of revenue shall adopt rules and regulations in order to implement the provisions of paragraph (2).

(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) (1) *Any person who is a veteran may request that the division issue to such person a nondriver identification card which shall include the designation "VETERAN" displayed on the front of the nondriver identification card at a location to be determined by the secretary of revenue. In order to receive a nondriver identification card described in this subsection, the veteran must provide proof of the veteran's military service and honorable discharge or general discharge under honorable conditions, including a copy of the veteran's DD214 form or equivalent.*

(2) *As used in this subsection, "veteran" means a person who:*

(A) *Has served in: The army, navy, marine corps, air force, coast guard, air or army national guard or any branch of the military reserves of the United States; and*

(B) *has been separated from the branch of service in which the person was honorably discharged or received a general discharge under honorable conditions.*

(3) *The director of vehicles may adopt any rules and regulations necessary to carry out the provisions of this subsection.*

~~(k)(l)~~ 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.

~~(k)(m)~~ 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. 2012 Supp. 75-455, and amendments thereto.

Sec. 3. K.S.A. 2012 Supp. 74-2012 is hereby amended to read as follows: 74-2012. (a) (1) All motor vehicle records shall be subject to the provisions of the open records act, except as otherwise provided under the provisions of this section and by K.S.A. 65-2422d and 74-2022, and amendments thereto.

(2) *Nothing in this section shall prevent the transmittal of motor vehicle records for the purpose of processing voter registration applications.*

(3) For the purpose of this section, "motor vehicle records" means any record that pertains to a motor vehicle drivers' license, motor vehicle

certificate of title, motor vehicle registration or identification card issued by the division of vehicles.

(b) All motor vehicle records which relate to the physical or mental condition of any person, have been expunged or are photographs or digital images maintained in connection with the issuance of drivers' licenses shall be confidential and shall not be disclosed except in accordance with a proper judicial order or as otherwise more specifically provided in this section or by other law. Photographs or digital images maintained by the division of vehicles in connection with the issuance of drivers' licenses may be disclosed to any federal, state or local agency, including any court or law enforcement agency, to assist such agency in carrying out the functions required of such governmental agency. In January of each year the division shall report to the house committee on veterans, military and homeland security regarding the utilization of the provisions of this subsection. Motor vehicle records relating to diversion agreements for the purposes of K.S.A. 8-1567, 12-4415 and 22-2908 and K.S.A. 2012 Supp. 8-1025, and amendments thereto, shall be confidential and shall not be disclosed except in accordance with a proper judicial order or by direct computer access to:

(1) A city, county or district attorney, for the purpose of determining a person's eligibility for diversion or to determine the proper charge for a violation of K.S.A. 8-2,144 or 8-1567 or K.S.A. 2012 Supp. 8-1025, and amendments thereto, or any ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by those statutes;

(2) a municipal or district court, for the purpose of using the record in connection with any matter before the court;

(3) a law enforcement agency, for the purpose of supplying the record to a person authorized to obtain it under paragraph (1) or (2) of this subsection; or

(4) an employer when a person is required to retain a commercial driver's license due to the nature of such person's employment.

(c) Lists of persons' names and addresses contained in or derived from motor vehicle records shall not be sold, given or received for the purposes prohibited by K.S.A. 2012 Supp. 45-230, and amendments thereto, except that:

(1) The director of vehicles may provide to a requesting party, and a requesting party may receive, such a list and accompanying information from motor vehicle records upon written certification that the requesting party shall use the list solely for the purpose of:

(A) Assisting manufacturers of motor vehicles in compiling statistical reports or in notifying owners of vehicles believed to:

(i) Have safety-related defects;

(ii) fail to comply with emission standards; or

(iii) have any defect to be remedied at the expense of the manufacturer;

(B) assisting an insurer authorized to do business in this state, or the insurer's authorized agent:

(i) In processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy; or

(ii) in conducting antifraud activities by identifying potential undisclosed drivers of a motor vehicle currently insured by an insurer licensed to do business in this state by providing only the following information: Drivers' license number, license type, date of birth, name, address, issue date and expiration date;

(C) assisting the selective service system in the maintenance of a list of persons 18 to 26 years of age in this state as required under the provisions of section 3 of the federal military selective service act;

(D) assisting any federal, state or local agency, including any court or law enforcement agency, or any private person acting on behalf of such agencies in carrying out the functions required of such governmental agency, except that such records shall not be redisclosed;

(E) assisting businesses with the verification or reporting of information derived from the title and registration records of the division to prepare and assemble vehicle history reports, except that such vehicle history reports shall not include the names or addresses of any current or previous owners;

(F) assisting businesses in producing motor vehicle title or motor vehicle registration, or both, statistical reports, so long as personal information is not published, redisclosed or used to contact individuals;~~or~~

(G) assisting an employer or an employer's authorized agent in monitoring the driving record of the employees required to drive in the course of employment to ensure driver behavior, performance or safety; or

(H) *assisting the Kansas commission on veterans affairs in notifying veterans of the facilities, benefits and services available to veterans.*

(2) Any law enforcement agency of this state which has access to motor vehicle records may furnish to a requesting party, and a requesting party may receive, such a list and accompanying information from such records upon written certification that the requesting party shall use the list solely for the purpose of assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.

(d) If a law enforcement agency of this state furnishes information to a requesting party pursuant to paragraph (2) of subsection (c), the law enforcement agency shall charge the fee prescribed by the secretary of revenue pursuant to K.S.A. 74-2022, and amendments thereto, for any copies furnished and may charge an additional fee to be retained by the law enforcement agency to cover its cost of providing such copies. The fee prescribed pursuant to K.S.A. 74-2022, and amendments thereto, shall be paid monthly to the secretary of revenue and upon receipt thereof

shall be deposited in the state treasury to the credit of the electronic databases fee fund, except for the \$1 of the fee for each record required to be credited to the highway patrol training center fund under subsection (f).

(e) The secretary of revenue, the secretary's agents or employees, the director of vehicles or the director's agents or employees shall not be liable for damages caused by any negligent or wrongful act or omission of a law enforcement agency in furnishing any information obtained from motor vehicle records.

(f) A fee in an amount fixed by the secretary of revenue pursuant to K.S.A. 74-2022, and amendments thereto, of not less than \$2 for each full or partial motor vehicle record shall be charged by the division, except that the director may charge a lesser fee pursuant to a contract between the secretary of revenue and any person to whom the director is authorized to furnish information under paragraph (1) of subsection (c), and such fee shall not be less than the cost of production or reproduction of any full or partial motor vehicle record requested. Except for the fees charged pursuant to a contract for motor vehicle records authorized by this subsection pertaining to motor vehicle titles or motor vehicle registrations or pursuant to subsection (c)(1)(B)(ii) or (c)(1)(D), \$1 shall be credited to the highway patrol training center fund for each motor vehicle record provided by the division of vehicles.

(g) The secretary of revenue may adopt such rules and regulations as are necessary to implement the provisions of this section.

Sec. 4. K.S.A. 2012 Supp. 8-243, 8-1324 and 74-2012 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after July 1, 2014, and its publication in the statute book.

Approved April 11, 2013.

CHAPTER 75

SENATE BILL No. 1

AN ACT concerning the legislative post audit act; relating to periodic audits of the state treasurer and the pooled money investment board; transition audits; amending K.S.A. 2012 Supp. 46-1106 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 46-1106 is hereby amended to read as follows: 46-1106. (a) (1) A financial-compliance audit shall be conducted each year of the general purpose financial statements prepared by the division of accounts and reports for its annual financial report. This audit

shall be conducted in accordance with generally accepted governmental auditing standards. The resulting written audit report shall be issued as soon after the end of the fiscal year as is practicable.

(2) In addition, *once every two years*, separate written audit reports on the financial management practices of the office of the state treasurer and the pooled money investment board shall be prepared addressing the adequacy of financial management practices and compliance with applicable state laws. The separate audit of the pooled money investment board also shall include a comparative investment performance review and an analysis of the investment program, including an evaluation of investment policies and practices and of specific investments in the pooled money investment portfolio. The analysis of the specific investments in the pooled money investment portfolio shall review whether such investments meet the investment priorities of safety, liquidity and performance. The performance of such investments shall be measured by comparison to an appropriate market index.

(3) *In addition, whenever an individual is first elected or appointed and qualified to the office of the state treasurer, the legislative division of post audit shall conduct a transition audit within two weeks after the date such individual enters upon the duties of the office of the state treasurer. The purpose of the transition audit shall be to review the assets in the custody of the office of the state treasurer for significant discrepancies at the time of the transition. A separate written report shall be prepared for each transition audit.*

(4) Copies of the reports of audits conducted pursuant to this subsection (a) shall be furnished to the governor, director of accounts and reports, director of the budget, each state agency, the legislative post audit committee and other persons or agencies as may be required by law or by the specifications of the audit.

~~(4)~~(5) Any additional costs associated with preparing the separate additional reports on the office of the state treasurer and the pooled money investment board shall be borne by the office of the state treasurer and the pooled money investment board in accordance with K.S.A. 46-1121, and amendments thereto.

(b) Including financial-compliance audit work conducted as part of the audit conducted pursuant to subsection (a), financial-compliance audit work shall be conducted at each state agency at least once every three years as directed by the legislative post audit committee. Written reports on the results of such auditing shall be furnished to the governor, director of accounts and reports, director of the budget, the state agency which is audited, the legislative post audit committee and such other persons or agencies as may be required by law or by the specifications of the audit.

(c) (1) Books and accounts of the state treasurer and the director of accounts and reports, including the bond register of the state treasurer, may be examined monthly if the legislative post audit committee so de-

termines, and such examination may include detailed checking of every transaction or test checking.

(2) Any person receiving tax information under the provisions of subsection (a) or (b) 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.

(d) The post auditor shall report immediately in writing to the legislative post audit committee, governor and attorney general whenever it appears in the opinion of the post auditor that there may have occurred any violation of penal statutes or any instances of misfeasance, malfeasance or nonfeasance by a public officer or employee disclosed by any audit or audit work conducted under the legislative post audit act. The post auditor shall furnish the attorney general all information in the possession of the post auditor relative to any report referred to the attorney general. The attorney general shall institute and prosecute civil proceedings against any such delinquent officer or employee, or upon such officer or employee's official bond, or both, as may be needed to recover for the state any funds or other assets misappropriated. The attorney general shall also prosecute such ouster and criminal proceedings as the evidence in the case warrants. Any person receiving tax information under the provisions of this subsection 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.

(e) The post auditor shall immediately report to the committee on surety bonds and insurance when any audit or audit work conducted under the legislative post audit act discloses a shortage in the accounts of any state agency, officer or employee.

(f) In the discharge of the duties imposed under the legislative post audit act, the post auditor may require state agencies to preserve and make available their accounts, records, documents, vouchers, requisitions, payrolls, canceled checks or vouchers and coupons, and other evidence of financial transactions.

(g) In the discharge of the duties imposed under the legislative post audit act, the post auditor or firm conducting a financial-compliance audit or conducting any other audit or audit work shall have access to all books, accounts, records, files, documents and correspondence, confidential or otherwise, of any person or state agency subject to the legislative post audit act or in the custody of any such person or state agency. Except as otherwise provided in this subsection, the post auditor or firm conducting a financial-compliance audit or other audit or audit work under the legislative post audit act and all employees and former employees of the division of post audit or firm performing a financial-compliance audit or other audit or audit work shall be subject to the same duty of confiden-

tiality imposed by law on any such person or state agency with regard to any such books, accounts, records, files, documents and correspondence, and any information contained therein, and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality. The duty of confidentiality imposed on the post auditor and on firms conducting financial-compliance audits or any other audits or audit work under the legislative post audit act and all employees of the division of post audit and all employees of such firms shall be subject to the provisions of subsection (d), and the post auditor may furnish all such books, accounts, records, files, documents and correspondence, and any information contained therein to the attorney general pursuant to subsection (d). Upon receipt thereof, the attorney general and all assistant attorneys general and all other employees and former employees of the office of attorney general shall be subject to the same duty of confidentiality with the exceptions that any such information contained therein may be disclosed in civil proceedings, ouster proceedings and criminal proceedings which may be instituted and prosecuted by the attorney general in accordance with subsection (d), and any such books, accounts, records, files, documents and correspondence furnished to the attorney general in accordance with subsection (d) may be entered into evidence in any such proceedings. Nothing in this subsection shall be construed to supersede any requirement of federal law.

(h) Any firm or firms which develop information in the course of conducting a financial-compliance audit or other audit or audit work under the legislative post audit act which the post auditor is required to report under subsection (d) or (e) shall immediately report such information to the post auditor. The post auditor shall then make the report required in subsection (d) or (e).

Sec. 2. K.S.A. 2012 Supp. 46-1106 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 11, 2013.

CHAPTER 76

HOUSE BILL No. 2170
(Amended by Chapter 133)

AN ACT concerning crimes, criminal procedure and punishment; relating to probation and postrelease supervision; relating to sentencing; amending K.S.A. 2012 Supp. 21-6604, 21-6606, 21-6608, 21-6821, 22-3716, 22-3717, 74-9101 and 75-5217 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 21-6604a and 21-6604b.

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

Section 1. K.S.A. 2012 Supp. 21-6604 is hereby amended to read as follows: 21-6604. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense and may impose the provisions of subsection (q);

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, 8-2,144 and K.S.A. 2012 Supp. 8-1025, 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. 2012 Supp. 21-6609, and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (c) of K.S.A. 2012 Supp. 21-6602, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which

materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape from custody or aggravated escape from custody, as defined in K.S.A. 2012 Supp. 21-5911, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson or aggravated arson as defined in K.S.A. 2012 Supp. 21-5812, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 20-369, and amendments thereto;

(11) if the defendant is convicted of a misdemeanor or convicted of a felony specified in subsection (i) of K.S.A. 2012 Supp. 21-6804, and amendments thereto, assign the defendant to work release program, other than a program at a correctional institution under the control of the secretary of corrections as defined in K.S.A. 75-5202, and amendments thereto, provided such work release program requires such defendant to return to confinement at the end of each day in the work release program. On a second or *subsequent* conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program ~~must serve a total of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. On a third or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program must serve a total of 240 hours of confinement. Such 240 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day~~ shall serve the total number of hours of confinement mandated by that section;

(12) order the defendant to pay the full amount of unpaid costs associated with the conditions of release of the appearance bond under K.S.A. 22-2802, and amendments thereto;

(13) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12); or

(14) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. In regard to a violation of K.S.A. 2012 Supp. 21-6107, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719, and amendments thereto, to collect the restitution on behalf of the victim. The chief judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (d) of K.S.A. 2012 Supp. 21-6602, and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate

family, the court may waive payment of all or part of the amount due or modify the method of payment.

(e) In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole, conditional release or postrelease supervision.

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony, a new sentence shall be imposed ~~pursuant to the consecutive sentencing requirements consecutively pursuant to the provisions~~ of K.S.A. 2012 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) *When a new felony is committed during a period of time during which the defendant would have been on probation, assignment to a community correctional services program, parole, conditional release or post-release supervision for a felony had the defendant not been granted release by the court pursuant to subsection (d) of K.S.A. 2012 Supp. 21-6608, and amendments thereto, or the prisoner review board pursuant to K.S.A. 22-3717, and amendments thereto, 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.*

(3) 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. 2012 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)~~(4) 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. 2012 Supp. 21-6606, and amendments thereto, *consecutively pursuant to the provisions of K.S.A. 2012 Supp. 21-6606, and amendments thereto*, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2012 Supp. 21-6824, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and whose offense does not meet the requirements of K.S.A. 2012 Supp. 21-6824, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, 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~~ *amendments* thereto, or a community intermediate sanction center. Pursuant to this subsection the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or community intermediate sanction center and the defendant meets all of the conservation camp's or 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 community intermediate sanction center.

(h) In committing a defendant to the custody of the secretary of corrections, the court 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 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, in

grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, or for an offense which is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and such offense does not meet the requirements of K.S.A. 2012 Supp. 21-6824, and amendments thereto; and

(2) otherwise meets admission criteria of the camp.

If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 2012 Supp. 21-6608, and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

(n) (1) Except as provided by subsection (f) of K.S.A. 2012 Supp. 21-6805, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2012 Supp. 21-5706, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2012 Supp. 21-6824, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2012 Supp. 75-52,144, and amendments thereto, including, but not limited to, an approved after-care plan. *The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.*

(2) If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the defendant'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 sanction or revocation pursuant to the provisions of K.S.A. 22-3716, and amendments thereto.~~ *If the defendant's probation is revoked, the defendant shall serve the underlying prison sentence as established in K.S.A. 2012 Supp. 21-6805, and amendments thereto.*

(A) *Except as provided in subsection (n)(2)(B), for those offenders who are convicted on or after July 1, 2003, but prior to July 1, 2013, upon completion of the underlying prison sentence, the offender 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.~~*

(B) *Offenders whose crime of conviction was committed on or after*

July 1, 2013, and whose probation is revoked pursuant to subsection (c) of K.S.A. 22-3716, and amendments thereto, or whose underlying prison term expires while serving a sanction pursuant to subsection (c)(1)(C) or (c)(1)(D) of K.S.A. 22-3716, and amendments thereto, shall serve a period of postrelease supervision upon the completion of the underlying prison term.

(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. 2012 Supp. 21-5706, and amendments thereto, in which the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle upon a highway or street, the offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be suspended for one year.

(2) Upon suspension of a license pursuant to this subsection, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the person's privilege to operate a motor vehicle is in effect.

(3) (A) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any person as 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" mean the same as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

(p) In addition to any of the above, for any criminal offense that includes the domestic violence designation pursuant to K.S.A. 2012 Supp. 22-4616, and amendments thereto, the court shall require the defendant to: (1) Undergo a domestic violence offender assessment *conducted by a certified batterer intervention program*; and (2) follow all recommendations *made by such program*, 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 offender assessment ~~and any other evaluation~~ to any entity responsible for supervising such defendant. A defendant ordered to undergo a domestic violence offender assessment shall be required to pay for the assessment and, unless otherwise ordered by the court or the department of corrections, for completion of all recommendations.

(q) In imposing a fine, the court may authorize the payment thereof in installments. In lieu of payment of any fine imposed, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed by the later of one year after the fine is imposed or one

year after release from imprisonment or jail, or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance shall become due on that date. If conditional reduction of any fine is rescinded by the court for any reason, then pursuant to the court's order the person may be ordered to perform community service by one year after the date of such rescission or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date. All credits for community service shall be subject to review and approval by the court.

(r) In addition to any other penalty or disposition imposed by law, for any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2012 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the court shall order that the defendant be electronically monitored upon release from imprisonment for the duration of the defendant's natural life and that the defendant shall reimburse the state for all or part of the cost of such monitoring as determined by the prisoner review board.

(s) *Whenever the court has released the defendant on probation pursuant to subsection (a)(3), the defendant's supervising court services officer, with the concurrence of the chief court services officer, may impose the violation sanctions as provided in subsection (c)(1)(B) of K.S.A. 22-3716, and amendments thereto, without further order of the court, unless:*

(1) *The court has specifically withheld this authority in its sentencing order; or*

(2) *the defendant, after being apprised of the right to a revocation hearing before the court pursuant to subsection (b) of K.S.A. 22-3716, and amendments thereto, refuses to waive such right.*

(t) *Whenever the court has assigned the defendant to a community correctional services program pursuant to subsection (a)(4), the defendant's community corrections officer, with the concurrence of the community corrections director, may impose the violation sanctions as provided in subsection (c)(1)(B) of K.S.A. 22-3716, and amendments thereto, without further order of the court unless:*

(1) *The court has specifically withheld this authority in its sentencing order; or*

(2) *the defendant, after being apprised of the right to a revocation hearing before the court pursuant to subsection (b) of K.S.A. 22-3716, and amendments thereto, refuses to waive such right.*

Sec. 2. K.S.A. 2012 Supp. 21-6606 is hereby amended to read as follows: 21-6606. (a) When separate sentences of imprisonment for dif-

ferent crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as *otherwise* provided in subsections (c), (d) and (e).

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

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

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

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

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

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

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

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

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

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

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

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

(4) When indeterminate sentences are imposed to be served consecutively to sentences previously imposed in any other court or the sentencing court, the aggregated minimums and maximums shall be computed from the effective date of the subsequent sentences which have been imposed as consecutive. For the purpose of determining the sentence begins date and the parole eligibility and conditional release dates, the inmate shall be given credit on the aggregate sentence for time spent

imprisoned on the previous sentences, but not exceeding an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned on the minimum sentence. For the purpose of computing the maximum date, the inmate shall be given credit for all time spent imprisoned on the previous sentence. This method for computation of the maximum sentence shall be utilized for all sentences computed pursuant to this subsection after July 1, 1983.

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

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

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

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

Sec. 3. K.S.A. 2012 Supp. 21-6608 is hereby amended to read as follows: 21-6608. (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 probation 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 committed prior to July 1, 2012, and crimes in crime severity levels 1, 2 and 3 committed on or after July 1, 2012;

(3) except as provided further, in felony cases sentenced at severity levels 9 and 10 on the sentencing guidelines grid for nondrug crimes, severity level 4 on the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, and severity level 5 of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation of up to 12 months in length;

(4) in felony cases sentenced at severity level 8 on the sentencing guidelines grid for nondrug crimes, severity level 3 on the sentencing guidelines grid for drug crimes committed prior to July 1, 2012, and severity level 4 of the sentencing guidelines grid for drug crimes committed on or after July 1, 2012, and felony cases sentenced pursuant to K.S.A. 2012 Supp. 21-6824, 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.

(d) In addition to the provisions of subsection (a), a defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court. The court shall grant such discharge unless the court finds substantial and compelling reasons for denial of such discharge.

Sec. 4. K.S.A. 2012 Supp. 21-6821 is hereby amended to read as follows: 21-6821. (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;

(B) for 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; or

(C) for a drug severity level 3 or 4 crime committed on or after January 1, 2008, but prior to July 1, 2012, or a drug severity level 4 or 5 crime committed on or after July 1, 2012, an amount equal to 20% of the prison part of the sentence.

(c) The postrelease supervision term of a person sentenced to a term of imprisonment that includes a sentence for a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, a sexually motivated crime in which the offender has been ordered to register pursuant to subsection (d)(1)(D)(vii) of K.S.A. 22-3717, and amendments thereto, electronic solicitation, K.S.A. 21-3523, prior to its repeal, or K.S.A. 2012 Supp. 21-5509, and amendments thereto, or unlawful sexual relations,

K.S.A. 21-3520, prior to its repeal, or K.S.A. 2012 Supp. 21-5512, and amendments thereto, shall have any time which is earned and subtracted from the prison part of the such sentence of any inmate and any other consecutive or concurrent sentence 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, but prior to July 1, 2012, or an inmate who is serving only a sentence for a nondrug severity level 4 through 10 crime or a drug severity level 4 or 5 crime committed on or after July 1, 2012, 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 not be added to such inmate's postrelease supervision term, if applicable, *except that the postrelease supervision term of a person sentenced to a term of imprisonment that includes a sentence for a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, a sexually moti-*

vated crime in which the offender has been ordered to register pursuant to subsection (d)(1)(D)(vii) of K.S.A. 22-3717, and amendments thereto, electronic solicitation, K.S.A. 21-3523, prior to its repeal, or K.S.A. 2012 Supp. 21-5509, and amendments thereto, or unlawful sexual relations, K.S.A. 21-3520, prior to its repeal, or K.S.A. 2012 Supp. 21-5512, and amendments thereto, shall have any time which is earned and subtracted from the prison part of such sentence and any other consecutive or concurrent sentence pursuant to program credit calculation added to such inmate's postrelease supervision term.

(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, a drug severity level 3 or 4 committed prior to July 1, 2012, or a drug severity level 4 or 5 committed on or after July 1, 2012.

(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. 5. K.S.A. 2012 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)~~(e) 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)~~(e), 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) (1) 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.

(2) ~~Thereupon, or upon an arrest by warrant as provided in this section, Unless the defendant, after being apprised of the right to a hearing by the supervising court services or community correctional services officer, waives such hearing,~~ 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.

(3) (A) *Except as otherwise provided, if the original crime of conviction was a felony and a violation is established, the court may impose the violation sanctions as provided in subsection (c)(1).*

(B) *Except as otherwise provided, if the original crime of conviction was a misdemeanor and a 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.*

(4) *Except as otherwise provided, if the defendant waives the right to a hearing and the sentencing court has not specifically withheld the authority from court services or community correctional services to impose sanctions, the following sanctions may be imposed without further order of the court:*

(A) *If the defendant was on probation at the time of the violation, the defendant's supervising court services officer, with the concurrence of the chief court services officer, may impose the violation sanctions as provided in subsection (c)(1)(B); and*

(B) *if the defendant was assigned to a community correctional services program at the time of the violation, the defendant's community corrections officer, with the concurrence of the community corrections director, may impose the violation sanctions as provided in subsection (c)(1)(B).*

(c) (1) Except as otherwise provided, ~~if the violation is established, the court may the following violation sanctions may be imposed:~~

(A) ~~Continue or revoke Continuation or modification of the release conditions of 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.;~~

(B) *an intermediate sanction of confinement in jail for a total of not more than six days per month in any three separate months during the period of release supervision. The six days per month confinement may only be imposed as two-day or three-day consecutive periods, not to exceed 18 days of total confinement;*

(C) *if the violator already had at least one intermediate sanction imposed pursuant to subsection (c)(1)(B) related to the felony crime for which the original supervision was imposed, remanding the defendant to the custody of the secretary of corrections for a period of 120 days, subject to a reduction of up to 60 days in the discretion of the secretary. This sanction shall not be imposed more than once during the term of supervision;*

(D) *if the violator already had a sanction imposed pursuant to subsection (c)(1)(B) or (c)(1)(C) related to the felony crime for which the original supervision was imposed, remanding the defendant to the custody of the secretary of corrections for a period of 180 days, subject to a reduction of up to 90 days in the discretion of the secretary. This sanction shall not be imposed more than once during the term of supervision; or*

(E) *if the violator already had a sanction imposed pursuant to subsection (c)(1)(C) or (c)(1)(D) related to the felony crime for which the original supervision was imposed, revocation of the probation, assignment to a community corrections services program, suspension of sentence or nonprison sanction and requiring such violator to serve the sentence imposed, or any lesser sentence and, if imposition of sentence was suspended, imposition of any sentence which might originally have been imposed.*

(2) 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.~~

(3) The provisions of ~~this~~ subsection (c)(2) shall not apply to adult

felony offenders as described in subsection (a)(3) of K.S.A. 75-5291, and amendments thereto.

(4) 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.

(5) 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 *consecutively* pursuant to the ~~consecutive sentencing requirements provisions~~ of K.S.A. 2012 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(6) *Except as provided in subsection (f), upon completion of a violation sanction imposed pursuant to subsection (c)(1)(C) or (c)(1)(D) such offender shall return to community correctional services supervision. The sheriff shall not be responsible for the return of the offender to the county where the community correctional services supervision is assigned.*

(7) *A violation sanction imposed pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)(D) shall not be longer than the amount of time remaining on the defendant's underlying prison sentence.*

(8) *If the offender commits a new felony or misdemeanor or absconds from supervision while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction, the court may revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender pursuant to subsection (c)(1)(E) without having previously imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)(D).*

(9) *The court may revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender pursuant to subsection (c)(1)(E) without having previously imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)(D) if 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 offender will not be served by such sanction.*

~~(c)(d)~~ 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)~~(e) 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)~~(f) ~~Notwithstanding the provisions of any other law to the contrary, For crimes committed on and after July 1, 2013, an offender whose nonprison sanction is revoked pursuant to subsection (c) and a term of imprisonment imposed pursuant to either the sentencing guidelines grid for nondrug or drug crimes or whose underlying prison term expires while serving a sanction pursuant to subsection (c)(1)(C) or (c)(1)(D) shall not serve a period of postrelease supervision upon the completion of the prison portion of that the underlying 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. 2012 Supp. 21-6804, 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)~~(g) Offenders who have been sentenced pursuant to K.S.A. 2012 Supp. 21-6824, 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. 6. K.S.A. 2012 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638, prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642, prior to its repeal; K.S.A. 2012 Supp. 21-6617, 21-6620, 21-6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567, and amendments thereto; an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2012 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2012 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2012 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2012 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, prior to its repeal, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2012 Supp. 21-6627, and amendments

thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, prior to its repeal, or K.S.A. 2012 Supp. 21-6606, and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2012 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 1 through 4 crimes, drug severity levels 1 and 2 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity levels 1, 2 and 3 crimes committed on or after July 1, 2012, must serve 36 months, ~~plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2012 Supp. 21-6821, and amendments thereto,~~ on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes, drug severity level 3 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity level 4 crimes committed on or after July 1, 2012, must serve 24 months, ~~plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2012 Supp. 21-6821, and amendments thereto,~~ on postrelease supervision.

(C) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 7 through 10 crimes, drug severity level 4 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity level 5 crimes committed on or after July 1, 2012, must serve 12 months, ~~plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2012 Supp. 21-6821, and amendments thereto,~~ on postrelease supervision.

(D) *Persons sentenced to a term of imprisonment that includes a sentence for a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, a sexually motivated crime in which the offender has been ordered to register pursuant to subsection (d)(1)(D)(vii) of K.S.A. 22-3717, and amendments thereto, electronic solicitation, K.S.A. 21-3523, prior to its repeal, or K.S.A. 2012 Supp. 21-5509, and amendments thereto, or unlawful sexual relations, K.S.A. 21-3520, prior to its repeal, or K.S.A. 2012 Supp. 21-5512, and amendments thereto, shall serve the period of postrelease supervision as provided in subsections (d)(1)(A), (d)(1)(B) or (d)(1)(C) plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2012 Supp. 21-6821, and amendments thereto, on postrelease supervision.*

(i) ~~If the sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated. In that event, departure may be imposed to extend the post-release supervision to a period of up to 60 months.~~

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, prior to its repeal, or K.S.A. 2012 Supp. 21-6820, and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714, prior to its repeal, or subsection (e) of K.S.A. 2012 Supp. 21-6813, and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the prisoner review board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of ~~subparagraph~~ subsection (d)(1)(D), the court shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2012 Supp. 21-6817, and amendments thereto.

(vi) Upon petition *and payment of any restitution ordered pursuant to K.S.A. 2012 Supp. 21-6604, and amendments thereto*, the prisoner review board may provide for early discharge from the postrelease su-

pervision period *imposed pursuant to subsection (d)(1)(D)(i)* upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to ~~subparagraph~~ *subsection (d)(1)(A), (d)(1)(B) or (d)(1)(C)*. Early discharge from postrelease supervision is at the discretion of the board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2012 Supp. 21-5508, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

(2) *Persons serving a period of postrelease supervision pursuant to subsections (d)(1)(A), (d)(1)(B) or (d)(1)(C) may petition the prisoner review board for early discharge. Upon payment of restitution, the prisoner review board may provide for early discharge.*

(3) *Persons serving a period of incarceration for a supervision violation shall not have the period of postrelease supervision modified until such person is released and returned to postrelease supervision.*

(4) *Offenders whose crime of conviction was committed on or after July 1, 2013, and whose probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction is revoked pursuant to subsection (c) of K.S.A. 22-3716, and amendments thereto, or whose underlying prison term expires while serving a sanction pursuant to subsection (c)(1)(C) or (c)(1)(D) of K.S.A. 22-3716, and amendments thereto, shall serve a period of postrelease supervision upon the completion of the underlying prison term.*

(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)~~(5) As used in this subsection, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal, or K.S.A. 2012 Supp. 21-5510, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5505, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5604, and amendments thereto; or

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section.

(3) As used in this subsection, “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 prisoner review board may postpone the inmate’s parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate’s parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, prior to its repeal, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past

the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the prisoner review board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of 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 prisoner review board.

(g) Subject to the provisions of this section, the prisoner review board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, 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 prisoner review board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least one 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 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 prisoner review board will review the inmate's 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 prisoner review board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the 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 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 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 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 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 board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the 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 board determines that such resources are insufficient. If the board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) (1) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(2) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer or a department of corrections enforcement, apprehension and investigation

officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment.

(3) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity. Any law enforcement officer who conducts such a search shall submit a written report to the appropriate parole officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.

(l) The prisoner review board shall promulgate 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 prisoner review board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable;

(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 prisoner review board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services;

(6) shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment; and

(7) shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the prisoner review board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the prisoner review board grants the parole of an inmate, the board, within 14 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious

good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and (d)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to ~~May 25, 2000~~ *July 1, 2013*, who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section:

(1) *On or before September 1, 2013*, for offenders convicted of:

(A) Severity levels 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes ~~and~~;

(B) severity level 4 crimes *on the sentencing guidelines grid for drug crimes committed prior to July 1, 2012; and*

(C) *severity level 5 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000 committed on and after July 1, 2012;*

(2) *on or before November 1, 2013*, for offenders convicted of:

(A) Severity levels 6, 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes;

(B) *level 3 crimes on the sentencing guidelines grid for drug crimes committed prior to July 1, 2012; and*

(C) *level 4 crimes on the sentencing guidelines grid for drug crimes committed on or after July 1, 2012 on or before November 1, 2000; and*

(3) *on or before January 1, 2014*, for offenders convicted of:

(A) Severity levels 1, 2, 3, 4 and 5 ~~and 6~~ crimes on the sentencing guidelines grid for nondrug crimes ~~and~~;

(B) ~~severity level 3~~ *levels 1 and 2 crimes on the sentencing guidelines grid for drug crimes committed at any time; and*

(C) *severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001 committed on or after July 1, 2012.*

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2012 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the prisoner review board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the prisoner review board orders a person to be electronically monitored pursuant to this section, or the court orders a person to be electronically monitored pursuant to subsection (r) of K.S.A. 2012

Supp. 21-6604, and amendments thereto, the board 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 shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

(w) (1) On and after July 1, 2012, for any inmate who is a sex offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever the prisoner review board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to not possess pornographic materials.

(A) As used in this subsection, “pornographic materials” means: Any obscene material or performance depicting sexual conduct, sexual contact or a sexual performance; and any visual depiction of sexually explicit conduct.

(B) As used in this subsection, all other terms have the meanings provided by K.S.A. 2012 Supp. 21-5510, and amendments thereto.

(2) The provisions of this subsection shall be applied retroactively to every sex offender, as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2012. The prisoner review board shall obtain the written agreement required by this subsection from such offenders as soon as practicable.

Sec. 7. K.S.A. 2012 Supp. 75-5217 is hereby amended to read as follows: 75-5217. (a) At any time during release on parole, conditional release or postrelease supervision, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize any law enforcement officer to arrest and deliver the released inmate to a place as provided by subsection (g). Any parole officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving such officer a written or verbal arrest and detain order setting forth that the released inmate, in the judgment of the parole officer, has violated the conditions of the inmate’s release. A written arrest and detain order delivered to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining the inmate. After making an arrest the parole officer shall present to the detaining authorities a similar arrest and detain order and statement of the circumstances of violation. Pending a hearing, as provided in this section, upon any charge of violation the released inmate shall remain incarcerated in the institution or place to which the inmate is taken for detention.

(b) Upon such arrest and detention, the parole officer shall notify the secretary of corrections, or the secretary’s designee, within five days and

shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. After such notification is given to the secretary of corrections, or upon an arrest by warrant as herein provided, and the finding of probable cause pursuant to procedures established by the secretary of a violation of the released inmate's conditions of release, the secretary or the secretary's designee may cause the released inmate to be brought before the prisoner review board, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the board may adopt, or may dismiss the charges that the released inmate has violated the conditions of release and order the released inmate to remain on parole, conditional release or post release supervision. It is within the discretion of the board whether such hearing requires the released inmate to appear personally before the board when such inmate's violation results from a conviction for a new felony or misdemeanor. An offender under determinate sentencing whose violation does not result from a conviction of a new felony or misdemeanor may waive the right to a final revocation hearing before the board under such conditions and terms as may be prescribed by rules and regulations promulgated by the secretary of corrections. Relevant written statements made under oath shall be admitted and considered by the board, its designee or designees, along with other evidence presented at the hearing. If the violation is established to the satisfaction of the board, the board may continue or revoke the parole or conditional release, or enter such other order as the board may see fit. The revocation of release of inmates who are on a specified period of postrelease supervision shall be for a six-month period of confinement from the date of the revocation hearing before the board or the effective date of waiver of such hearing by the offender pursuant to rules and regulations promulgated by the board, if the violation does not result from a conviction for a new felony or misdemeanor. Such period of confinement may be reduced by not more than three months based on the inmate's conduct, work and program participation during the incarceration period. The reduction in the incarceration period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(c) If the violation results from a conviction for a new felony, upon revocation, the inmate shall serve ~~the entire~~ *a period of confinement, to be determined by the prisoner review board, which shall not exceed the remaining balance of the period of postrelease supervision, even if the new conviction did not result in the imposition of a new term of imprisonment.*

(d) If the violation results from a conviction for a new misdemeanor, upon revocation, the inmate shall serve a period of confinement, to be determined by the prisoner review board, which shall not exceed the remaining balance of the period of postrelease supervision.

(e) In the event the released inmate reaches conditional release date

as provided by K.S.A. 22-3718, and amendments thereto, after a finding of probable cause, pursuant to procedures established by the secretary of corrections of a violation of the released inmate's conditions of release, but prior to a hearing before the prisoner review board, the secretary of corrections shall be authorized to detain the inmate until the hearing by the board. The secretary shall then enforce the order issued by the board.

(f) If the secretary of corrections issues a warrant for the arrest of a released inmate for violation of any of the conditions of release and the released inmate is subsequently arrested in the state of Kansas, either pursuant to the warrant issued by the secretary of corrections or for any other reason, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest.

If a released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state, and the released inmate has been authorized as a condition of such inmate's release to reside in or travel to the state in which the released inmate was arrested, and the released inmate has not absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant to the date of the released inmate's arrest. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state for reasons other than the secretary's warrant and the released inmate does not have authorization to be in the other state or if authorized to be in the other state has been charged by the secretary with having absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant by the secretary to the date the released inmate is first available to be returned to the state of Kansas. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of a condition of release is subsequently arrested in another state pursuant only to the secretary's warrant, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest, regardless of whether the released inmate's presence in the other state was authorized or the released inmate had absconded from supervision.

The secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and may direct that all reasonable means to serve the warrant and detain such released inmate be employed including, but not limited to, notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of the released inmate.

(g) Law enforcement officers shall execute warrants issued by the

secretary of corrections, and shall deliver the inmate named in the warrant to the jail used by the county where the inmate is arrested unless some other place is designated by the secretary, in the same manner as for the execution of any arrest warrant.

(h) For the purposes of this section, an inmate or released inmate is an individual under the supervision of the secretary of corrections, including, but not limited to, an individual on parole, conditional release, postrelease supervision, probation granted by another state or an individual supervised under any interstate compact in accordance with the provisions of the uniform act for out-of-state parolee supervision, K.S.A. 22-4101 et seq., and amendments thereto.

Sec. 8. K.S.A. 2012 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 prisoner review board and whether the policy of allocating good time credits for the purpose of determining an inmate's eligibility for parole or conditional release should be continued;

(2) consult with and advise the legislature with reference to the implementation, management, monitoring, maintenance and operations of the sentencing guidelines system;

(3) direct implementation of the sentencing guidelines system;

(4) assist in the process of training judges, county and district attorneys, court services officers, state parole officers, correctional officers, law enforcement officials and other criminal justice groups. For these purposes, the sentencing commission shall develop an implementation policy and shall construct an implementation manual for use in its training activities;

(5) receive presentence reports and journal entries for all persons

who are sentenced for crimes committed on or after July 1, 1993, to develop post-implementation monitoring procedures and reporting methods to evaluate guideline sentences. In developing the evaluative criteria, the commission shall take into consideration rational and consistent sentencing standards which reduce sentence disparity to include, but not be limited to, racial and regional biases;

(6) advise and consult with the secretary of corrections and members of the legislature in developing a mechanism to link guidelines sentence practices with correctional resources and policies, including, but not 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. 2012 Supp. 21-6822, and amendments thereto;

(8) prepare and submit fiscal impact and correctional resource statement as provided in K.S.A. 74-9106, and amendments thereto;

(9) make recommendations to those responsible for developing a working philosophy of sentencing guideline consistency and rationality;

(10) develop prosecuting standards and guidelines to govern the conduct of prosecutors when charging persons with crimes and when engaging in plea bargaining;

(11) analyze problems in criminal justice, identify alternative solutions and make recommendations for improvements in criminal law, prosecution, community and correctional placement, programs, release procedures and related matters including study and recommendations concerning the statutory definition of crimes and criminal penalties and review of proposed criminal law changes;

(12) perform such other criminal justice studies or tasks as may be assigned by the governor or specifically requested by the legislature, department of corrections, the chief justice or the attorney general;

(13) develop a program plan which includes involvement of business and industry in the public or other social or fraternal organizations for admitting back into the mainstream those offenders who demonstrate both the desire and ability to reconstruct their lives during their incarceration or during conditional release;

(14) appoint a task force to make recommendations concerning the consolidation of probation, parole and community corrections services;

(15) produce official inmate population projections annually on or before six weeks following the date of receipt of the data from the department of corrections. When the commission's projections indicate that the inmate population will exceed available prison capacity within two years of the date of the projection, the commission shall identify and

analyze the impact of specific options for: (A) Reducing the number of prison admissions; or (B) adjusting sentence lengths for specific groups of offenders. Options for reducing the number of prison admissions shall include, but not be limited to, possible modification of both sentencing grids to include presumptive intermediate dispositions for certain categories of offenders. Intermediate sanction dispositions shall include, but not be limited to: Intensive supervision; short-term jail sentences; halfway houses; community-based work release; electronic monitoring and house arrest; substance abuse treatment; and pre-revocation incarceration. 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 option's impact on the overall size of the prison population, the effect on public safety and costs. In preparing the assessment, the commission shall review the experience of other states and shall review available research regarding the effectiveness of such option. The commission's findings relative to each sentencing policy option shall be presented to the governor and the joint committee on corrections and juvenile justice oversight no later than November 1;

(16) at the request of the governor or the joint committee on corrections and juvenile justice oversight, initiate and complete an analysis of other sentencing policy adjustments not otherwise evaluated by the commission;

(17) develop information relating to the number of offenders on post-release supervision and subject to electronic monitoring for the duration of the person's natural life;

(18) determine the effect the mandatory sentencing established in K.S.A. 21-4642 and 21-4643, prior to their repeal, or K.S.A. 2012 Supp. 21-6626 and 21-6627, and amendments thereto, would have on the number of offenders civilly committed to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq., and amendments thereto;

(19) assume the designation and functions of the state statistical analysis center. All criminal justice agencies, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, and the juvenile justice authority shall provide any data or information, including juvenile offender information, requested by the commission to facilitate the function of the state statistical analysis center; ~~and~~

(20) subject to the provisions of appropriation acts and the availability of funds therefor, produce official juvenile correctional facility population projections annually on or before November 1, not more than six weeks following the receipt of the data from the juvenile justice authority and develop bed impacts regarding legislation that may affect juvenile correctional facility population;

(21) *be authorized to make statewide supervision and placement cut-*

off decisions based upon the risk levels and needs of the offender. The commission shall periodically review data and make recommended changes; and

(22) determine the impact and effectiveness of supervision and sanctions for felony offenders regarding recidivism and prison and community-based supervision populations.

Sec. 9. K.S.A. 2012 Supp. 21-6604, 21-6604a, 21-6604b, 21-6606, 21-6608, 21-6821, 22-3716, 22-3717, 74-9101 and 75-5217 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 11, 2013.

CHAPTER 77

HOUSE BILL No. 2349*

AN ACT concerning legislative post audit committee; auditing unified school districts.

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

Section 1. (a) (1) Each fiscal year, the legislative division of post audit shall conduct three school district efficiency audits at the direction of the legislative post audit committee. One audit shall be conducted on a small unified school district; one audit shall be conducted on a medium unified school district; and one audit shall be conducted on a large unified school district. The legislative post audit committee shall make a determination of selecting the appropriate unified school districts first on a voluntary basis in order to implement the provisions of this section.

(2) No unified school district shall be required to participate in a school district efficiency audit under this subsection if such unified school district has participated in a similar efficiency audit with either the legislative division of post audit or any other organization in the previous five years.

(b) If a unified school district is being audited under subsection (a), upon completion of the audit, such school district shall publish a summary of its audit report with recommendations, if any, on the district's internet website. Such summary shall contain a notice that the complete audit report may be obtained or viewed free of charge at the unified school district office.

(c) The provisions of this section shall expire on June 30, 2017.

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

Approved April 16, 2013.

CHAPTER 78

SENATE BILL No. 16
(Amended by Chapter 133)

AN ACT concerning racketeering; enacting the Kansas racketeer influenced and corrupt organization act; relating to criminal street gangs; forfeiture; amending K.S.A. 2012 Supp. 21-5302, 21-6313 and 60-4104 and repealing the existing sections.

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

New Section 1. Sections 1 through 5, and amendments thereto, shall be known and may be cited as the Kansas racketeer influenced and corrupt organization act (Kansas RICO act).

New Sec. 2. As used in the Kansas racketeer influenced and corrupt organization act:

(a) “Beneficial interest” means:

(1) The interest of a person as a beneficiary under any trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(2) the interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term “beneficial interest” does not include the interest of a stock holder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(b) “Covered person” means any person who:

(1) Is a criminal street gang member or criminal street gang associate, as defined in K.S.A. 2012 Supp. 21-6313, and amendments thereto;

(2) has engaged in or is engaging in any conduct prohibited by K.S.A. 2012 Supp. 21-5426, and amendments thereto, human trafficking or aggravated human trafficking; or

(3) has engaged in or is engaging in any conduct prohibited by K.S.A. 2012 Supp. 21-5703, and amendments thereto, unlawful manufacturing of controlled substances, or K.S.A. 2012 Supp. 21-5705, and amendments thereto, unlawful cultivation or distribution of controlled substances.

(c) “Documentary material” means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(d) “Enterprise” means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal street gang, as defined in K.S.A. 2012 Supp. 21-6313, and amendments thereto, constitutes an enterprise.

(e) “Pattern of racketeering activity” means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years, excluding any period of imprisonment, after a prior incident of racketeering activity.

(f) “Racketeering activity” means to commit, attempt to commit, conspire to commit or to solicit, coerce or intimidate another person to commit:

(1) Any felony or misdemeanor violation of: the felony provisions of K.S.A. 8-1568, and amendments thereto, fleeing or attempting to elude a police officer; K.S.A. 9-508 et seq., and amendments thereto, Kansas money transmitter act; article 12a of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, Kansas uniform securities act; K.S.A. 2012 Supp. 21-5401, and amendments thereto, capital murder; K.S.A. 2012 Supp. 21-5402, and amendments thereto, murder in the first degree; K.S.A. 2012 Supp. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 2012 Supp. 21-5408, and amendments thereto, kidnapping or aggravated kidnapping; K.S.A. 2012 Supp. 21-5412, and amendments thereto; K.S.A. 2012 Supp. 21-5413, and amendments thereto; K.S.A. 2012 Supp. 21-5414, and amendments thereto, domestic battery; K.S.A. 2012 Supp. 21-5415, and amendments thereto, criminal threat or aggravated criminal threat; K.S.A. 2012 Supp. 21-5420, and amendments thereto, robbery or aggravated robbery; K.S.A. 2012 Supp. 21-5421, and amendments thereto, terrorism; K.S.A. 2012 Supp. 21-5422, and amendments thereto, illegal use of weapons of mass destruction; K.S.A. 2012 Supp. 21-5423, and amendments thereto; K.S.A. 2012 Supp. 21-5426, and amendments thereto, human trafficking or aggravated human trafficking; K.S.A. 2012 Supp. 21-5428, and amendments thereto, blackmail; K.S.A. 2012 Supp. 21-5510, and amendments thereto, sexual exploitation of a child; K.S.A. 2012 Supp. 21-5601, and amendments thereto, endangering a child or aggravated endangering a child; K.S.A. 2012 Supp. 21-5602, and amendments thereto, abuse of a child; K.S.A. 2012 Supp. 21-5603, and amendments thereto, contributing to a child’s misconduct or deprivation; subsection (b) of K.S.A. 2012 Supp. 21-5607, and amendments thereto, furnishing alcoholic beverages to a minor for

illicit purposes; article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, crimes involving controlled substances; K.S.A. 2012 Supp. 21-5801, and amendments thereto, theft; K.S.A. 2012 Supp. 21-5803, and amendments thereto, criminal deprivation of property; K.S.A. 2012 Supp. 21-5805, and amendments thereto; K.S.A. 2012 Supp. 21-5807, and amendments thereto, burglary or aggravated burglary; K.S.A. 2012 Supp. 21-5812, and amendments thereto, arson or aggravated arson; K.S.A. 2012 Supp. 21-5813, and amendments thereto, criminal damage to property; K.S.A. 2012 Supp. 21-5814, and amendments thereto, criminal use of an explosive; K.S.A. 2012 Supp. 21-5818, and amendments thereto, tampering with a pipeline; K.S.A. 2012 Supp. 21-5821, and amendments thereto, giving a worthless check; K.S.A. 2012 Supp. 21-5823, and amendments thereto, forgery; K.S.A. 2012 Supp. 21-5824, and amendments thereto, making false information; K.S.A. 2012 Supp. 21-5825, and amendments thereto, counterfeiting; K.S.A. 2012 Supp. 21-5826, and amendments thereto, destroying written instrument; K.S.A. 2012 Supp. 21-5828, and amendments thereto, criminal use of a financial card; K.S.A. 2012 Supp. 21-5838, and amendments thereto, conducting a pyramid promotional scheme; K.S.A. 2012 Supp. 21-5839, and amendments thereto; K.S.A. 2012 Supp. 21-5903, and amendments thereto, perjury; K.S.A. 2012 Supp. 21-5904, and amendments thereto, interference with law enforcement; K.S.A. 2012 Supp. 21-5905, and amendments thereto, interference with the judicial process; K.S.A. 2012 Supp. 21-5909, and amendments thereto, intimidation of a witness or victim or aggravated intimidation of a witness or victim; K.S.A. 2012 Supp. 21-5912, and amendments thereto, aiding escape; K.S.A. 2012 Supp. 21-5913, and amendments thereto, obstructing apprehension or prosecution; K.S.A. 2012 Supp. 21-5918, and amendments thereto; K.S.A. 2012 Supp. 21-6001, and amendments thereto, bribery; K.S.A. 2012 Supp. 21-6002, and amendments thereto, official misconduct; K.S.A. 2012 Supp. 21-6301, and amendments thereto, criminal use of weapons; K.S.A. 2012 Supp. 21-6302, and amendments thereto, criminal carrying of a weapon; K.S.A. 2012 Supp. 21-6303, and amendments thereto, criminal distribution of firearms to a felon; K.S.A. 2012 Supp. 21-6304, and amendments thereto, criminal possession of a firearm by a convicted felon; K.S.A. 2012 Supp. 21-6305, and amendments thereto, aggravated weapons violation by a convicted felon; K.S.A. 2012 Supp. 21-6306, and amendments thereto, defacing identification marks of a firearm; K.S.A. 2012 Supp. 21-6308, and amendments thereto, criminal discharge of a firearm; K.S.A. 2012 Supp. 21-6310, and amendments thereto, unlawful endangerment; K.S.A. 2012 Supp. 21-6312, and amendments thereto; K.S.A. 2012 Supp. 21-6313 through 21-6316, and amendments thereto; K.S.A. 2012 Supp. 21-6401, and amendments thereto; K.S.A. 2012 Supp. 21-6404, and amendments thereto, gambling; K.S.A. 2012 Supp. 21-6405, and amendments thereto, illegal bingo operation; K.S.A. 2012 Supp. 21-6406, and

amendments thereto, commercial gambling; K.S.A. 2012 Supp. 21-6407, and amendments thereto, dealing in gambling devices; K.S.A. 2012 Supp. 21-6408, and amendments thereto; K.S.A. 2012 Supp. 21-6409, and amendments thereto, installing communication facilities for gamblers; subsections (a) or (b) of K.S.A. 2012 Supp. 21-6414, and amendments thereto, unlawful conduct of dog fighting or unlawful possession of dog fighting paraphernalia; subsections (a) or (b) of K.S.A. 2012 Supp. 21-6417, and amendments thereto, unlawful conduct of cockfighting or unlawful possession of cockfighting paraphernalia; K.S.A. 2012 Supp. 21-6419, and amendments thereto, prostitution; K.S.A. 2012 Supp. 21-6420, and amendments thereto, promoting prostitution; K.S.A. 2012 Supp. 21-6501, and amendments thereto, extortion; K.S.A. 2012 Supp. 21-6502, and amendments thereto, debt adjusting; K.S.A. 2012 Supp. 21-6504, and amendments thereto, equity skimming; K.S.A. 2012 Supp. 21-6506, and amendments thereto, commercial bribery; K.S.A. 2012 Supp. 21-6507, and amendments thereto, sports bribery; K.S.A. 2012 Supp. 21-6508, and amendments thereto, tampering with a sports contest; K.S.A. 39-720, and amendments thereto, social welfare service fraud; K.S.A. 40-2,118, and amendments thereto, fraudulent insurance acts; K.S.A. 41-101 et seq., and amendments thereto, Kansas liquor control act; K.S.A. 44-5,125, and amendments thereto, workers' compensation act; K.S.A. 65-1657, and amendments thereto, nonresident pharmacy registration; K.S.A. 65-3441, and amendments thereto, hazardous waste; K.S.A. 65-4167, and amendments thereto, trafficking in counterfeit drugs; article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas pari-mutuel racing act; or K.S.A. 79-3321, and amendments thereto, Kansas cigarette and tobacco products act; or

(2) any conduct defined as "racketeering activity" under 18 U.S.C. § 1961(1).

(g) "Real property" means any real property or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(h) "Trustee" means:

(1) Any person acting as trustee pursuant to a trust in which the trustee holds legal or record title to real property;

(2) any person who holds legal or record title to real property in which any other person has a beneficial interest; or

(3) any successor trustee or trustees to any or all of the foregoing persons.

The term "trustee" does not include any person appointed or acting as a personal representative as defined in K.S.A. 59-102, and amendments thereto, or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

(i) "Unlawful debt" means any money or other thing of value consti-

tuting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(1) In violation of any of the following provisions of law: article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas parimutuel racing act; K.S.A. 2012 Supp. 21-6404, and amendments thereto, gambling; K.S.A. 2012 Supp. 21-6405, and amendments thereto, illegal bingo operation; K.S.A. 2012 Supp. 21-6406, and amendments thereto, commercial gambling; K.S.A. 2012 Supp. 21-6407, and amendments thereto, dealing in gambling devices; K.S.A. 2012 Supp. 21-6408, and amendments thereto; or K.S.A. 2012 Supp. 21-6409, and amendments thereto, installing communication facilities for gamblers; or

(2) in gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

New Sec. 3. (a) It is unlawful for any covered person:

(1) Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;

(2) through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property; or

(3) employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(b) Violation of this section or conspiracy to commit a violation of this section is a severity level 2, person felony.

(c) The provisions of subsection (d) of K.S.A. 2012 Supp. 21-5302, and amendments thereto, shall not apply to conspiracy to commit a violation of this section.

(d) (1) Notwithstanding the provisions of K.S.A. 2012 Supp. 21-6611, and amendments thereto, any person convicted of engaging in conduct in violation of this section, through which the person derived pecuniary value, or by which the person caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(2) The court shall hold a hearing to determine the amount of the fine authorized by this subsection.

(3) For the purposes of this subsection, “pecuniary value” means:

(A) Anything of value in the form of money, a negotiable instrument,

or a commercial interest or anything else the primary significance of which is economic advantage; and

(B) any other property or service that has a value in excess of \$100.

(e) 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, an appropriate intensive pretrial supervision program is available and the defendant agrees to comply with the mandate of such pretrial supervision. Notwithstanding any other provision of law, any person arrested and charged under this section shall not be released upon the person's own recognizance pursuant to K.S.A. 22-2802, and amendments thereto.

New Sec. 4. (a) Any district court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of section 3, and amendments thereto, by issuing appropriate orders and judgments, including, but not limited to:

(1) Ordering any defendant to divest such defendant of any interest in any enterprise, including real property.

(2) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the provisions of section 3, and amendments thereto.

(3) Ordering the dissolution or reorganization of any enterprise.

(4) Ordering the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any agency of the state.

(5) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of section 3, and amendments thereto, and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

(b) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of the Kansas racketeer influenced and corrupt organization act is subject to civil forfeiture pursuant to the Kansas standard asset seizure and forfeiture act, K.S.A. 60-4101 et seq., and amendments thereto.

New Sec. 5. (a) For the purposes of this section, "attorney" means the attorney general, assistant attorney general, county attorney or district attorney, or in the absence of the county or district attorney, a designated assistant county or district attorney. If an assistant county or district at-

torney is designated by the county or district attorney for the purposes of this section, such designation shall be filed with the chief judge of such judicial district.

(b) If an attorney is informed or has knowledge that a person or other enterprise has engaged in, or is engaging in, activity in violation of the Kansas racketeer influenced and corrupt organization act, such attorney shall be authorized to administer oaths or affirmations, subpoena witnesses or material, and collect evidence relating to such activity.

(c) An attorney may apply ex parte to the district court of the district in which a subpoenaed person or entity resides, is found or transacts business, for an order directing that the subpoenaed person or entity not disclose the existence of the subpoena to any other person or entity except the subpoenaed person's attorney for a period of 90 days, which time may be extended by the court for good cause shown by the attorney. The order shall be served with the subpoena, and the subpoena shall include a reference to the order and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any other person or entity in violation of the order may subject the subpoenaed person or entity to punishment for contempt of court. Such an order may be granted by the court only upon a showing:

(1) Of sufficient factual grounds to reasonably indicate a violation of the Kansas racketeer influenced and corrupt organization act;

(2) that the documents or testimony sought appear reasonably calculated to lead to the discovery of admissible evidence; and

(3) of facts which reasonably indicate that disclosure of the subpoena would hamper or impede the investigation or would result in a flight from prosecution.

(d) If information or evidence that the attorney seeks to obtain by the subpoena is located outside the state, the person or enterprise subpoenaed may make such information or evidence available to the attorney or such attorney's representative for examination at the place where such information or evidence is located. The attorney may designate representatives, including officials of the jurisdiction in which the information or evidence is located, to inspect the information or evidence on such attorney's behalf and may respond to similar requests from officials of other jurisdictions.

(e) Upon failure of a person or enterprise, without lawful excuse, to obey a subpoena issued under this section or a subpoena issued in the course of a civil proceeding instituted pursuant to section 4, and amendments thereto, and after reasonable notice to such person or enterprise, the attorney may apply to the district court in which such civil proceeding is pending or, if no civil proceeding is pending, to the district court of the judicial district in which such person or enterprise resides, is found or transacts business for an order compelling compliance. Except in a prosecution for perjury, an individual who complies with a court order to

provide testimony or material after asserting a privilege against self-incrimination to which such individual is entitled by law shall not have the testimony or material so provided, or evidence derived therefrom, received against such individual in any criminal investigation or proceeding.

(f) A person who fails to obey a court order entered pursuant to this section may be adjudged in contempt of court and punished by fine and imprisonment.

Sec. 6. K.S.A. 2012 Supp. 21-5302 is hereby amended to read as follows: 21-5302. (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 is immaterial to the criminal liability of a person charged with conspiracy that any other person with whom the defendant conspired lacked the actual intent to commit the underlying crime provided that the defendant believed the other person did have the actual intent to commit the underlying crime.

(c) 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.

(d) (1) Conspiracy to commit an off-grid felony shall be ranked at nondrug 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 K.S.A. 2012 Supp. 21-5426, 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, as defined in K.S.A. 2012 Supp. 21-5421, and amendments thereto;

(C) illegal use of weapons of mass destruction, as defined in K.S.A. 2012 Supp. 21-5422, and amendments thereto;

(D) rape, as defined in subsection (a)(3) of K.S.A. 2012 Supp. 21-5503, 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 K.S.A. 2012 Supp. 21-5506, 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 K.S.A. 2012 Supp. 21-5504, and amendments thereto, if the offender is 18 years of age or older;

(G) promoting prostitution, as defined in K.S.A. 2012 Supp. 21-6420, 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 K.S.A. 2012 Supp. 21-5510, and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age; *or*

(I) *violations of the Kansas racketeer influenced and corrupt organization act, as described in section 3, and amendments thereto.*

(e) 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.

(f) A conspiracy to commit a misdemeanor is a class C misdemeanor.

Sec. 7. K.S.A. 2012 Supp. 21-6313 is hereby amended to read as follows: 21-6313. As used in K.S.A. 2012 Supp. 21-6313 through 21-6316, 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. 2012 Supp. 21-5701 through 21-5717, 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. 2012 Supp. 21-5701 through 21-5717, 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;~~

~~(E) adopts such gang's style of dress, color, use of hand signs or tattoos; and;~~

(F) associates with known criminal street gang members;

~~(F)(G)~~ 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)(H)~~ is identified as a criminal street gang member by physical evidence including, but not limited to, photographs or other documentation;

~~(G)(I)~~ has been stopped in the company of known criminal street gang members two or more times; or

~~(H)(J)~~ 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. 2012 Supp. 21-5701 through 21-5717, 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. 8. K.S.A. 2012 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 involving controlled substances, as described in K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto;

(c) theft, as defined in K.S.A. 2012 Supp. 21-5801, and amendments thereto;

(d) criminal discharge of a firearm, as defined in subsections (a)(1) and (a)(2) of K.S.A. 2012 Supp. 21-6308, and amendments thereto;

(e) gambling, as defined in K.S.A. 2012 Supp. 21-6404, and amendments thereto, and commercial gambling, as defined in subsection (a)(1) of K.S.A. 2012 Supp. 21-6406, and amendments thereto;

(f) counterfeiting, as defined in K.S.A. 2012 Supp. 21-5825, and amendments thereto;

(g) unlawful possession *or use* of a scanning device or reencoder, as described in K.S.A. 2012 Supp. 21-6108, and amendments thereto;

(h) medicaid fraud, as described in K.S.A. 2012 Supp. 21-5925 through 21-5934, and amendments thereto;

(i) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;

(j) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

(k) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

(l) furtherance of terrorism or illegal use of weapons of mass destruction, as described in K.S.A. 2012 Supp. 21-5423, and amendments thereto;

(m) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6414, and amendments thereto;

(n) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6417, and amendments thereto;

(o) prostitution, as defined in K.S.A. 2012 Supp. 21-6419, and amendments thereto, promoting prostitution, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, and patronizing a prostitute, as defined in K.S.A. 2012 Supp. 21-6421, and amendments thereto;

(p) human trafficking and aggravated human trafficking, as defined in K.S.A. 2012 Supp. 21-5426, and amendments thereto;

(q) violations of the banking code, as described in K.S.A. 9-2012, and amendments thereto;

(r) mistreatment of a dependent adult, as defined in K.S.A. 2012 Supp. 21-5417, and amendments thereto;

(s) giving a worthless check, as defined in K.S.A. 2012 Supp. 21-5821, and amendments thereto;

(t) forgery, as defined in K.S.A. 2012 Supp. 21-5823, and amendments thereto;

(u) making false information, as defined in K.S.A. 2012 Supp. 21-5824, and amendments thereto;

(v) criminal use of a financial card, as defined in K.S.A. 2012 Supp. 21-5828, and amendments thereto;

(w) unlawful acts concerning computers, as described in K.S.A. 2012 Supp. 21-5839, and amendments thereto;

(x) identity theft and identity fraud, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6107, and amendments thereto;

(y) electronic solicitation, as defined in K.S.A. 2012 Supp. 21-5509, and amendments thereto; ~~and~~

(z) felony violations of fleeing or attempting to elude a police officer, as described in K.S.A. 8-1568, and amendments thereto; *and*

(aa) violations of the Kansas racketeer influenced and corrupt organization act, as described in section 3, and amendments thereto.

Sec. 9. K.S.A. 2012 Supp. 21-5302, 21-6313 and 60-4104 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 16, 2013.

CHAPTER 79

SENATE BILL No. 111

AN ACT concerning native Americans; amending K.S.A. 35-205 and K.S.A. 2012 Supp. 38-2285 and repealing the existing sections.

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

Section 1. K.S.A. 35-205 is hereby amended to read as follows: 35-205. (a) The fourth Saturday of September of the present year of our Lord 1945, and the fourth Saturday of September of each year thereafter is hereby designated as “Native American ~~Indian~~ Day.”

(b) *The first Wednesday of February of 2014, and the first Wednes-*

day of February of each year thereafter is hereby designated as "Native American Legislative Day at the Capitol."

Sec. 2. K.S.A. 2012 Supp. 38-2285 is hereby amended to read as follows: 38-2285. (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, *or in the custody of a federally recognized Indian tribe in this state*, 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.

Sec. 3. K.S.A. 35-205 and K.S.A. 2012 Supp. 38-2285 are hereby repealed.

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

Approved April 16, 2013.

Published in the *Kansas Register* April 25, 2013.

CHAPTER 80

SENATE BILL No. 149
(Amended by Chapter 133)

AN ACT concerning drug screening; amending K.S.A. 2012 Supp. 39-709, 39-709e, 44-706 and 75-4362 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 39-709 is hereby amended to read as follows: 39-709. (a) *General eligibility requirements for assistance for which federal moneys are expended.* Subject to the additional requirements below, assistance in accordance with plans under which federal moneys are expended may be granted to any needy person who:

(1) Has insufficient income or resources to provide a reasonable subsistence compatible with decency and health. Where a husband and wife are living together, the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary, in determining need of any applicant for or recipient of assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or minor stepchild if the stepchild is living with such individual. The secretary in determining need

of an individual may provide such income and resource exemptions as may be permitted by federal law. For purposes of eligibility for aid for families with dependent children, for food stamp assistance and for any other assistance provided through the department of social and rehabilitation services under which federal moneys are expended, the secretary of social and rehabilitation services shall consider one motor vehicle owned by the applicant for assistance, regardless of the value of such vehicle, as exempt personal property and shall consider any equity in any additional motor vehicle owned by the applicant for assistance to be a nonexempt resource of the applicant for assistance.

(2) Is a citizen of the United States or is an alien lawfully admitted to the United States and who is residing in the state of Kansas.

(b) *Assistance to families with dependent children.* Assistance may be granted under this act to any dependent child, or relative, subject to the general eligibility requirements as set out in subsection (a), who resides in the state of Kansas or whose parent or other relative with whom the child is living resides in the state of Kansas. Such assistance shall be known as aid to families with dependent children. Where husband and wife are living together both shall register for work under the program requirements for aid to families with dependent children in accordance with criteria and guidelines prescribed by rules and regulations of the secretary.

(c) *Aid to families with dependent children; assignment of support rights and limited power of attorney.* By applying for or receiving aid to families with dependent children such applicant or recipient shall be deemed to have assigned to the secretary on behalf of the state any accrued, present or future rights to support from any other person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. In any case in which an order for child support has been established and the legal custodian and obligee under the order surrenders physical custody of the child to a caretaker relative without obtaining a modification of legal custody and support rights on behalf of the child are assigned pursuant to this section, the surrender of physical custody and the assignment shall transfer, by operation of law, the child's support rights under the order to the secretary on behalf of the state. Such assignment shall be of all accrued, present or future rights to support of the child surrendered to the caretaker relative. The assignment of support rights shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant, recipient or obligee. By applying for or receiving aid to families with dependent children, or by surrendering physical custody of a child to a caretaker relative who is an applicant or recipient of such assistance on the child's behalf, the applicant, recipient or obligee is also deemed to have appointed the secretary, or the secretary's designee, as

an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full.

(d) *Eligibility requirements for general assistance, the cost of which is not shared by the federal government.* (1) General assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d).

(A) To qualify for general assistance in any form a needy person must have insufficient income or resources to provide a reasonable subsistence compatible with decency and health and, except as provided for transitional assistance, be a member of a family in which a minor child or a pregnant woman resides or be unable to engage in employment. The secretary shall adopt rules and regulations prescribing criteria for establishing when a minor child may be considered to be living with a family and whether a person is able to engage in employment, including such factors as age or physical or mental condition. Eligibility for general assistance, other than transitional assistance, is limited to families in which a minor child or a pregnant woman resides or to an adult or family in which all legally responsible family members are unable to engage in employment. Where a husband and wife are living together the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary in determining need of any applicant for or recipient of general assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of general assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or a minor stepchild if the stepchild is living with such individual. In determining the need of an individual, the secretary may provide for income and resource exemptions.

(B) To qualify for general assistance in any form a needy person must be a citizen of the United States or an alien lawfully admitted to the United States and must be residing in the state of Kansas.

(2) General assistance in the form of transitional assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d), but who do not meet the criteria prescribed by rules and regulations of the secretary relating to inability to engage in employment or are not a member of a family in which a minor or a pregnant woman resides.

(3) In addition to the other requirements prescribed under this sub-

section (d), the secretary shall adopt rules and regulations which establish community work experience program requirements for eligibility for the receipt of general assistance in any form and which establish penalties to be imposed when a work assignment under a community work experience program requirement is not completed without good cause. The secretary may adopt rules and regulations establishing exemptions from any such community work experience program requirements. A first time failure to complete such a work assignment requirement shall result in ineligibility to receive general assistance for a period fixed by such rules and regulations of not more than three calendar months. A subsequent failure to complete such a work assignment requirement shall result in a period fixed by such rules and regulations of ineligibility of not more than six calendar months.

(4) If any person is found guilty of the crime of theft under the provisions of K.S.A. 39-720, and amendments thereto, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the provisions of K.S.A. 39-720, and amendments thereto, or the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction. If any person is found guilty by a court of competent jurisdiction of any state other than the state of Kansas of a crime involving welfare fraud, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the law of any other state concerning welfare fraud shall become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the law of any other state concerning welfare fraud shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction.

(e) *Requirements for medical assistance for which federal moneys or state moneys or both are expended.* (1) When the secretary has adopted a medical care plan under which federal moneys or state moneys or both are expended, medical assistance in accordance with such plan shall be granted to any person who is a citizen of the United States or who is an alien lawfully admitted to the United States and who is residing in the state of Kansas, whose resources and income do not exceed the levels prescribed by the secretary. In determining the need of an individual, the

secretary may provide for income and resource exemptions and protected income and resource levels. Resources from inheritance shall be counted. A disclaimer of an inheritance pursuant to K.S.A. 59-2291, and amendments thereto, shall constitute a transfer of resources. The secretary shall exempt principal and interest held in irrevocable trust pursuant to subsection (c) of K.S.A. 16-303, and amendments thereto, from the eligibility requirements of applicants for and recipients of medical assistance. Such assistance shall be known as medical assistance.

(2) For the purposes of medical assistance eligibility determinations on or after July 1, 2004, if an applicant or recipient owns property in joint tenancy with some other party and the applicant or recipient of medical assistance has restricted or conditioned their interest in such property to a specific and discrete property interest less than 100%, then such designation will cause the full value of the property to be considered an available resource to the applicant or recipient.

(3) (A) Resources from trusts shall be considered when determining eligibility of a trust beneficiary for medical assistance. Medical assistance is to be secondary to all resources, including trusts, that may be available to an applicant or recipient of medical assistance.

(B) If a trust has discretionary language, the trust shall be considered to be an available resource to the extent, using the full extent of discretion, the trustee may make any of the income or principal available to the applicant or recipient of medical assistance. Any such discretionary trust shall be considered an available resource unless: (i) At the time of creation or amendment of the trust, the trust states a clear intent that the trust is supplemental to public assistance; and (ii) the trust: (a) Is funded from resources of a person who, at the time of such funding, owed no duty of support to the applicant or recipient of medical assistance; or (b) is funded not more than nominally from resources of a person while that person owed a duty of support to the applicant or recipient of medical assistance.

(C) For the purposes of this paragraph, "public assistance" includes, but is not limited to, medicaid, medical assistance or title XIX of the social security act.

(4) (A) When an applicant or recipient of medical assistance is a party to a contract, agreement or accord for personal services being provided by a nonlicensed individual or provider and such contract, agreement or accord involves health and welfare monitoring, pharmacy assistance, case management, communication with medical, health or other professionals, or other activities related to home health care, long term care, medical assistance benefits, or other related issues, any moneys paid under such contract, agreement or accord shall be considered to be an available resource unless the following restrictions are met: (i) The contract, agreement or accord must be in writing and executed prior to any services being provided; (ii) the moneys paid are in direct relationship with the fair market value of such services being provided by similarly situated and

trained nonlicensed individuals; (iii) if no similarly situated nonlicensed individuals or situations can be found, the value of services will be based on federal hourly minimum wage standards; (iv) such individual providing the services will report all receipts of moneys as income to the appropriate state and federal governmental revenue agencies; (v) any amounts due under such contract, agreement or accord shall be paid after the services are rendered; (vi) the applicant or recipient shall have the power to revoke the contract, agreement or accord; and (vii) upon the death of the applicant or recipient, the contract, agreement or accord ceases.

(B) When an applicant or recipient of medical assistance is a party to a written contract for personal services being provided by a licensed health professional or facility and such contract involves health and welfare monitoring, pharmacy assistance, case management, communication with medical, health or other professionals, or other activities related to home health care, long term care, medical assistance benefits or other related issues, any moneys paid in advance of receipt of services for such contracts shall be considered to be an available resource.

(5) Any trust may be amended if such amendment is permitted by the Kansas uniform trust code.

(f) *Eligibility for medical assistance of resident receiving medical care outside state.* A person who is receiving medical care including long-term care outside of Kansas whose health would be endangered by the postponement of medical care until return to the state or by travel to return to Kansas, may be determined eligible for medical assistance if such individual is a resident of Kansas and all other eligibility factors are met. Persons who are receiving medical care on an ongoing basis in a long-term medical care facility in a state other than Kansas and who do not return to a care facility in Kansas when they are able to do so, shall no longer be eligible to receive assistance in Kansas unless such medical care is not available in a comparable facility or program providing such medical care in Kansas. For persons who are minors or who are under guardianship, the actions of the parent or guardian shall be deemed to be the actions of the child or ward in determining whether or not the person is remaining outside the state voluntarily.

(g) *Medical assistance; assignment of rights to medical support and limited power of attorney; recovery from estates of deceased recipients.*

(1) Except as otherwise provided in K.S.A. 39-786 and 39-787, and amendments thereto, or as otherwise authorized on and after September 30, 1989, under section 303, and amendments thereto, of the federal medicare catastrophic coverage act of 1988, whichever is applicable, by applying for or receiving medical assistance under a medical care plan in which federal funds are expended, any accrued, present or future rights to support and any rights to payment for medical care from a third party of an applicant or recipient and any other family member for whom the applicant is applying shall be deemed to have been assigned to the sec-

retary on behalf of the state. The assignment shall automatically become effective upon the date of approval for such assistance without the requirement that any document be signed by the applicant or recipient. By applying for or receiving medical assistance the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments, representing payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for assistance and shall remain in effect until the assignment has been terminated in full. The assignment of any rights to payment for medical care from a third party under this subsection shall not prohibit a health care provider from directly billing an insurance carrier for services rendered if the provider has not submitted a claim covering such services to the secretary for payment. Support amounts collected on behalf of persons whose rights to support are assigned to the secretary only under this subsection and no other shall be distributed pursuant to subsection (d) of K.S.A. 39-756, and amendments thereto, except that any amounts designated as medical support shall be retained by the secretary for repayment of the unreimbursed portion of assistance. Amounts collected pursuant to the assignment of rights to payment for medical care from a third party shall also be retained by the secretary for repayment of the unreimbursed portion of assistance.

(2) The amount of any medical assistance paid after June 30, 1992, under the provisions of subsection (e) is (A) a claim against the property or any interest therein belonging to and a part of the estate of any deceased recipient or, if there is no estate, the estate of the surviving spouse, if any, shall be charged for such medical assistance paid to either or both, and (B) a claim against any funds of such recipient or spouse in any account under K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-5829, and amendments thereto. There shall be no recovery of medical assistance correctly paid to or on behalf of an individual under subsection (e) except after the death of the surviving spouse of the individual, if any, and only at a time when the individual has no surviving child who is under 21 years of age or is blind or permanently and totally disabled. Transfers of real or personal property by recipients of medical assistance without adequate consideration are voidable and may be set aside. Except where there is a surviving spouse, or a surviving child who is under 21 years of age or is blind or permanently and totally disabled, the amount of any medical assistance paid under subsection (e) is a claim against the estate in any guardianship or conservatorship proceeding. The monetary value of any benefits received by the recipient of such medical assistance under long-term care insurance, as defined by K.S.A. 40-2227, and amendments thereto, shall be a credit against the amount of the claim provided for

such medical assistance under this subsection (g). The secretary is authorized to enforce each claim provided for under this subsection (g). The secretary shall not be required to pursue every claim, but is granted discretion to determine which claims to pursue. All moneys received by the secretary from claims under this subsection (g) shall be deposited in the social welfare fund. The secretary may adopt rules and regulations for the implementation and administration of the medical assistance recovery program under this subsection (g).

(3) By applying for or receiving medical assistance under the provisions of article 7 of chapter 39 of the Kansas Statutes Annotated, such individual or such individual's agent, fiduciary, guardian, conservator, representative payee or other person acting on behalf of the individual consents to the following definitions of estate and the results therefrom:

(A) If an individual receives any medical assistance before July 1, 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, which forms the basis for a claim under subsection (g)(2), such claim is limited to the individual's probatable estate as defined by applicable law; and

(B) if an individual receives any medical assistance on or after July 1, 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, which forms the basis for a claim under subsection (g)(2), such claim shall apply to the individual's medical assistance estate. The medical assistance estate is defined as including all real and personal property and other assets in which the deceased individual had any legal title or interest immediately before or at the time of death to the extent of that interest or title. The medical assistance estate includes, without limitation assets conveyed to a survivor, heir or assign of the deceased recipient through joint tenancy, tenancy in common, survivorship, transfer-on-death deed, payable-on-death contract, life estate, trust, annuities or similar arrangement.

(4) The secretary of social and rehabilitation services or the secretary's designee is authorized to file and enforce a lien against the real property of a recipient of medical assistance in certain situations, subject to all prior liens of record. The lien must be filed in the office of the register of deeds of the county where the real property is located and must contain the legal description of all real property in the county subject to the lien. This lien is for payments of medical assistance made by the department of social and rehabilitation services to the recipient who is an inpatient in a nursing home or other medical institution. Such lien may be filed only after notice and an opportunity for a hearing has been given. Such lien may be enforced only upon competent medical testimony that the recipient cannot reasonably be expected to be discharged and returned home. A six-month period of compensated inpatient care at a nursing home, nursing homes or other medical institution shall constitute a determination by the department of social and rehabilitation services

that the recipient cannot reasonably be expected to be discharged and returned home. To return home means the recipient leaves the nursing or medical facility and resides in the home on which the lien has been placed for a period of at least 90 days without being readmitted as an inpatient to a nursing or medical facility. The amount of the lien shall be for the amount of assistance paid by the department of social and rehabilitation services after the expiration of six months from the date the recipient became eligible for compensated inpatient care at a nursing home, nursing homes or other medical institution until the time of the filing of the lien and for any amount paid thereafter for such medical assistance to the recipient.

(5) The lien filed by the secretary or the secretary's designee for medical assistance correctly received may be enforced before or after the death of the recipient by the filing of an action to foreclose such lien in the Kansas district court or through an estate probate court action in the county where the real property of the recipient is located. However, it may be enforced only:

- (A) After the death of the surviving spouse of the recipient;
- (B) when there is no child of the recipient, natural or adopted, who is 20 years of age or less residing in the home;
- (C) when there is no adult child of the recipient, natural or adopted, who is blind or disabled residing in the home; or
- (D) when no brother or sister of the recipient is lawfully residing in the home, who has resided there for at least one year immediately before the date of the recipient's admission to the nursing or medical facility, and has resided there on a continuous basis since that time.

(6) The lien remains on the property even after a transfer of the title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

- (A) The lien is satisfied. The recipient, the heirs, personal representative or assigns of the recipient may discharge such lien at any time by paying the amount of the lien to the secretary or the secretary's designee;
- (B) the lien is terminated by foreclosure of prior lien of record or settlement action taken in lieu of foreclosure;
- (C) the value of the real property is consumed by the lien, at which time the secretary or the secretary's designee may force the sale for the real property to satisfy the lien; or
- (D) after a lien is filed against the real property, it will be dissolved if the recipient leaves the nursing or medical facility and resides in the property to which the lien is attached for a period of more than 90 days without being readmitted as an inpatient to a nursing or medical facility, even though there may have been no reasonable expectation that this would occur. If the recipient is readmitted to a nursing or medical facility during this period, and does return home after being released, another 90 days must be completed before the lien can be dissolved.

(7) If the secretary of social and rehabilitation services or the secretary's designee has not filed an action to foreclose the lien in the Kansas district court in the county where the real property is located within 10 years from the date of the filing of the lien, then the lien shall become dormant, and shall cease to operate as a lien on the real estate of the recipient. Such dormant lien may be revived in the same manner as a dormant judgment lien is revived under K.S.A. 60-2403 et seq., and amendments thereto.

(h) *Placement under the revised Kansas code for care of children or revised Kansas juvenile justice code; assignment of support rights and limited power of attorney.* In any case in which the secretary of social and rehabilitation services pays for the expenses of care and custody of a child pursuant to K.S.A. 2012 Supp. 38-2201 et seq. or 38-2301 et seq., and amendments thereto, including the expenses of any foster care placement, an assignment of all past, present and future support rights of the child in custody possessed by either parent or other person entitled to receive support payments for the child is, by operation of law, conveyed to the secretary. Such assignment shall become effective upon placement of a child in the custody of the secretary or upon payment of the expenses of care and custody of a child by the secretary without the requirement that any document be signed by the parent or other person entitled to receive support payments for the child. When the secretary pays for the expenses of care and custody of a child or a child is placed in the custody of the secretary, the parent or other person entitled to receive support payments for the child is also deemed to have appointed the secretary, or the secretary's designee, as attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary on behalf of the child. This limited power of attorney shall be effective from the date the assignment to support rights becomes effective and shall remain in effect until the assignment of support rights has been terminated in full.

(i) No person who voluntarily quits employment or who is fired from employment due to gross misconduct as defined by rules and regulations of the secretary or who is a fugitive from justice by reason of a felony conviction or charge shall be eligible to receive public assistance benefits in this state. Any recipient of public assistance who fails to timely comply with monthly reporting requirements under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regulations.

(j) If the applicant or recipient of aid to families with dependent children is a mother of the dependent child, as a condition of the mother's eligibility for aid to families with dependent children the mother shall identify by name and, if known, by current address the father of the dependent child except that the secretary may adopt by rules and regu-

lations exceptions to this requirement in cases of undue hardship. Any recipient of aid to families with dependent children who fails to cooperate with requirements relating to child support enforcement under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regulations which penalty shall progress to ineligibility for the family after three months of noncooperation.

(k) By applying for or receiving child care benefits or food stamps, the applicant or recipient shall be deemed to have assigned, pursuant to K.S.A. 39-756, and amendments thereto, to the secretary on behalf of the state only accrued, present or future rights to support from any other person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. The assignment of support rights shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant or recipient. By applying for or receiving child care benefits or food stamps, the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full. An applicant or recipient who has assigned support rights to the secretary pursuant to this subsection shall cooperate in establishing and enforcing support obligations to the same extent required of applicants for or recipients of aid to families with dependent children.

(l) (1) A program of drug screening for applicants for cash assistance as a condition of eligibility for cash assistance and persons receiving cash assistance as a condition of continued receipt of cash assistance shall be established, subject to applicable federal law, by the secretary for children and families on or before January 1, 2014. Under such program of drug screening, the secretary for children and families shall order a drug screening of an applicant for or a recipient of cash assistance at any time when reasonable suspicion exists that such applicant for or recipient of cash assistance is unlawfully using a controlled substance or controlled substance analog. The secretary for children and families may use any information obtained by the secretary for children and families to determine whether such reasonable suspicion exists, including, but not limited to, an applicant's or recipient's demeanor, missed appointments and arrest or other police records, previous employment or application for employment in an occupation or industry that regularly conducts drug screening, termination from previous employment due to unlawful use of a controlled

substance or controlled substance analog or prior drug screening records of the applicant or recipient indicating unlawful use of a controlled substance or controlled substance analog.

(2) *Any applicant for or recipient of cash assistance whose drug screening results in a positive test may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any applicant for or recipient of cash assistance who requests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening. Such applicant or recipient who took the additional drug screening and who tested negative for unlawful use of a controlled substance and controlled substance analog shall be reimbursed for the cost of such additional drug screening.*

(3) *Any applicant for or recipient of cash assistance who tests positive for unlawful use of a controlled substance or controlled substance analog shall be required to complete a substance abuse treatment program approved by the secretary for children and families, secretary of labor or secretary of commerce, and a job skills program approved by the secretary for children and families, secretary of labor or secretary of commerce. Subject to applicable federal laws, any applicant for or recipient of cash assistance who fails to complete or refuses to participate in the substance abuse treatment program or job skills program as required under this subsection shall be ineligible to receive cash assistance until completion of such substance abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job skills programs, such applicant for or recipient of cash assistance may be subject to periodic drug screening, as determined by the secretary for children and families. Upon a second positive test for unlawful use of a controlled substance or controlled substance analog, a recipient of cash assistance shall be ordered to complete again a substance abuse treatment program and job skills program, and shall be terminated from cash assistance for a period of 12 months, or until such recipient of cash assistance completes both substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled substance analog, a recipient of cash assistance shall be terminated from cash assistance, subject to applicable federal law.*

(4) *If an applicant for or recipient of cash assistance is ineligible for or terminated from cash assistance as a result of a positive test for unlawful use of a controlled substance or controlled substance analog, and such applicant for or recipient of cash assistance is the parent or legal guardian of a minor child, an appropriate protective payee shall be designated to receive cash assistance on behalf of such child. Such parent or legal guardian of the minor child may choose to designate an individual to receive cash assistance for such parent's or legal guardian's minor child, as approved by the secretary for children and families. Prior to the designated individual receiving any cash assistance, the secretary for children and*

families shall review whether reasonable suspicion exists that such designated individual is unlawfully using a controlled substance or controlled substance analog.

(A) In addition, any individual designated to receive cash assistance on behalf of an eligible minor child shall be subject to drug screening at any time when reasonable suspicion exists that such designated individual is unlawfully using a controlled substance or controlled substance analog. The secretary for children and families may use any information obtained by the secretary for children and families to determine whether such reasonable suspicion exists, including, but not limited to, the designated individual's demeanor, missed appointments and arrest or other police records, previous employment or application for employment in an occupation or industry that regularly conducts drug screening, termination from previous employment due to unlawful use of a controlled substance or controlled substance analog or prior drug screening records of the designated individual indicating unlawful use of a controlled substance or controlled substance analog.

(B) Any designated individual whose drug screening results in a positive test may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any designated individual who requests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening. Such designated individual who took the additional drug screening and who tested negative for unlawful use of a controlled substance and controlled substance analog shall be reimbursed for the cost of such additional drug screening.

(C) Upon any positive test for unlawful use of a controlled substance or controlled substance analog, the designated individual shall not receive cash assistance on behalf of the parent's or legal guardian's minor child, and another designated individual shall be selected by the secretary for children and families to receive cash assistance on behalf of such parent's or legal guardian's minor child.

(5) If a person has been convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction and which has as an element of such offense the manufacture, cultivation, distribution, possession or use of a controlled substance or controlled substance analog, and the date of conviction is on or after July 1, 2013, such person shall thereby become forever ineligible to receive any cash assistance under this subsection unless such conviction is the person's first conviction. First-time offenders convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction and which has as an element of such offense the manufacture, cultivation, distribution, possession or use of a controlled substance or controlled substance analog, and the date of conviction is on or after July 1, 2013, such

person shall become ineligible to receive cash assistance for five years from the date of conviction.

(6) *Except for hearings before the Kansas department for children and families or, the results of any drug screening administered as part of the drug screening program authorized by this subsection shall be confidential and shall not be disclosed publicly.*

(7) *The secretary for children and families may adopt such rules and regulations as are necessary to carry out the provisions of this subsection.*

(8) *Any authority granted to the secretary for children and families under this subsection shall be in addition to any other penalties prescribed by law.*

(9) *As used in this subsection:*

(A) *“Cash assistance” means cash assistance provided to individuals under the provisions of article 7 of chapter 39 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations adopted pursuant to such statutes.*

(B) *“Controlled substance” means the same as in K.S.A. 2012 Supp. 21-5701, and amendments thereto, and 21 U.S.C. § 802.*

(C) *“Controlled substance analog” means the same as in K.S.A. 2012 Supp. 21-5701, and amendments thereto.*

Sec. 2. K.S.A. 2012 Supp. 39-709e is hereby amended to read as follows: 39-709e. (a) *Except as provided in section 1, and amendments thereto, under the authority of subsection (d)(1)(A) of 21 U.S.C. § 862a, the state of Kansas hereby exercises its option out of subsection (a) of 21 U.S.C. § 862a, which makes any individual ineligible for certain state and federal assistance if that individual has been convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction and which has as an element of such offense the possession, use or distribution of a controlled substance as defined by subsection (6) of 21 U.S.C. § 802, only if, after such conviction, such individual has:*

(1) *Been assessed by a licensed substance abuse treatment provider as not requiring substance abuse treatment; or*

(2) *been assessed by a licensed substance abuse treatment provider and such provider recommended substance abuse treatment and such individual:*

(A) *Is participating in a licensed substance abuse treatment program;*
or

(B) *has successfully completed a licensed substance abuse treatment program.*

(b) *An individual shall be disqualified for any state or federal assistance permitted by this section if confirmation of illegal drug use is found as a result of testing that occurs while the individual is on probation, parole, conditional release or postrelease supervision or during required*

substance abuse treatment. Thereafter, such disqualified individual may reapply for assistance after 30 days.

New Sec. 3. (a) Each employer shall submit a report to the secretary containing:

(1) The name and address of each job applicant who has been refused employment by reason of misconduct as such term is defined in K.S.A. 44-706(b)(2), and amendments thereto; and

(2) such other information which may be required by the secretary.

(b) The report required by subsection (a) shall be submitted on a form prescribed by the secretary. Such report shall be submitted in a manner prescribed by the secretary.

(c) The secretary may adopt rules and regulations as are necessary to carry out the provisions of this section.

(d) The secretary may use any report received pursuant to this section to determine eligibility for unemployment benefits.

(e) This section shall be a part of and supplemental to the employment security law.

Sec. 4. K.S.A. 2012 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. 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 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 "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 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, "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 articles 54 or 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2012 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, 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, "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 shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection. 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, 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. 2012 Supp. 21-5701, and amendments thereto. As used in this 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, 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, 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; and (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 be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection, 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 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.

(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 in-

formation 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; 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. 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, the term "educational service agency" means a governmental agency or entity which is established and operated exclu-

sively 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 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 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.~~

(1) Any applicant for or recipient of unemployment benefits who tests positive for unlawful use of a controlled substance or controlled substance analog shall be required to complete a substance abuse treatment program approved by the secretary of labor, secretary of commerce or secretary for children and families, and a job skills program approved by the secretary of labor, secretary of commerce or the secretary for children and families. Subject to applicable federal laws, any applicant for or recipient of unemployment benefits who fails to complete or refuses to participate in the substance abuse treatment program or job skills program as required under this subsection shall be ineligible to receive unemployment benefits until completion of such substance abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job skills programs, such applicant for or recipient of unemployment benefits may be subject to periodic drug screening, as determined by the secretary of labor. Upon a second positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or recipient of unemployment benefits shall be ordered to complete again a substance abuse treatment program and job skills program, and shall be terminated from unemployment benefits for a period of 12 months, or until such applicant for or recipient of unemployment benefits completes both substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or a recipient of unemployment benefits shall be terminated from receiving unemployment benefits, subject to applicable federal law.

(2) Any individual who has been discharged or refused employment for failing a preemployment drug screen required by an employer may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any such individual who re-

quests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening.

(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. 2012 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 *or members of the Kansas senate or house of representatives* 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) *members of the Kansas senate or house of representatives;*
- ~~(2)~~(3) any safety sensitive position;
- ~~(3)~~(4) 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)~~(5) any position in the Kansas state school for the blind, as established under K.S.A. 76-1101 et seq., and amendments thereto;
- ~~(5)~~(6) any position in the Kansas state school for the deaf, as established under K.S.A. 76-1001 et seq., and amendments thereto; or
- ~~(6)~~(7) 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 institution, as defined in K.S.A. 2012 Supp. 21-5914, and amendments thereto;

(6) all employees of a juvenile correctional facility, as defined in K.S.A. 2012 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. 6. K.S.A. 2012 Supp. 39-709, 39-709e, 44-706 and 75-4362 are hereby repealed.

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

Approved April 16, 2013.

CHAPTER 81

Senate Substitute for HOUSE BILL No. 2011

AN ACT concerning distinctive license plates; making educational institution plates available to motorcycles; transferability of license plates; amending K.S.A. 2012 Supp. 8-1,142 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 8-1,142 is hereby amended to read as follows: 8-1,142. (a) As used in this section, “educational institution” means:

(1) Any state educational institution under the control and supervision of the state board of regents;

(2) any municipal university;

(3) any not-for-profit independent institution of higher education which is accredited by the north central association of colleges and secondary schools accrediting agency based on its requirements as of April 1, 1985, is operated independently and not controlled or administered by the state or any agency or subdivision thereof, maintains open enrollment and the main campus or principal place of operation of which is located in Kansas;

(4) any community college organized and operating under the laws of this state; and

(5) Haskell Indian Nations university.

(b) Any owner or lessee of one or more passenger vehicles ~~or~~, trucks registered for a gross weight of not more than 20,000 pounds *or motorcycles*, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one educational institution license plate for each such passenger vehicle ~~or~~, truck *or motorcycle*. Such license plates shall be issued for the same period of time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, plus the payment of an additional fee of \$5 for each plate, and either the payment to the county treasurer of the logo use royalty payment established by the alumni association or foundation or the presentation of the annual emblem use authorization statement provided for in subsection (c).

(c) Any educational institution may authorize through its officially recognized alumni association or foundation the use of such institution’s official emblems to be affixed on license plates as provided by this section. Any royalty payment derived from this section, except reasonable administrative costs, shall be used for recognition of academic achievement or excellence subject to the approval of the chancellor or president of the educational institution. Any motor vehicle owner or lessee may annually apply to the alumni association or foundation for the use of the institution’s emblems. Upon annual application and payment to either: (1) The alumni association or foundation in an amount of not less than \$25 nor

more than \$100 as an emblem use royalty payment for each educational institution license plate to be issued, the alumni association or foundation shall issue to the motor vehicle owner or lessee, without further charge, an emblem use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration; or (2) the county treasurer of the logo use royalty payment for each license plate to be issued.

(d) Any applicant for an educational institution license plate may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for the educational institution license plates shall provide either the annual emblem use authorization statement provided for in subsection (c) or pay to the county treasurer the logo use royalty payment established by the alumni association or foundation. Application for registration of a passenger vehicle ~~or~~, truck ~~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.

(e) No registration or educational institution license plate issued under this section shall be transferable to any other person.

(f) The director of vehicles may transfer educational institution license plates from a leased vehicle to a purchased vehicle.

(g) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (b), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides to the county treasurer either the annual emblem use authorization statement provided for in subsection (c) or the payment of the annual emblem use royalty payment established by the alumni association or foundation. If such emblem use authorization statement is not presented at the time of registration or faxed by the alumni association or foundations, or the annual emblem use royalty payment is not made to the county treasurer, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the educational institution license plates to the county treasurer of such person's residence.

(h) The director of vehicles shall not issue any educational institution license plates for any educational institution, unless such educational institution's alumni association or foundation guarantees the initial issuance of at least 500 license plates.

(i) The director of vehicles shall discontinue the issuance of an educational institution's license plate authorized under this section if:

(1) Less than 500 educational institution license plates, including annual renewals, are issued for an educational institution by the end of the second year of sales; and

(2) less than 250 educational institution license plates, including an-

nual renewals, are issued for an educational institution during any subsequent two-year period.

(j) Each educational institution's alumni association or foundation shall:

(1) Pay the initial cost of silk-screening for such educational license plates; and

(2) provide to all county treasurers a toll-free telephone number where applicants can call the alumni association or foundation for information concerning the application process or the status of their license plate application.

(k) Each educational institution's alumni association or foundation, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a license plate to be issued under the provisions of this section.

(l) As a condition of receiving the educational institution license plate and any subsequent registration renewal of such plate, the applicant must provide consent to the division authorizing the division's release of motor vehicle record information, including the applicant's name, address, emblem use royalty payment amount, plate number and vehicle type to the relevant educational institution and the state treasurer.

(m) Annual royalty payments collected by county treasurers under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. In the case of an educational institution that is a state educational institution as defined by K.S.A. 76-711, and amendments thereto, upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the appropriate account of the restricted fees fund of such state educational institution. In the case of an educational institution which is not a state educational institution as defined by K.S.A. 76-711, and amendments thereto, upon receipt of each such remittance, the state treasurer shall remit the entire amount to the educational institutions emblem royalty fund, which is hereby created in the state treasury and shall be administered by the state treasurer. All expenditures from the educational institutions emblem royalty fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or the state treasurer's designee. Payments from the educational institutions emblem royalty fund to the respective educational institutions shall be made on a monthly basis.

New Sec. 2. Except as otherwise provided by statute, the secretary of revenue shall adopt rules and regulations to establish a procedure for allowing the transfer of distinctive license plates issued pursuant to article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, from one vehicle to another for which such distinctive plates were

originally issued, when the title to the original vehicle has not been transferred and the name or names of the owner or owners listed on the title to both vehicles are identical.

Sec. 3. K.S.A. 2012 Supp. 8-1,142 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 16, 2013.

CHAPTER 82

HOUSE BILL No. 2128
(Amended by Chapter 133)

AN ACT concerning the open records act, exceptions; amending K.S.A. 2012 Supp. 45-221 and repealing the existing section; also repealing K.S.A. 2012 Supp. 45-221j and 45-221k.

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

Section 1. K.S.A. 2012 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. 2012 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. 2012 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the char-

acter or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the

generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has au-

thority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, ~~except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.~~

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) ~~the ombudsman of corrections,~~ the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which

specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

(41) All financial analysis ratios and examination synopses concerning

insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third-party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers, DD Form 214. Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safe-house or similar place where persons are provided protection from abuse

or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.

(51) Records of a public agency which identify the home address or home ownership of a law enforcement officer as defined in K.S.A. 2012 Supp. 21-5111, and amendments thereto, parole officer, probation officer, court services officer or community correctional services officer. The agency head of such law enforcement office, parole office, probation office, court services office or community correctional services office or such individual officer shall file with the custodian of such record a request to have such officer's identifying information removed from public access. Within seven days of receipt of such requests, the public agency shall remove such officer's identifying information from such public access.

(52) Records of a public agency which identify the home address or home ownership of a federal judge, a justice of the supreme court, a judge of the court of appeals, a district judge, a district magistrate judge, the United States attorney for the district of Kansas, an assistant United States attorney, the attorney general, an assistant attorney general, a district attorney or county attorney or an assistant district attorney or assistant county attorney. Such person or such person's employer shall file with the custodian of such record a request to have such person's identifying information removed from public access. Within seven days of receipt of such requests, the public agency shall remove such person's identifying information from such public access.

(53) *Records of a utility concerning information about cyber security threats, attacks or general attempts to attack utility operations provided to law enforcement agencies, the state corporation commission, the federal energy regulatory commission, the department of energy, the southwest power pool, the North American electric reliability corporation, the federal communications commission or any other federal, state or regional organization that has a responsibility for the safeguarding of telecom-*

munications, electric, potable water, waste water disposal or treatment, motor fuel or natural gas energy supply systems.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 2. K.S.A. 2012 Supp. 45-221, 45-221j and 45-221k 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 16, 2013.

CHAPTER 83

HOUSE BILL No. 2139

AN ACT concerning state finance; relating to canceled warrants; amending K.S.A. 10-811, 46-913, 46-924 and 58-3974 and repealing the existing sections; also repealing K.S.A. 10-812 and K.S.A. 2012 Supp. 46-921.

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

Section 1. K.S.A. 10-811 is hereby amended to read as follows: 10-811. (a) In every case in which the director of accounts and reports shall have drawn a warrant against the state treasurer and a period of one year shall have elapsed since the issuance of such warrant, during which time no person entitled thereto shall have appeared to claim such warrant from the director of accounts and reports, or to claim the money so authorized to be paid from the state treasurer, such warrant, at the discretion of the director of accounts and reports and state treasurer, may be canceled and set aside upon their records.

(b) In the event that federal laws or regulations require the state to refund or credit money to the federal government because state warrants which were funded in whole or in part by federal funds remain uncashed or unclaimed after a specified period of time, the director of accounts and reports may cancel any such warrant after such specified period of time has elapsed. Such specified period of time shall be prominently stated on the face of the warrant.

(c) Cancellations pursuant to this section shall show the date canceled and the records shall recite that they were unpaid but canceled by reason of this statute of limitation. Canceled warrants shall ~~not~~ be considered unclaimed property under the provisions of K.S.A. 58-3934 through 58-3978, and amendments thereto.

(d) *The canceled warrants payment fund is hereby abolished. All balances in the canceled warrants payment fund shall be transferred to the state general fund. All balances accrued from unpaid canceled warrants shall be transferred upon the records of the director of accounts and reports and state treasurer and shall be considered unclaimed property under the provisions of K.S.A. 58-3934 through 58-3978, and amendments thereto. Any programming costs, including technical and functional analysis, incurred by the department of administration to implement the provisions of this subsection shall be performed and expended within the*

current resources of the department. No additional funding shall be requested or appropriated for such programming costs.

Sec. 2. K.S.A. 46-913 is hereby amended to read as follows: 46-913.

(a) Any person wishing to present a claim shall file the same with the chairperson of the joint committee in writing upon a form to be provided by the joint committee stating the following information:

(1) The name and address of the claimant; the name and address of the claimant's principal, if the claimant is acting in a representative capacity; and the name and address of the claimant's attorney, if the claimant is so represented;

(2) A concise statement of the basis of the claim, including the date, time, place and circumstances of the act or event complained of, if applicable;

(3) a statement itemizing the amount claimed; and

(4) any other pertinent information requested by the joint committee.

(b) Upon the filing of a claim, the joint committee shall inform the claimant in writing of any additional information it will require in order to take action upon the claim.

~~(c) No claim based upon a canceled state warrant shall be considered by the joint committee if such claim is filed more than five years after the date the warrant originally was issued.~~

Sec. 3. K.S.A. 46-924 is hereby amended to read as follows: 46-924. The acceptance by the claimant of any payment made pursuant to this act shall be final and conclusive and shall constitute a complete release of any claim against the state. Otherwise, the claimant shall proceed with a claim against the state as provided by K.S.A. 46-913, and amendments thereto. ~~The joint committee shall have no authority to recommend an award for payment of a claim based on a canceled state warrant if such claim is filed more than five years after the date the warrant originally was issued.~~

Sec. 4. K.S.A. 58-3974 is hereby amended to read as follows: 58-3974.

(a) The provisions of this act shall not apply to any tangible or intangible personal property which is subject to the provisions of K.S.A. 8-1101, 8-1102, 9-1918, 10-815, 17-2206a, 17-5564, 19-320, 47-229, 47-230, 47-232, 47-236 to 47-239, inclusive, 59-514, 59-901 to 59-905, inclusive, 70-101, 70-102, 70-103 and 70-104, and amendments thereto.

(b) This act shall not apply to any personal property which is being administered or has been distributed under the provisions of K.S.A. 59-2701 to 59-2707, inclusive, and amendments thereto.

(c) This act shall not apply to any patronage dividend or capital credit held or owing by any cooperative association, society or corporation organized under the provisions of K.S.A. 17-1501 et seq., 17-1601 et seq. or 17-4601 et seq., and amendments thereto.

(d) This act shall not apply to any patronage dividend or any capital

credit held or owing by any public utility which is a member-owned non-profit corporation organized under the provisions of K.S.A. 17-6001et seq., and amendments thereto.

Sec. 5. K.S.A. 10-811, 10-812, 46-913, 46-924 and 58-3974 and K.S.A. 2012 Supp. 46-921 are hereby repealed.

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

Approved April 16, 2013.

CHAPTER 84

Senate Substitute for HOUSE BILL No. 2150

AN ACT concerning the Kansas employment first oversight commission; amending K.S.A. 2012 Supp. 44-1138 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 44-1138 is hereby amended to read as follows: 44-1138. (a) There is hereby established a Kansas employment first oversight commission consisting of ~~five~~ *seven* members. The commission shall consist of the following members who shall serve for a three-year term:

(1) Four members who are persons with a disability or who are knowledgeable of disability issues and who are not state employees, of whom:

(A) One shall be appointed by the speaker of the house of representatives;

(B) one shall be appointed by the minority leader of the house of representatives;

(C) one shall be appointed by the president of the senate; and

(D) one shall be appointed by the minority leader of the senate;

(2) *three members shall be appointed by the governor as follows:*

(A) One member who is experienced with employment service programs ~~and who is not a state employee shall be appointed by the governor;~~

(B) *one member who has disability employment experience; and*

(C) *one member with business employment experience.*

(b) The governor shall designate one member to convene and organize the first meeting of the commission at which the commission shall elect a chairperson and a vice-person from among its members. The commission shall meet at least four times a year and, additionally, whenever called by the chairperson. A quorum shall consist of ~~three~~ *four* members. All actions of the commission shall be taken by a majority of the members of the commission.

(c) Each member of the commission shall be paid mileage and other expenses as provided by K.S.A. 75-3212, and amendments thereto.

~~(d) The commission shall establish measurable goals and objectives for the state of Kansas to ensure implementation of this act. The commission shall track the measurable progress of public agencies in implementing this act. All state agencies shall fully cooperate with and provide data and information to assist the commission in carrying out its duties. The focus of the commission shall be on increasing the number of Kansans with disabilities in competitive integrated employment. To increase the number of Kansans with disabilities achieving competitive integrated employment, the commission shall work collaboratively with state agencies that provide services specifically to assist Kansans with disabilities to become employed, and privately owned or operated organizations, non-profit organizations and community-based organizations that receive moneys from the state or federal government, or both, to provide services and support that assist individuals with disabilities to obtain, maintain or regain competitive and integrated employment. In addition the commission may promote and educate state agencies and stakeholders regarding the employment first initiative.~~

~~(e) The commission shall issue an annual report on or before January 1 each year which shall be presented to the governor and members of the state legislature. The report shall detail progress toward the goals and objectives and full implementation of this act. All state agencies shall cooperate with the commission on the creation and dissemination of the annual report. The report also shall identify barriers to achieving the outcomes along with the effective strategies and policies that can help realize the employment first initiative. At the commencement of each regular session of the legislature, the commission, in the form of an annual report, may make recommendations to the governor, legislature and state agencies on strategies to increase the number of Kansans with disabilities in competitive integrated employment. The lead agency shall cause the report to be published on the internet on the lead agency's web site.~~

(f) The governor shall select from the cabinet agencies the lead agency responsible for compiling data and coordinating the preparation of the annual report at the direction of the commission. The activities of the commission and lead agency pursuant to this section shall be done within existing grants and resources.

Sec. 2. K.S.A. 2012 Supp. 44-1138 is hereby repealed.

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

CHAPTER 85

HOUSE BILL No. 2164

AN ACT concerning juries; relating to information disqualifying juror from jury service; grand juries; amending K.S.A. 22-3002, 22-3003, 22-3004, 22-3005, 22-3006, 22-3007, 22-3009, 22-3010, 22-3011, 22-3012, 22-3013 and 22-3014 and K.S.A. 2012 Supp. 22-3001, 22-3008 and 43-107 and repealing the existing sections.

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

New Section 1. (a) On and after July 1, 2013, any jury commissioner that receives information regarding citizenship from a prospective juror or court of this state that disqualifies or potentially disqualifies such prospective juror from jury service pursuant to K.S.A. 43-156, and amendments thereto, shall submit such information to the secretary of state in a form and manner approved by the secretary of state. Any such information provided by a jury commissioner to the secretary of state shall be limited to the information regarding citizenship and the full name, current and prior addresses, age and telephone number of the prospective juror, and, if available, the date of birth of the prospective juror. Any such information provided by a jury commissioner to the secretary of state shall be used for the purpose of maintaining voter registrations as required by law.

(b) This section shall be part of and supplemental to article 1 of chapter 43 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 2. K.S.A. 2012 Supp. 22-3001 is hereby amended to read as follows: 22-3001. (a) A majority of the district judges in any judicial district may order a grand jury to be summoned in any county in the district when it is determined to be in the public interest.

(b) ~~The district or county attorney in such attorney's county may petition the chief judge or the chief judge's designee in such district court to order a grand jury to be summoned in the designated county in the district to investigate alleged violations of an off-grid felony, a severity level 1, 2, 3 or 4 felony or a drug severity level 1 or 2 felony~~ *consider any alleged felony law violation. The attorney general in any judicial district may petition the chief judge or the chief judge's designee in such judicial district to order a grand jury to be summoned in the designated county in the district to consider any alleged felony law violation if authorized by the district or county attorney in such judicial district or if jurisdiction is otherwise authorized by law.* The chief judge or the chief judge's designee in the district court of the county shall then consider the petition and, if it is found that the petition is in proper form, as set forth in this subsection, shall order a grand jury to be summoned *within 15 days after receipt of such petition.*

(c)(1) A grand jury shall be summoned in any county within 60 days after a petition praying therefor is presented to the district court, bearing the signatures of a number of electors equal to 100 plus 2% of the total

number of votes cast for governor in the county in the last preceding election.

(2) *The petition, upon its face, shall state the name, address and phone number of the person filing the petition, the subject matter of the prospective grand jury, a reasonably specific identification of areas to be inquired into and sufficient general allegations to warrant a finding that such inquiry may lead to information which, if true, would warrant a true bill of indictment.*

(3) The petition shall be in substantially the following form:

The undersigned qualified electors of the county of _____ and state of Kansas hereby request that the district court of _____ county, Kansas, within 60 days after the filing of this petition, cause a grand jury to be summoned in the county to investigate alleged violations of law and to perform such other duties as may be authorized by law.

The signatures to the petition need not all be affixed to one paper, but each paper to which signatures are affixed shall have substantially the foregoing form written or printed at the top thereof. Each signer shall add to such signer's signature such signer's place of residence, giving the street and number or rural route number, if any. One of the signers of each paper shall verify upon oath that each signature appearing on the paper is the genuine signature of the person whose name it purports to be and that such signer believes that the statements in the petition are true. The petition shall be filed in the office of the clerk of the district court who shall forthwith transmit it to the county election officer, who shall determine whether the persons whose signatures are affixed to the petition are qualified electors of the county. Thereupon, the county election officer shall return the petition to the clerk of the district court, together with such election officer's certificate stating the number of qualified electors of the county whose signatures appear on the petition and the aggregate number of votes cast for all candidates for governor in the county in the last preceding election. The judge or judges of the district court of the county shall then consider the petition and, if it is found that the petition is in proper form and bears the signatures of the required number of electors, a grand jury shall be ordered to be summoned.

(4) *After a grand jury is summoned pursuant to this subsection, but before it begins deliberations, the judge or judges of the district court of the county in which the petition is presented shall provide instructions to the grand jury regarding its conduct and deliberations, which instructions shall include, but not be limited to, the following:*

(A) *You have been impaneled as a grand jury pursuant to a citizens' petition filed in this court, signed by (insert number) qualified electors of this county, stating (insert the subject matter described in the petition, including a reasonably specific identification of the areas to be inquired into and the allegations sufficient to warrant a finding that the grand jury's inquiry may lead to information which, if true, would warrant a*

true bill of indictment.) You are charged with making inquiry with regard to this subject matter and determining whether the facts support allegations warranting a true bill of indictment.

(B) The person filing the citizens' petition filed in this court must be the first witness you call for the purpose of presenting evidence and testimony as to the subject matter and allegations of the petition.

(C) You may, with the approval of this court, employ special counsel and investigators, and incur such other expense for services and supplies as you and this court deem necessary. Any special counsel or investigator you employ shall be selected by a majority vote of your grand jury. You may make such selection only after hearing testimony from the person who filed the citizens' petition. You may utilize the services of any special counsel or investigator you employ instead of, or in addition to, the services of the prosecuting attorney.

(D) If any witness duly summoned to appear and testify before you fails or refuses to obey, compulsory process will be issued by this court to enforce the witness' attendance.

(E) If any witness appearing before you refuses to testify or to answer any questions asked in the course of the witness' examination, you shall communicate that fact to this court in writing, together with a statement regarding the question the witness refuses to answer. This court will determine and inform you of whether the witness is bound to answer or not. However, no witness appearing before you can be compelled to make any statement which will incriminate such witness.

(F) Any person may file a written request with the prosecuting attorney or with the foreman of the grand jury and request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. Any written request shall include a summary of such person's written testimony.

(G) At the conclusion of your inquiry and determination, you will return either a no bill of indictment or a true bill of indictment.

(d) The grand jury shall consist of 15 members and shall be drawn, qualified and summoned in the same manner as petit jurors for the district court. Twelve members thereof shall constitute a quorum. The judge or judges ordering the grand jury shall direct that a sufficient number of legally qualified persons be summoned for service as grand jurors.

Sec. 3. K.S.A. 22-3002 is hereby amended to read as follows: 22-3002. ~~(1)~~(a) The prosecuting attorney may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges by the state shall be made before the administration of the oath to the jurors and shall be tried by the court.

~~(2)~~(b) A motion to dismiss the indictment made by the defendant

may be based on objections to the array or on the lack of legal qualification of an individual juror. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to K.S.A. 22-3004, *and amendments thereto*, that 12 or more jurors, after deducting the jurors not legally qualified, concurred in finding the indictment.

(c) *After the prosecutor has conducted an examination of the prospective grand jurors under this section, a list of all remaining legally qualified grand jurors shall be approved by the court and submitted to the clerk of the court of such county for a second drawing of grand juror names pursuant to K.S.A. 43-107, and amendments thereto.*

Sec. 4. K.S.A. 22-3003 is hereby amended to read as follows: 22-3003. (a) An oath or affirmation shall be administered to the presiding juror of the grand jury, in substance as follows:

“You, as presiding juror of the grand jury, shall diligently inquire, and true presentment make, of all public offenses against the laws of this state cognizable by this court, committed or triable within this county, of which you have or can obtain legal evidence. You shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor or affection, or for any reward or the promise of hope thereof, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding.”

(b) Other members of the grand jury shall be administered the following oath:

“The same oath or affirmation, which your presiding juror has taken now before you on the presiding juror’s part, you and each of you shall well and truly observe on your part.”

Sec. 5. K.S.A. 22-3004 is hereby amended to read as follows: 22-3004. (a) The court shall appoint one of the jurors to be presiding juror and another to be deputy presiding juror.

(b) The presiding juror shall have power to administer oaths and affirmations and shall sign all indictments.

(c) The presiding juror or another juror designated by the presiding juror shall keep a record of the name of each juror concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court.

(d) During the absence of the presiding juror, the deputy presiding juror shall act as presiding juror.

Sec. 6. K.S.A. 22-3005 is hereby amended to read as follows: 22-3005. ~~(a)~~ When a grand jury is impaneled and sworn, it shall be charged by the judge who summoned it. In so doing, the judge shall give the grand jurors such information as ~~he~~ *the judge* deems proper and as is required

by law, as to their duties, and as to any charges of crimes known to the court and likely to come before the grand jury.

~~(2)~~(b) When the grand jury has been impaneled, sworn and charged, it shall retire to a private room, and inquire into the crimes cognizable by it.

Sec. 7. K.S.A. 22-3006 is hereby amended to read as follows: 22-3006. ~~(1)~~(a) Persons summoned for service as grand jurors shall be compensated for their service and expenses at the rates provided by law for the compensation of petit jurors in the district court. Such compensation shall be paid from the general fund of the county.

~~(2)~~(b) The grand jury shall employ a certified shorthand reporter who shall make a stenographic record of all testimony and other proceedings before the grand jury. The compensation of the reporter shall be fixed by the district court and paid from the general fund of the county.

~~(3)~~(c) The grand jury may, with the approval of the district court, ~~employ special counsel, investigators, and incur such other expense employ investigators and, except in the case of grand juries impaneled pursuant to subsection (b) of K.S.A. 22-3001, and amendments thereto, employ special counsel. The grand jury may also incur other expenses for services and supplies as it and the district court may deem necessary. Compensation for such services and supplies shall be fixed by the district court and shall be paid from the general fund of the county. Any special counsel or investigator employed by the grand jury shall be selected by majority vote of such grand jury only after hearing testimony from the person filing the petition pursuant to K.S.A. 22-3001, and amendments thereto. Subject to the provisions of this section, the grand jury shall have all authority to investigate any concerns associated with such petition.~~

Sec. 8. K.S.A. 22-3007 is hereby amended to read as follows: 22-3007. ~~(1)~~(a) *In the case of grand juries impaneled pursuant to subsection (a) or (c) of K.S.A. 22-3001, and amendments thereto, the prosecuting attorney shall:*

(1) ~~When requested by any grand jury it shall be the duty of the prosecuting attorney to, attend sessions thereof for the purpose of examining witnesses or giving the grand jury advice upon any legal matter; and~~

(2) ~~The prosecuting attorney shall, upon his~~ *upon such attorney's request, be permitted to appear before the grand jury for the purpose of giving information relative to any matter cognizable by the grand jury, and may be permitted to interrogate witnesses if the grand jury deems it necessary.*

(b) *In the case of grand juries impaneled pursuant to subsection (b) of K.S.A. 22-3001, and amendments thereto, the prosecuting attorney shall:*

(1) *Attend all sessions thereof and inform the grand jury of all offenses*

liable to indictment and evidence of which will be presented to them for consideration;

(2) *present witnesses and examine such witnesses on all matters to be considered by the grand jury; and*

(3) *give the grand jury advice upon all questions related to the proper discharge of their duties.*

Sec. 9. K.S.A. 2012 Supp. 22-3008 is hereby amended to read as follows: 22-3008. ~~(1)~~(a) 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. *The person who filed the petition pursuant to K.S.A. 22-3001, and amendments thereto, shall be the first witness called by the grand jury for the purpose of presenting evidence and testimony as to the subject matter and allegations of the petition.*

~~(2)~~(b) 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)~~(c) 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)~~(d) No witness before a grand jury shall be required to incriminate the witness' self.

~~(5)~~~~(a)~~(e) (1) 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)~~(A) 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)~~(B) 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)~~(2) Any person granted immunity under either or both of subsections ~~(5)(a)(i) or (ii)~~(e)(1)(A) or (e)(1)(B) 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)~~(3) No immunity shall be granted for perjury as provided in K.S.A. 2012 Supp. 21-5903, and amendments thereto, which was committed in giving such evidence.

~~(6)~~(f) 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.

(g) *Any person may file a written request with the prosecuting attorney or with the foreman of the grand jury and request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. Any written request shall include a summary of such person's written testimony.*

Sec. 10. K.S.A. 22-3009 is hereby amended to read as follows: 22-3009. ~~(1)~~(a) Any person called to testify before a grand jury must be informed that ~~he~~ such person has a right to be advised by counsel and that ~~he may~~ such person shall not be required to make any statement which will incriminate ~~him~~ such person. Upon a request by such person for counsel, no further examination of the witness shall take place until counsel is present. In the event that counsel of the witness' choice is not available, ~~he~~ the witness shall be required to obtain other counsel within three ~~(3)~~ days in order that the work of the grand jury may proceed. If such person is indigent and unable to obtain the services of counsel, the court shall appoint counsel to assist ~~him~~ such person who shall be compensated as counsel appointed for indigent defendants in the district court.

~~(2)~~(b) Counsel for any witness may be present while the witness is testifying and may interpose objections on behalf of the witness. ~~He~~ Such counsel shall not be permitted to examine or cross-examine ~~his~~ such counsel's client or any other witness before the grand jury.

Sec. 11. K.S.A. 22-3010 is hereby amended to read as follows: 22-3010. Prosecuting attorneys, special counsel employed by the grand jury, the witness under examination and ~~his~~ such witness' counsel, interpreters when needed and, for the purpose of taking the evidence, the reporter for the grand jury, may be present while the grand jury is in session, but

no person other than the jurors may be present while the grand jury is deliberating or voting.

Sec. 12. K.S.A. 22-3011 is hereby amended to read as follows: 22-3011. ~~(1)~~(a) An indictment may be found only on the concurrence of 12 or more grand jurors. When an indictment is found, the presiding juror shall endorse thereon “a true bill” and shall sign the presiding juror’s name as presiding juror.

~~(2)~~(b) When 12 or more grand jurors do not concur in finding an indictment, the presiding juror shall certify that the indictment is “not a true bill.”

~~(3)~~(c) Indictments found by the grand jury shall be presented by its presiding juror, in the jury’s presence, to the court and shall be filed and remain as records of the court.

Sec. 13. K.S.A. 22-3012 is hereby amended to read as follows: 22-3012. (a) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror ~~may shall~~ be made to the prosecuting attorney for use in the performance of ~~his such~~ attorney’s duties.

(b) Otherwise a juror, attorney, interpreter, reporter or any typist who transcribes recorded testimony ~~may shall not~~ disclose matters occurring before the grand jury ~~only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury except, upon court order:~~

(1) *The testimony of a witness before the grand jury may be disclosed to a defendant to determine whether it is consistent with testimony given before the court, but only upon a showing of good cause;*

(2) *evidentiary materials presented to one grand jury may be disclosed to a succeeding grand jury; and*

(3) *grand jury testimony by a defendant may be disclosed to such defendant, but only in the criminal action resulting from such testimony.*

(c) No obligation of secrecy may be imposed upon any person except in accordance with this ~~rule~~ section. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

Sec. 14. K.S.A. 22-3013 is hereby amended to read as follows: 22-3013. ~~(1)~~(a) A grand jury *impaneled pursuant to subsection (a) or (c) of K.S.A. 22-3001, and amendments thereto*, shall serve until it shall advise the court in writing that it has completed its investigation, but no *such* grand jury shall serve for more than three months unless extended by order of the district court. The district court may, before the expiration of the tenure of ~~a such~~ grand jury, make an order extending such grand

jury for an additional period of not to exceed three months if the court finds that an investigation begun by ~~the such~~ grand jury cannot be completed within the initial three months period and that the public interest requires the continuation of ~~the such~~ grand jury.

(b) *A grand jury impaneled pursuant to subsection (b) of K.S.A. 22-3001, and amendments thereto, shall serve for a period of six months. The district court may, before the expiration of the tenure of such grand jury, make an order extending such grand jury for an additional period of not to exceed six months upon good cause shown by such grand jury.*

~~(2)~~(c) At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

Sec. 15. K.S.A. 22-3014 is hereby amended to read as follows: 22-3014. (a) Witnesses attending a grand jury in response to a subpoena shall be allowed the same fees as are allowed witnesses in criminal cases in the district court.

(b) ~~The Such~~ witness fees shall be paid from the general fund of the county upon a certificate of attendance signed by the presiding juror of the grand jury.

New Sec. 16. (a) *Matters of form, time, place, names.* At any time before or during trial, the court may, upon application of the people and with notice to the defendant and opportunity for the defendant to be heard, order the amendment of an indictment with respect to defects, errors or variances from the proof relating to matters of form, time, place and names of persons when such amendment does not change the substance of the charge, and does not prejudice the defendant on the merits. Upon ordering an amendment, the court, for good cause shown, may grant a continuance to provide the defendant adequate opportunity to prepare a defense.

(b) *Prohibition as to matters of substance.* An indictment shall not be amended as to the substance of the offense charged.

(c) This section shall be part of and supplemental to article 30 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 17. K.S.A. 2012 Supp. 43-107 is hereby amended to read as follows: 43-107. (a) At least 30 days before service is required, the clerk of the court of the county where such court is to be held shall draw from the jury box the names of 30 persons to serve as grand jurors and the names of 24 persons to serve as petit jurors. In the event that a county has appropriate base information programmed as a part of its computer operations so that it might comply with the spirit of the jury selection laws of Kansas, the jury commissioners may by local rule provide alternate methods for securing jury panels directly from the computer without the necessity of drawing names or cards from a wheel manually.

(b) *Upon receipt of a list of all remaining legally qualified grand jurors*

from the court pursuant to K.S.A. 22-3002, and amendments thereto, the clerk of the court of the county where such court is to be held shall draw for a second time 15 names of persons to serve as grand jurors from such list. In the event that the county in which court is to be held has an alternate method for securing jury panels directly from the computer, the clerk shall use the computer to generate 15 names of persons to serve as grand jurors from such list.

New Sec. 18. (a) Upon a majority vote of the grand jury, the grand jury may seek the removal of the assigned judge pursuant to K.S.A. 20-311d, and amendments thereto.

(b) This section shall be part of and supplemental to article 30 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 19. K.S.A. 22-3002, 22-3003, 22-3004, 22-3005, 22-3006, 22-3007, 22-3009, 22-3010, 22-3011, 22-3012, 22-3013 and 22-3014 and K.S.A. 2012 Supp. 22-3001, 22-3008 and 43-107 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 16, 2013.

CHAPTER 86

HOUSE BILL No. 2069*

AN ACT concerning employer leave policies for employees; declaring certain city ordinances and county resolutions to be against public policy.

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

Section 1. (a) No city, county or local government unit shall enact or administer any ordinance, resolution or law which requires an employer to:

(1) Provide to such employer's employees any leave from work, either with or without pay, unless such leave is required by state or federal law;

(2) pay compensation to such employer's employees for any leave from work unless payment of compensation for such leave is required by state or federal law;

(3) pay compensation or wages at any rate higher than the minimum wage unless the payment of higher compensation or wages is required by state or federal law; or

(4) offer an employee benefit other than those required by state or federal law.

(b) Subsection (a) shall not impact, or apply to, requirements under state economic development incentive programs or city, county, local gov-

ernment or local economic development agency business attraction, retention or recruitment programs.

Sec. 2. (a) No city, county or local government unit shall enact or administer any ordinance, resolution or law that requires, nor shall any city, county or local government discriminate against, favor, prefer or base any ordinance, law, policy, economic development program, agreement, grant or incentive on, an employer providing or not providing:

(1) Any leave from work, either with or without pay, unless such leave is required by state or federal law;

(2) compensation for any leave from work, unless payment of compensation for such leave is required by state or federal law;

(3) compensation or wages at any rate higher than the minimum wage, unless the payment of higher compensation or wages is required by state or federal law; or

(4) any employee benefit other than those required by state or federal law.

(b) Subsection (a) shall only apply to wages, compensation or benefits, or any combination thereof, paid or provided by a construction contractor or subcontractor performing construction or infrastructure work on a real estate construction or infrastructure project.

Sec. 3. The administration, enactment or enforcement of any city ordinance which conflicts with section 1or 2, and amendments thereto, is hereby declared to be void and against the public policy of this state.

Sec. 4. The administration, enactment or enforcement of any county resolution which conflicts with section 1or 2, and amendments thereto, is hereby declared to be void and against the public policy of this state.

Sec. 5. For the purposes of this act, unless the context otherwise requires:

(a) “Employee” means an individual employed in this state by an employer.

(b) (1) “Employer” means any individual, sole proprietorship, partnership, limited liability company, corporation or any other entity that is legally doing business in this state.

(2) “Employer” shall not include a public employer.

(c) “Public employer” has the meaning specified in K.S.A. 75-4322, and amendments thereto.

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

Approved April 16, 2013.

CHAPTER 87

House Substitute for SENATE BILL No. 83
(Amended by Chapters 133 and 135)

AN ACT concerning taxation; relating to delinquent tax liabilities; service fees, remittance; income tax deductions and modifications; severance tax; sales and use tax, nexus; property tax, exemptions, watercraft, appraisals, payment of refund of taxes; amending K.S.A. 79-32,109 and K.S.A. 2012 Supp. 74-2433f, 75-5162, 79-306e, 79-1448, 79-1609, 79-1701a, 79-1702, 79-2005, 79-32,117, 79-32,118, 79-32,266, 79-3620, 79-3702 and 79-4217 and repealing the existing sections; also repealing K.S.A. 79-3632 and K.S.A. 2012 Supp. 79-32,117n and 79-3639a.

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

Section 1. On July 1, 2013, K.S.A. 2012 Supp. 75-5162 is hereby amended to read as follows: 75-5162. (a) For any tax established pursuant to law which is administered by the Kansas department of revenue, any taxpayer having a delinquent tax liability and entering into an agreement with the department providing for an installment payment plan allowing the pay off of such liability in a time period in excess of 90 days from the date when such agreement is entered into shall be assessed a service fee of ~~\$10~~\$25.

(b) *Any taxpayer requesting a full or partial abatement of tax liability pursuant to K.S.A. 79-3233a, 79-3618 or 75-5154, and amendments thereto, shall be assessed a service fee of \$50.*

(c) *The department, when remitting funds to the United States internal revenue service in response to a levy on those funds, may withhold from the funds a service fee of \$22.*

(d) The secretary of revenue shall remit all moneys received by or for the secretary from such fees 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 to the credit of the recovery fund for enforcement actions and attorney fees, *which is hereby established in the state treasury and which may be used for the administration and operation of the department.* The secretary of revenue shall remit the first \$350,000 of delinquent taxes, including penalties and interest, collected during any fiscal year for income tax or any other tax that would otherwise be deposited 100% in the state general fund, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the recovery fund for enforcement actions and attorney fees. All expenditures from the recovery fund for enforcement actions and attorney fees 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 revenue or by a person or persons designated by the secretary.

Sec. 2. K.S.A. 79-32,109 is hereby amended to read as follows: 79-32,109. As used in this act, unless the context otherwise requires:

(a) (1) Any term used in this act shall have the same meaning as when used in a comparable context in the federal internal revenue code. Any reference in this act to the “federal internal revenue code” shall mean the provisions of the federal internal revenue code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time, or from time to time, for the taxable year.

(2) *Any reference in this act to a federal form or schedule, or to a line number on a federal form or schedule, shall be to such form, schedule and line number as they existed for tax year 2011 and as revised thereafter by the internal revenue service. Any such reference shall include comparable federal forms, schedules, and line numbers used by non-United States residents when filing their federal income tax return with the internal revenue service.*

(b) “Resident individual” means a natural person who is domiciled in this state. A natural person who spends in the aggregate more than six months of the taxable year within this state shall be presumed to be a resident for purposes of this act in absence of proof to the contrary. A nonresident individual means an individual other than a resident individual.

(c) “Resident estate” means the estate of a deceased person whose domicile was in this state at the time of such person’s death. “Nonresident estate” means an estate other than a resident estate.

(d) “Resident trust” means a trust which is administered in this state. A trust shall not be deemed to be administered in this state solely because it is subject to the jurisdiction of a district court within this state. “Nonresident trust” means a trust other than a resident trust.

(e) “Resident partner” means a partner who is a resident individual, a resident estate, or a resident trust. “Nonresident partner” means a partner other than a resident partner.

(f) “Resident beneficiary” means a beneficiary of an estate or trust which beneficiary is a resident individual, a resident estate, or a resident trust. “Nonresident beneficiary” means a beneficiary other than a resident beneficiary.

(g) “Director” means the director of taxation.

(h) “Modified Kansas source income” means that part of a nonresident individual’s Kansas adjusted gross income as set forth in K.S.A. 79-32,117, and amendments thereto, derived from sources in Kansas. Items of income including unemployment compensation, gain, loss or deduction reflected in Kansas adjusted gross income shall be considered derived from sources in Kansas to the extent that they are attributable to: (1) The ownership of any interest in real or tangible personal property in this state; (2) a business, trade, profession or occupation carried on in this

state; (3) a business, trade, profession or occupation carried on partly within and partly without this state as determined by the uniform division of income for tax purposes act as set forth in K.S.A. 79-3271 through K.S.A. 79-3293, and amendments thereto; (4) the distributive share of partnership income, gain, loss and deduction determined under this section as if the partnership were a nonresident individual; (5) the share of estate or trust income, gain, loss and deduction determined under K.S.A. 79-32,137, and amendments thereto; (6) prizes won from lottery games conducted by the Kansas lottery; (7) any winnings from parimutuel wagering derived from the conduct of parimutuel activities within this state; or (8) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property to the extent that such income is from property employed in a trade, business, profession or occupation carried on in Kansas. A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of such dealer's trade or business, shall not be deemed to carry on a business, trade, profession or occupation in Kansas solely by reason of the purchase and sale of property for such nonresident's own account.

“Modified Kansas source income” shall not include: (1) Compensation paid by the United States for service in the armed forces of the United States, performed during an induction period by an individual not domiciled in this state; or (2) such individual's share of distributed or undistributed taxable income or net operating loss of a corporation which is an electing small business corporation unless an agreement is filed as provided in K.S.A. 79-32,139, and amendments thereto, in which event, the “modified Kansas source income” of such nonresident individual shall include such individual's share of such corporation's distributed and undistributed taxable income or net operating loss as such share is determined under the internal revenue code only to the extent, however, that such income, gain or loss is at the corporate level, derived from sources within Kansas.

Sec. 3. K.S.A. 2012 Supp. 79-32,117 is hereby amended to read as follows: 79-32,117. (a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be

excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax. This paragraph shall not apply to taxes imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto, for privilege tax year 1995, and all such years thereafter.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments thereto.

(vii) The amount of any charitable contribution made to the extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto.

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,204, and amendments thereto.

(ix) The amount of any ad valorem taxes and assessments paid and the amount of any costs incurred for habitat management or construction and maintenance of improvements on real property, claimed for deduc-

tion in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203, and amendments thereto.

(x) Amounts received as nonqualified withdrawals, as defined by K.S.A. 2012 Supp. 75-643, and amendments thereto, if, at the time of contribution to a family postsecondary education savings account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, or if such amounts are not already included in the federal adjusted gross income.

(xi) The amount of any contribution made to the same extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 2012 Supp. 74-50,154, and amendments thereto.

(xii) For taxable years commencing after December 31, 2004, amounts received as withdrawals not in accordance with the provisions of K.S.A. 2012 Supp. 74-50,204, and amendments thereto, if, at the time of contribution to an individual development account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xiii) of subsection (c), or if such amounts are not already included in the federal adjusted gross income.

(xiii) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,217 through 79-32,220 or 79-32,222, and amendments thereto.

(xiv) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,221, and amendments thereto.

(xv) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,223 through 79-32,226, 79-32,228 through 79-32,231, 79-32,233 through 79-32,236, 79-32,238 through 79-32,241, 79-32,245 through 79-32,248 or 79-32,251 through 79-32,254, and amendments thereto.

(xvi) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250 or 79-32,255, and amendments thereto.

(xvii) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,256, and amendments thereto.

(xviii) For taxable years commencing after December 31, 2006, the amount of any ad valorem or property taxes and assessments paid to a state other than Kansas or local government located in a state other than

Kansas by a taxpayer who resides in a state other than Kansas, when the law of such state does not allow a resident of Kansas who earns income in such other state to claim a deduction for ad valorem or property taxes or assessments paid to a political subdivision of the state of Kansas in determining taxable income for income tax purposes in such other state, to the extent that such taxes and assessments are claimed as an itemized deduction for federal income tax purposes.

(xix) For all taxable years beginning after December 31, 2012, the amount of any: (1) Loss from business as determined under the federal internal revenue code and reported from schedule C and on line 12 of the taxpayer's form 1040 federal individual income tax return; (2) loss from rental real estate, royalties, partnerships, S corporations, *except those with wholly owned subsidiaries subject to the Kansas privilege tax*, estates, trusts, residual interest in real estate mortgage investment conduits and net farm rental as determined under the federal internal revenue code and reported from schedule E and on line 17 of the taxpayer's form 1040 federal individual income tax return; and (3) farm loss as determined under the federal internal revenue code and reported from schedule F and on line 18 of the taxpayer's form 1040 federal income tax return; all to the extent deducted or subtracted in determining the taxpayer's federal adjusted gross income. For purposes of this subsection, references to the federal form 1040 and federal schedule C, schedule E, and schedule F, shall be to such form and schedules as they existed for tax year 2011, and as revised thereafter by the internal revenue service.

(xx) For all taxable years beginning after December 31, 2012, the amount of any deduction for self-employment taxes under section 164(f) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxi) For all taxable years beginning after December 31, 2012, the amount of any deduction for pension, profit sharing, and annuity plans of self-employed individuals under section 62(a)(6) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxii) For all taxable years beginning after December 31, 2012, the amount of any deduction for health insurance under section 162(l) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxiii) For all taxable years beginning after December 31, 2012, the amount of any deduction for domestic production activities under section 199 of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expenses directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retirement benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

(viii) Amounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U.S.C. §§ 228b (a) and 228c (a)(1) et seq.

(ix) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. § 280 C. For taxable years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. § 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249, and amendments thereto.

(xiii) For taxable years beginning after December 31, 2004, amounts contributed to and the amount of income earned on contributions deposited to an individual development account under K.S.A. 2012 Supp. 74-50,201 et seq., and amendments thereto.

(xiv) For all taxable years commencing after December 31, 1996, that portion of any income of a bank organized under the laws of this state or any other state, a national banking association organized under the laws of the United States, an association organized under the savings and loan code of this state or any other state, or a federal savings association organized under the laws of the United States, for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholders as dividends of the corporation. For all taxable years beginning after December 31, 2012, the amount of modification under this subsection shall exclude the portion of income or loss reported on schedule E and included on line 17 of the taxpayer's form 1040 federal individual income tax return.

(xv) For all taxable years beginning after December 31, 2006, amounts not exceeding \$3,000, or \$6,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program or a qualified tuition program established and maintained by another state or agency or instrumentality thereof pursuant to section 529 of the internal revenue code of 1986, as amended, for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. The terms and phrases used in this paragraph shall have the meaning respectively ascribed thereto by the provisions of K.S.A. 2012 Supp. 75-643, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

(xvi) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are or were members of the armed forces of the United States, including service in the Kansas army and air national guard, as a recruitment, sign up or retention bonus received by

such taxpayer as an incentive to join, enlist or remain in the armed services of the United States, including service in the Kansas army and air national guard, and amounts received for repayment of educational or student loans incurred by or obligated to such taxpayer and received by such taxpayer as a result of such taxpayer's service in the armed forces of the United States, including service in the Kansas army and air national guard.

(xvii) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are eligible members of the Kansas army and air national guard as a reimbursement pursuant to K.S.A. 48-281, and amendments thereto, and amounts received for death benefits pursuant to K.S.A. 48-282, and amendments thereto, or pursuant to section 1 or section 2 of chapter 207 of the 2005 session laws of Kansas, and amendments thereto, to the extent that such death benefits are included in federal adjusted gross income of the taxpayer.

(xviii) For the taxable year beginning after December 31, 2006, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$50,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly; and for all taxable years beginning after December 31, 2007, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$75,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly.

(xix) Amounts received by retired employees of Washburn university as retirement and pension benefits under the university's retirement plan.

(xx) For all taxable years beginning after December 31, 2012, the amount of any: (1) Net profit from business as determined under the federal internal revenue code and reported from schedule C and on line 12 of the taxpayer's form 1040 federal individual income tax return; (2) net income from rental real estate, royalties, partnerships, S corporations, estates, trusts, residual interest in real estate mortgage investment conduits and net farm rental as determined under the federal internal revenue code and reported from schedule E and on line 17 of the taxpayer's form 1040 federal individual income tax return; and (3) net farm profit as determined under the federal internal revenue code and reported from schedule F and on line 18 of the taxpayer's form 1040 federal income tax return; all to the extent included in the taxpayer's federal adjusted gross income. For purposes of this subsection, references to the federal form 1040 and federal schedule C, schedule E, and schedule F, shall be to such form and schedules as they existed for tax year 2011 and as revised thereafter by the internal revenue service.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the

Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.

Sec. 4. K.S.A. 2012 Supp. 79-32,118 is hereby amended to read as follows: 79-32,118. ~~Commencing in tax year 2013,~~ The Kansas deduction of an individual shall be such individual's Kansas standard deduction *unless such individual elects to deduct such individual's Kansas itemized deductions under the conditions set forth in K.S.A. 79-32,120, and amendments thereto.*

Sec. 5. K.S.A. 2012 Supp. 79-32,266 is hereby amended to read as follows: 79-32,266. (a) For taxable years commencing after December 31, 2010, there shall be allowed as a credit against the tax liability of a resident individual taxpayer an amount equal to 95% of the resident individual's income tax liability under the provisions of the Kansas income tax act for Kansas source income received from a qualified company that is business income attributable to business activities conducted at the business facility, office, department or other operation relocated to Kansas when the taxpayer owns such qualified company and materially participates in such business activities conducted at such relocated business facility, office, department or other operation of such qualified company which qualified for benefits under the provisions of subsection (a)(1) of K.S.A. 74-50,212, and amendments thereto. A taxpayer shall be treated as materially participating in such qualified company's business activities conducted at such business facility, office, department or other operation relocated to Kansas only if the taxpayer is involved in such business activities of such qualified company on a basis which is regular, continuous and substantial. A taxpayer may claim the credit authorized by this section during any tax year in which the qualified company owned by the taxpayer qualifies for benefits under provisions of K.S.A. 74-50,212, and amendments thereto.

(b) Business income attributable to the business activities conducted at the business facility, office, department or other operation relocated to Kansas of a qualified company which qualified for benefits under the provisions of subsection (a)(1) of K.S.A. 74-50,212, and amendments thereto, shall be determined by multiplying the business income of the company apportioned to this state by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. For purposes of this subsection, the property factor is a fraction, the numerator of which is the average value of the company's real and tangible personal property owned or rented and used during the tax period at such relocated facility, office, department

or other relocated operation in Kansas, and the denominator of which is the average value of the company's real and tangible personal property owned or rented and used within this state during the tax period. The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the company for compensation at such relocated facility, office, department or other relocated operation in Kansas, and the denominator of which is the total compensation paid by the company in this state during the tax period. The sales factor is a fraction, the numerator of which is the total sales of the relocated facility, office, department or other relocated operation in this state during the tax period, and the denominator of which is the total sales of the company in this state during the tax period.

(c) This credit shall not be available to any taxpayer making a modification under (b)(xix) or ~~(c)(xx)~~ (c)(xx) of K.S.A. 79-32,117, and amendments thereto.

(d) The secretary of revenue shall adopt rules and regulations regarding the filing of documents that support the qualifications of the taxpayer for the credit claimed pursuant to this section.

Sec. 6. K.S.A. 2012 Supp. 79-3620 is hereby amended to read as follows: 79-3620. (a) All revenue collected or received by the director of taxation from the taxes imposed by 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, less amounts withheld as provided in subsection (b) and amounts credited as provided in ~~subsection~~ ~~subsections~~ (c), (d) and (e), to the credit of the state general fund.

(b) A refund fund, designated as "sales tax refund fund" not to exceed \$100,000 shall be set apart and maintained by the director from sales tax collections and estimated tax collections and held by the state treasurer for prompt payment of all sales tax refunds ~~including refunds authorized under the provisions of K.S.A. 79-3635, and amendments thereto.~~ Such fund shall be in such amount, within the limit set by this section, as the director shall determine is necessary to meet current refunding requirements under this act. In the event such fund as established by this section is, at any time, insufficient to provide for the payment of refunds due claimants thereof, the director shall certify the amount of additional funds required to the director of accounts and reports who shall promptly transfer the required amount from the state general fund to the sales tax refund fund, and notify the state treasurer, who shall make proper entry in the records.

(c) (1) The state treasurer shall credit $\frac{5}{8}$ s of the revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 4.9%, and deposited as provided in subsection (a),

exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(2) The state treasurer shall credit $\frac{5}{106}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5.3%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(3) On July 1, 2006, the state treasurer shall credit $\frac{19}{265}$ of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(4) On July 1, 2007, the state treasurer shall credit $\frac{13}{106}$ of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(5) On July 1, 2010, the state treasurer shall credit 11.427% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 6.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(6) On July 1, 2011, the state treasurer shall credit 11.26% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 6.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(7) On July 1, 2012, the state treasurer shall credit 11.233% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 6.3%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund, as well as such revenue collected and received at the rate of 6.3%, after June 30, 2013.

(8) On July 1, 2013, and thereafter, the state treasurer shall credit 18.421% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5.7%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(d) The state treasurer shall credit all revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, as certified by the director, from taxpayers doing business within that portion of a STAR bond project district occupied by a STAR bond project or taxpayers doing business with such entity financed by a STAR bond project as defined in K.S.A. 2012 Supp. 12-17,162, and amendments thereto, that was determined by the secretary of commerce to be of state-

wide as well as local importance or will create a major tourism area for the state or the project was designated as a STAR bond project as defined in K.S.A. 2012 Supp. 12-17,162, and amendments thereto, to the city bond finance fund, which fund is hereby created. The provisions of this subsection shall expire when the total of all amounts credited hereunder and under subsection (d) of K.S.A. 79-3710, and amendments thereto, is sufficient to retire the special obligation bonds issued for the purpose of financing all or a portion of the costs of such STAR bond project.

(e) All revenue certified by the director of taxation as having been collected or received from the tax imposed by subsection (c) of K.S.A. 79-3603, and amendments thereto, on the sale or furnishing of gas, water, electricity and heat for use or consumption within the intermodal facility district described in this subsection, shall be credited by the state treasurer to the state highway fund. Such revenue may be transferred by the secretary of transportation to the rail service improvement fund pursuant to law. The provisions of this subsection shall take effect upon certification by the secretary of transportation that a notice to proceed has been received for the construction of the improvements within the intermodal facility district, but not later than December 31, 2010, and shall expire when the secretary of revenue determines that the total of all amounts credited hereunder and pursuant to subsection (e) of K.S.A. 79-3710, and amendments thereto, is equal to \$53,300,000, but not later than December 31, 2045. Thereafter, all revenues shall be collected and distributed in accordance with applicable law. For all tax reporting periods during which the provisions of this subsection are in effect, none of the exemptions contained in K.S.A. 79-3601 et seq., and amendments thereto, shall apply to the sale or furnishing of any gas, water, electricity and heat for use or consumption within the intermodal facility district. As used in this subsection, "intermodal facility district" shall consist of an intermodal transportation area as defined by subsection (oo) of K.S.A. 12-1770a, and amendments thereto, located in Johnson county within the polygonal-shaped area having Waverly Road as the eastern boundary, 191st Street as the southern boundary, Four Corners Road as the western boundary, and Highway 56 as the northern boundary, and the polygonal-shaped area having Poplar Road as the eastern boundary, 183rd Street as the southern boundary, Waverly Road as the western boundary, and the BNSF main-line track as the northern boundary, that includes capital investment in an amount exceeding \$150 million for the construction of an intermodal facility to handle the transfer, storage and distribution of freight through railway and trucking operations.

Sec. 7. K.S.A. 2012 Supp. 79-4217 is hereby amended to read as follows: 79-4217. (a) There is hereby imposed an excise tax upon the severance and production of coal, oil or gas from the earth or water in this state for sale, transport, storage, profit or commercial use, subject to

the following provisions of this section. Such tax shall be borne ratably by all persons within the term "producer" as such term is defined in K.S.A. 79-4216, and amendments thereto, in proportion to their respective beneficial interest in the coal, oil or gas severed. Such tax shall be applied equally to all portions of the gross value of each barrel of oil severed and subject to such tax and to the gross value of the gas severed and subject to such tax. The rate of such tax shall be 8% of the gross value of all oil or gas severed from the earth or water in this state and subject to the tax imposed under this act. The rate of such tax with respect to coal shall be \$1 per ton. For the purposes of the tax imposed hereunder the amount of oil or gas produced shall be measured or determined: (1) In the case of oil, by tank tables compiled to show 100% of the full capacity of tanks without deduction for overage or losses in handling; allowance for any reasonable and bona fide deduction for basic sediment and water, and for correction of temperature to 60 degrees Fahrenheit will be allowed; and if the amount of oil severed has been measured or determined by tank tables compiled to show less than 100% of the full capacity of tanks, such amount shall be raised to a basis of 100% for the purpose of the tax imposed by this act; and (2) in the case of gas, by meter readings showing 100% of the full volume expressed in cubic feet at a standard base and flowing temperature of 60 degrees Fahrenheit, and at the absolute pressure at which the gas is sold and purchased; correction to be made for pressure according to Boyle's law, and used for specific gravity according to the gravity at which the gas is sold and purchased, or if not so specified, according to the test made by the balance method.

(b) The following shall be exempt from the tax imposed under this section:

(1) The severance and production of gas which is: (A) Injected into the earth for the purpose of lifting oil, recycling or repressuring; (B) used for fuel in connection with the operation and development for, or production of, oil or gas in the lease or production unit where severed; (C) lawfully vented or flared; (D) severed from a well having an average daily production during a calendar month having a gross value of not more than \$87 per day, which well has not been significantly curtailed by reason of mechanical failure or other disruption of production; in the event that the production of gas from more than one well is gauged by a common meter, eligibility for exemption hereunder shall be determined by computing the gross value of the average daily combined production from all such wells and dividing the same by the number of wells gauged by such meter; (E) inadvertently lost on the lease or production unit by reason of leaks, blowouts or other accidental losses; (F) used or consumed for domestic or agricultural purposes on the lease or production unit from which it is severed; or (G) placed in underground storage for recovery at a later date and which was either originally severed outside of the state of Kansas, or as to which the tax levied pursuant to this act has been paid;

(2) the severance and production of oil which is: (A) From a lease or production unit whose average daily production is five barrels or less per producing well, which well or wells have not been significantly curtailed by reason of mechanical failure or other disruption of production; (B) from a lease or production unit, the producing well or wells upon which have a completion depth of 2,000 feet or more, and whose average daily production is six barrels or less per producing well or, if the price of oil as determined pursuant to subsection (d) is \$16 or less, whose average daily production is seven barrels or less per producing well, or, if the price of oil as determined pursuant to subsection (d) is \$15 or less, whose average daily production is eight barrels or less per producing well, or, if the price of oil as determined pursuant to subsection (d) is \$14 or less, whose average daily production is nine barrels or less per producing well, or, if the price of oil as determined pursuant to subsection (d) is \$13 or less, whose average daily production is 10 barrels or less per producing well, which well or wells have not been significantly curtailed by reason of mechanical failure or other disruption of production; (C) from a lease or production unit, whose production results from a tertiary recovery process. "Tertiary recovery process" means the process or processes described in subparagraphs (1) through (9) of 10 C.F.R. § 212.78(c) as in effect on June 1, 1979; (D) from a lease or production unit, the producing well or wells upon which have a completion depth of less than 2,000 feet and whose average daily production resulting from a water flood process, is six barrels or less per producing well, which well or wells have not been significantly curtailed by reason of mechanical failure or other disruption of production; (E) from a lease or production unit, the producing well or wells upon which have a completion depth of 2,000 feet or more, and whose average daily production resulting from a water flood process, is seven barrels or less per producing well or, if the price of oil as determined pursuant to subsection (d) is \$16 or less, whose average daily production is eight barrels or less per producing well, or, if the price of oil as determined pursuant to subsection (d) is \$15 or less, whose average daily production is nine barrels or less per producing well, or, if the price of oil as determined pursuant to subsection (d) is \$14 or less, whose average daily production is 10 barrels or less per producing well, which well or wells have not been significantly curtailed by reason of mechanical failure or other disruption of production; (F) test, frac or swab oil which is sold or exchanged for value; or (G) inadvertently lost on the lease or production unit by reason of leaks or other accidental means;

(3) (A) any taxpayer applying for an exemption pursuant to ~~subsection~~ *subsections* (b)(2)(A) and (B) shall make application biennially to the director of taxation therefor. Exemptions granted pursuant to ~~subsection~~ *subsections* (b)(2)(A) and (B) shall be valid for a period of two years following the date of certification thereof by the director of taxation; (B) any taxpayer applying for an exemption pursuant to ~~subsection~~ *subsections*

(b)(2)(D) or (E) shall make application biennially to the director of taxation therefor. Such application shall be accompanied by proof of the approval of an application for the utilization of a water flood process therefor by the corporation commission pursuant to rules and regulations adopted under the authority of K.S.A. 55-152, and amendments thereto, and proof that the oil produced therefrom is kept in a separate tank battery and that separate books and records are maintained therefor. Such exemption shall be valid for a period of two years following the date of certification thereof by the director of taxation; (C) any exemption granted pursuant to subsections (b)(2)(A), (B), (D) or (E) with an odd lease number and an exemption termination date between June 1, 2004, and May 31, 2005, inclusive, shall be valid for a period of one year following the date of certification; and (D) notwithstanding the provisions of paragraph (A) or (B), any exemption in effect on the effective date of this act affected by the amendments to subsection (b)(2) by this act shall be redetermined in accordance with such amendments. Any such exemption, and any new exemption established by such amendments and applied for after the effective date of this *act* shall be valid for a period commencing with May 1, 1998, and ending on April 30, 1999;

(4) the severance and production of gas or oil from any pool from which oil or gas was first produced on or after April 1, 1983, and prior to July 1, 2012, as determined by the state corporation commission and certified to the director of taxation, and continuing for a period of 24 months from the month in which oil or gas was first produced from such pool as evidenced by an affidavit of completion of a well, filed with the state corporation commission and certified to the director of taxation. Exemptions granted for production from any well pursuant to this paragraph shall be valid for a period of 24 months following the month in which oil or gas was first produced from such pool. The term “pool” means an underground accumulation of oil or gas in a single and separate natural reservoir characterized by a single pressure system so that production from one part of the pool affects the reservoir pressure throughout its extent;

(5) the severance and production of oil from any *well within a pool* from which oil was first produced on or after July 1, 2012, *as certified by the state corporation commission to the director of taxation*, and from which the *average daily* severance and production of oil during the *initial six months of production from the date of first production from such pool producing well, which well has not been significantly curtailed by reason of mechanical failure or other disruption of production*, does not exceed 50 barrels per day ~~as certified by the state corporation commission and certified to the director of taxation~~, and continuing for a period of 24 months from the month in which oil was first produced from such pool as evidenced by an affidavit of completion of a well, filed with the state corporation commission and certified to the director of taxation. Exemp-

tions granted for production from any well pursuant to this subsection shall be valid for a period of 24 months following the month in which oil was first produced from such pool. The term “pool” means an underground accumulation of oil in a single and separate natural reservoir characterized by a single pressure system so that production from one part of the pool affects the reservoir pressure throughout its extent. *For any such well that has qualified for exemption, if the average daily severance and production of oil from such well exceeds 50 barrels per day within any qualifying one-month production period after the initial qualifying production period, the exemption for such well shall be terminated as of the commencement of such one-month production period;*

(6) the severance and production of oil or gas from a three-year inactive well, as determined by the state corporation commission and certified to the director of taxation, for a period of 10 years after the date of receipt of such certification. As used in this paragraph, “three-year inactive well” means any well that has not produced oil or gas in more than one month in the three years prior to the date of application to the state corporation commission for certification as a three-year inactive well. An application for certification as a three-year inactive well shall be in such form and contain such information as required by the state corporation commission, and shall be made prior to July 1, 1996. The commission may revoke a certification if information indicates that a certified well was not a three-year inactive well or if other lease production is credited to the certified well. Upon notice to the operator that the certification for a well has been revoked, the exemption shall not be applied to the production from that well from the date of revocation;

(7) (A) The incremental severance and production of oil or gas which results from a production enhancement project begun on or after July 1, 1998, shall be exempt for a period of seven years from the start-up date of such project. As used in this paragraph:

(1) “Incremental severance and production” means the amount of oil or natural gas which is produced as the result of a production enhancement project which is in excess of the base production of oil or natural gas, and is determined by subtracting the base production from the total monthly production after the production enhancement project is completed.

(2) “Base production” means the average monthly amount of production for the twelve-month period immediately prior to the production enhancement project beginning date, minus the monthly rate of production decline for the well or project for each month beginning 180 days prior to the project beginning date. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the well or project for the twelve-month period immediately prior to the production enhancement project beginning date, except that the monthly rate of production decline shall be equal to zero in the case where the

well or project has experienced no monthly decline during the twelve-month period immediately prior to the production enhancement project beginning date. Such monthly rate of production decline shall be continued as the decline that would have occurred except for the enhancement project. Any well or project which may have produced during the twelve-month period immediately prior to the production enhancement project beginning date but is not capable of production on the project beginning date shall have a base production equal to zero. The calculation of the base production amount shall be evidenced by an affidavit and supporting documentation filed by the applying taxpayer with the state corporation commission.

(3) “Workover” means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery of oil or gas, including, but not limited to, acidizing, reperforation, fracture treatment, sand/paraffin/scale removal or other wellbore cleanouts, casing repair, squeeze cementing, initial installation, or enhancement of artificial lifts including plunger lifts, rods, pumps, submersible pumps and coiled tubing velocity strings, downsizing existing tubing to reduce well loading, downhole commingling, bacteria treatments, polymer treatments, upgrading the size of pumping unit equipment, setting bridge plugs to isolate water production zones, or any combination of the aforementioned operations; “workover” shall not mean the routine maintenance, routine repair, or like for-like replacement of downhole equipment such as rods, pumps, tubing packers or other mechanical device.

(4) “Production enhancement project” means performing or causing to be performed the following:

- (i) Workover;
- (ii) recompletion to a different producing zone in the same well bore, except recompletions in formations and zones subject to a state corporation commission proration order;
- (iii) secondary recovery projects;
- (iv) addition of mechanical devices to dewater a gas or oil well;
- (v) replacement or enhancement of surface equipment;
- (vi) installation or enhancement of compression equipment, line looping or other techniques or equipment which increases production from a well or a group of wells in a project; *or*
- (vii) new discoveries of oil or gas which are discovered as a result of the use of new technology, including, but not limited to, three dimensional seismic studies.

(B) The state corporation commission shall adopt rules and regulations necessary to efficiently and properly administer the provisions of this paragraph including rules and regulations for the qualification of production enhancement projects, the procedures for determining the monthly rate of production decline, criteria for determining the share of

incremental production attributable to each well when a production enhancement project includes a group of wells, criteria for determining the start-up date for any project for which an exemption is claimed, and determining new qualifying technologies for the purposes of subsection (b)(7)(A)(4)(vii).

(C) Any taxpayer applying for an exemption pursuant to this paragraph shall make application to the director of taxation. Such application shall be accompanied by a state corporation commission certification that the production for which an exemption is sought results from a qualified production enhancement project and certification of the base production for the enhanced wells or group of wells, and the rate of decline to be applied to that base production. The secretary of revenue shall provide credit for any taxes paid between the project start-up date and the certification of qualifications by the commission.

(D) The exemptions provided for in this paragraph shall not apply for 12 months beginning July 1 of the year subsequent to any calendar year during which: (1) In the case of oil, the secretary of revenue determines that the weighted average price of Kansas oil at the wellhead has exceeded \$20.00 per barrel; or (2) in the case of natural gas the secretary of revenue determines that the weighted average price of Kansas gas at the wellhead has exceeded \$2.50 per Mcf.

(E) The provisions of this paragraph shall not affect any other exemption allowable pursuant to this section; and

(7) for the calendar year 1988, and any year thereafter, the severance or production of the first 350,000 tons of coal from any mine as certified by the state geological survey.

(c) No exemption shall be granted pursuant to subsection (b)(3) or (4) to any person who does not have a valid operator's license issued by the state corporation commission, and no refund of tax shall be made to any taxpayer attributable to any production in a period when such taxpayer did not hold a valid operator's license issued by the state corporation commission.

(d) On April 15, 1988, and on April 15 of each year thereafter, the secretary of revenue shall determine from statistics compiled and provided by the United States department of energy, the average price per barrel paid by the first purchaser of crude oil in this state for the six-month period ending on December 31 of the preceding year. Such price shall be used for the purpose of determining exemptions allowed by subsection (b)(2)(B) or (E) for the twelve-month period commencing on May 1 of such year and ending on April 30 of the next succeeding year.

New Sec. 8. (a) The following described property, to the extent herein specified, shall be exempt from all property taxes levied under the laws of Kansas:

Any new automobile manufacturing property.

(b) The provisions of subsection (a) shall apply from and after the later of the purchase or commencement of construction of such property and continue only for a period thereafter until 10 calendar years following the calendar year in which construction of such property is completed.

(c) The provisions of this section shall apply to all taxable years beginning after December 31, 2011.

(d) The owner of any new automobile manufacturing property shall pay in lieu of taxes in an amount mutually agreed to by the governing body of the appropriate taxing subdivisions and the owners as long as this exemption is in effect. The in lieu of taxes shall be paid at the same time taxes are required to be paid pursuant to K.S.A. 79-2004 and 79-2004a, and amendments thereto. The county treasurer shall apportion such in lieu of tax payments among the taxing subdivisions of this state in the territory in which the facility is located. Any payment in lieu of taxes shall be divided by the county treasurer among such taxing subdivisions in the same proportion that the amount of the total mill levy of each individual taxing subdivision bears to the aggregate of such levies of all the taxing subdivisions among which the division is to be made. The county treasurer shall pay such amounts to the taxing subdivisions at the same time or times as their regular operating tax rate mill levy is paid to them. Based upon the assessed valuation which such facility would have if it were upon the tax rolls of the county, the county clerk shall compute the total of the property taxes which would be levied upon such facility by all taxing subdivisions within which the facility is located if such property were taxable.

(e) As used in this section:

(1) “Appropriate taxing subdivisions” means the county, city or unified government jurisdiction in which the new automobile property is located; and

(2) “new automobile manufacturing property” means any real property purchased or constructed after December 31, 2011, owned by a business with an NAICS code of 336111, provided such property:

(A) Includes a building or addition to a building constructed after December 31, 2011, having not less than 50,000 square feet of floorspace; and

(B) was purchased or constructed after December 31, 2011, for a total cost of not less than \$10,000,000 including the cost of both the land and buildings.

New Sec. 9. (a) On and after July 1, 2013, if any person sells or leases tangible personal property to the state, a state department, a state agency or an agent thereof, that person and any affiliated person shall, as a prerequisite for any such sale or lease, register with the department of revenue as a retailer and comply with all legal requirements imposed on a retailer, including the requirement to collect and remit sales or use tax on all taxable sales of tangible personal property to customers in this state.

(b) Any ruling, agreement or contract, whether written or oral, express or implied, between a retailer and this state's executive branch, or any other state agency or department, stating, agreeing or ruling that the retailer is not required to collect sales and use tax in this state despite the presence of a warehouse, distribution center or fulfillment center in the state that is owned or operated by the retailer or an affiliated person of the retailer shall be null and void, unless it is specifically approved by a majority vote of each of the chambers of the Kansas legislature.

(c) As used in this section, "affiliated person" means any person that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code as the retailer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the retailer as a corporation that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code.

New Sec. 10. (a) On and after July 1, 2013, watercraft shall be appraised at fair market value determined therefor pursuant to K.S.A. 79-503a, and amendments thereto, and assessed at the percentage of value as follows: (1) 11.5% in tax year 2014; and (2) 5% in tax year 2015 and all tax years thereafter. In no case shall the assessed value of any watercraft, as determined under the provisions of this section, cause the tax upon such watercraft to be less than \$12.

(b) As used in this section, "watercraft" means any vessel requiring numbering pursuant to K.S.A. 32-1110, and amendments thereto. Each watercraft may include one trailer which is designed to launch, retrieve, transport and store such watercraft and any nonelectric motor or motors which are necessary to operate such watercraft on the water.

Sec. 11. On July 1, 2013, K.S.A. 2012 Supp. 74-2433f is hereby amended to read as follows: 74-2433f. (a) There shall be a division of the state court of tax appeals known as the small claims and expedited hearings division. Hearing officers appointed by the chief hearing officer shall have authority to hear and decide cases heard in the small claims and expedited hearings division.

(b) The small claims and expedited hearings division shall have jurisdiction over hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, and hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and ~~acts amendatory thereof or supplemental amendments~~ thereto, with regard to single-family residential property. The filing of an appeal with the small claims and expedited hearings division shall be a prerequisite for filing an appeal with the state court of tax appeals for appeals involving single-family residential property.

(c) At the election of the taxpayer, the small claims and expedited hearings division shall have jurisdiction over: (1) Any appeal of a decision, finding, order or ruling of the director of taxation, except an appeal, finding, order or ruling relating to an assessment issued pursuant to K.S.A. 79-5201 et seq., and amendments thereto, in which the amount of tax in controversy does not exceed \$15,000; (2) hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, where the value of the property, other than property devoted to agricultural use, is less than \$2,000,000 as reflected on the valuation notice; *and* (3) hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and ~~acts amendatory thereof or supplemental amendments~~ thereto, other than those relating to land devoted to agricultural use, wherein the value of the property is less than \$2,000,000 as reflected on the valuation notice.

(d) In accordance with the provisions of K.S.A. 74-2438, and amendments thereto, any party may elect to appeal any application or decision referenced in subsection (b) to the state court of tax appeals. Except as provided in subsection (b) regarding single-family residential property, the filing of an appeal with the small claims and expedited hearings division shall not be a prerequisite for filing an appeal with the state court of tax appeals under this section. Final decisions of the small claims and expedited hearings division may be appealed to the state court of tax appeals. An appeal of a decision of the small claims and expedited hearings division to the state court of tax appeals shall be de novo.

(e) A taxpayer shall commence a proceeding in the small claims and expedited hearings division by filing a notice of appeal in the form prescribed by the rules of the state court of tax appeals which shall state the nature of the taxpayer's claim. Notice of appeal shall be provided to the appropriate unit of government named in the notice of appeal by the taxpayer. In any valuation appeal or tax protest commenced pursuant to articles 14 and 20 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, the hearing shall be conducted in the county where the property is located or a county adjacent thereto. In any appeal from a final determination by the secretary of revenue, the hearing shall be conducted in the county in which the taxpayer resides or a county adjacent thereto.

(f) The hearing in the small claims and expedited hearings division shall be informal. The hearing officer may hear any testimony and receive any evidence the hearing officer deems necessary or desirable for a just determination of the case. A hearing officer shall have the authority to administer oaths in all matters before the hearing officer. All testimony shall be given under oath. A party may appear personally or may be represented by an attorney, a certified public accountant, a certified general

appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee of the taxpayer. A county or unified government may be represented by the county appraiser, designee of the county appraiser, county attorney or counselor or other representatives so designated. No transcript of the proceedings shall be kept.

(g) The hearing in the small claims and expedited hearings division shall be conducted within 60 days after the appeal is filed in the small claims and expedited hearings division unless such time period is waived by the taxpayer. A decision shall be rendered by the hearing officer within 30 days after the hearing is concluded and, in cases arising from appeals described by subsections (b) and (c)(2) and (3), shall be accompanied by a written explanation of the reasoning upon which such decision is based. Documents provided by a taxpayer or county or district appraiser shall be returned to the taxpayer or the county or district appraiser by the hearing officer and shall not become a part of the court's permanent records. Documents provided to the hearing officer shall be confidential and may not be disclosed, except as otherwise specifically provided.

(h) With regard to any matter properly submitted to the division relating to the determination of valuation of property for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination. *With regard to leased commercial and industrial property, the presumption of validity and correctness of such determination shall exist in favor of the county appraiser unless the taxpayer has furnished the county or district appraiser, within 30 calendar days following the informal meeting required by K.S.A. 79-1448, and amendments thereto, or within 30 calendar days following the informal meeting required by K.S.A. 79-2005, and amendments thereto, a complete income and expense statement for the property for the three years next preceding the year of appeal.*

Sec. 12. On July 1, 2013, K.S.A. 2012 Supp. 79-306e is hereby amended to read as follows: 79-306e. (a) The value for property tax purposes of any ~~vessel watercraft~~, as defined by ~~K.S.A. 32-1102~~ section 10, and amendments thereto, which is acquired or sold after January 1 and prior to September 1 of any taxable year shall be equal to the value determined therefor pursuant to ~~K.S.A. 79-503a~~ section 10, and amendments thereto, multiplied by: (1) In the case of a sale, a fraction the numerator of which is the number of months, or major portion thereof, such ~~vessel watercraft~~ was owned by the record owner thereof during the taxable year in which such ~~vessel watercraft~~ was sold, and the denominator of which is 12; and (2) in the case of an acquisition, a fraction the numerator of which is the number of months, or major portion thereof,

remaining in the taxable year after the date of acquisition by the record owner thereof, and the denominator of which is 12.

(b) On or after July 1, 2007, notice of the acquisition or sale of any such ~~vessel~~ *watercraft* shall be provided by the record owner thereof to the appropriate county appraiser on or before December 20 of the year of such acquisition or sale. Upon receipt of such notice, and after computation of the value of any such ~~vessel~~ *watercraft* in accordance with the provision of subsection (a), a notification or revised notification of value shall be mailed to the taxpayer.

(c) ~~Vessels~~ *Watercraft* acquired after September 1 of a taxable year shall not be subject to assessment and taxation for such year, except as provided by paragraph (1) of subsection (a).

(d) The provisions of this section shall apply to all taxable years commencing after December 31, ~~2002~~ 2013.

Sec. 13. On July 1, 2013, K.S.A. 2012 Supp. 79-1448 is hereby amended to read as follows: 79-1448. Any taxpayer may complain or appeal to the county appraiser from the classification or appraisal of the taxpayer's property by giving notice to the county appraiser within 30 days subsequent to the date of mailing of the valuation notice required by K.S.A. 79-1460, and amendments thereto, for real property, and on or before May 15 for personal property. The county appraiser or the appraiser's designee shall arrange to hold an informal meeting with the aggrieved taxpayer with reference to the property in question. At such meeting it shall be the duty of the county appraiser or the county appraiser's designee to initiate production of evidence to substantiate the valuation of such property, including the affording to the taxpayer of the opportunity to review the data sheet of comparable sales utilized in the determination of such valuation. *In any appeal from the appraisal of leased commercial and industrial property, the county or district appraiser's appraised value shall be presumed to be valid and correct and may only be rebutted by a preponderance of the evidence, unless the property owner furnishes the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal within 30 calendar days following the informal meeting.* The county appraiser may extend the time in which the taxpayer may informally appeal from the classification or appraisal of the taxpayer's property for just and adequate reasons. Except as provided in K.S.A. 79-1404, and amendments thereto, no informal meeting regarding real property shall be scheduled to take place after May 15, nor shall a final determination be given by the appraiser after May 20. Any final determination shall be accompanied by a written explanation of the reasoning upon which such determination is based when such determination is not in favor of the taxpayer. Any taxpayer who is aggrieved by the final determination of the county appraiser may appeal to the hearing officer

or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, and such hearing officer, or panel, for just cause shown and recorded, is authorized to change the classification or valuation of specific tracts or individual items of real or personal property in the same manner provided for in K.S.A. 79-1606, and amendments thereto. In lieu of appealing to a hearing officer or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, any taxpayer aggrieved by the final determination of the county appraiser, except with regard to land devoted to agricultural use, wherein the value of the property, is less than \$2,000,000, as reflected on the valuation notice, or the property constitutes single family residential property, may appeal to the small claims and expedited hearings division of the state court of tax appeals within the time period prescribed by K.S.A. 79-1606, and amendments thereto. Any taxpayer who is aggrieved by the final determination of a hearing officer or panel may appeal to the state court of tax appeals as provided in K.S.A. 79-1609, and amendments thereto. An informal meeting with the county appraiser or the appraiser's designee shall be a condition precedent to an appeal to the county or district hearing panel.

Sec. 14. On July 1, 2013, K.S.A. 2012 Supp. 79-1609 is hereby amended to read as follows: 79-1609. Any person aggrieved by any order of the hearing officer or panel may appeal to the state court of tax appeals by filing a written notice of appeal, on forms approved by the state court of tax appeals and provided by the county clerk for such purpose, stating the grounds thereof and a description of any comparable property or properties and the appraisal thereof upon which they rely as evidence of inequality of the appraisal of their property, if that be a ground of the appeal, with the state court of tax appeals and by filing a copy thereof with the county clerk within 30 days after the date of the order from which the appeal is taken. A county or district appraiser may appeal to the state court of tax appeals from any order of the hearing officer or panel. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination—~~except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.~~ *With regard to leased commercial and industrial property, the presumption of validity and correctness of such determination shall exist in favor of the county or district appraiser unless, within 30 calendar*

days following the informal meeting required by K.S.A. 79-1448, and amendments thereto, the taxpayer furnished to the county or district appraiser complete income and expense statements for the property for the three years next preceding the year of appeal.

Sec. 15. On July 1, 2013, K.S.A. 2012 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 correction of the clerical errors listed in subsection (a), (c), (f) or (g) of K.S.A. 79-1701, and amendments thereto,* and 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. 16. On July 1, 2013, K.S.A. 2012 Supp. 79-1702 is hereby amended to read as follows: 79-1702. If any taxpayer, municipality or taxing district shall have a grievance described under the provisions of K.S.A. 79-1701 or 79-1701a, and amendments thereto, which is not re-

remediable thereunder solely because not reported within the time prescribed therein, or which was remediable thereunder and reported to the proper official or officials within the time prescribed but which has not been remedied by such official or officials, such grievance may be presented to the state court of tax appeals and if it shall be satisfied from competent evidence produced that there is a real grievance, it may direct that the same be remedied either by canceling the tax, if uncollected, together with all penalties charged thereon, or if the tax has been paid, by ordering a refund of the amount found to have been unlawfully charged and collected and interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, minus two percentage points.

In all cases where the identical property owned by any taxpayer has been assessed for the current tax year in more than one county in the state, the court is hereby given authority to determine which county is entitled to the assessment of the property and to charge legal taxes thereon, and if the taxes have been paid in a county not entitled thereto, the court is hereby empowered to direct the authorities of the county which has so unlawfully collected the taxes to refund the same to the taxpayer with all penalties charged thereon.

No tax grievance shall be considered by the state court of tax appeals unless the same is filed within four years from the date the tax would have become a lien on real estate.

In all cases where an error results in an understatement of values or taxes as a result of ~~a mathematical miscalculation on the part of a county~~ *the correction of the clerical errors listed in subsection (a), (c), (f) or (g) of K.S.A. 79-1701, and amendments thereto*, the state court of tax appeals, if it shall be satisfied from competent evidence produced that there is an understatement as a result of a clerical error, may order an additional assessment or tax bill, or both, to be issued so that the proper value of the property in question is reflected, except that, in no such case shall the taxpayer be assessed interest or penalties on any tax which may be assessed. No increase shall be ordered to correct such error that extends back more than two years from the date of the most recent tax year. 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.

Errors committed in the valuation and assessment process that are not specifically described in K.S.A. 79-1701, and amendments thereto, shall be remediable only under the provisions of K.S.A. 79-2005, and amendments thereto.

Sec. 17. On July 1, 2013, K.S.A. 2012 Supp. 79-2005 is hereby amended to read as follows: 79-2005. (a) Any taxpayer, before protesting the payment of such taxpayer's taxes, shall be required, either at the time of paying such taxes, or, if the whole or part of the taxes are paid prior

to December 20, no later than December 20, or, with respect to taxes paid in whole or in part in an amount equal to at least $\frac{1}{2}$ of such taxes on or before December 20 by an escrow or tax service agent, no later than January 31 of the next year, to file a written statement with the county treasurer, on forms approved by the state court of tax appeals and provided by the county treasurer, clearly stating the grounds on which the whole or any part of such taxes are protested and citing any law, statute or facts on which such taxpayer relies in protesting the whole or any part of such taxes. When the grounds of such protest is an assessment of taxes made pursuant to K.S.A. 79-332a and 79-1427a, and amendments thereto, the county treasurer may not distribute the taxes paid under protest until such time as the appeal is final. When the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the county treasurer shall forward a copy of the written statement of protest to the county appraiser who shall within 15 days of the receipt thereof, schedule an informal meeting with the taxpayer or such taxpayer's agent or attorney with reference to the property in question. The county appraiser shall review the appraisal of the taxpayer's property with the taxpayer or such taxpayer's agent or attorney and may change the valuation of the taxpayer's property, if in the county appraiser's opinion a change in the valuation of the taxpayer's property is required to assure that the taxpayer's property is valued according to law, and shall, within 15 business days thereof, notify the taxpayer in the event the valuation of the taxpayer's property is changed, in writing of the results of the meeting. In the event the valuation of the taxpayer's property is changed and such change requires a refund of taxes and interest thereon, the county treasurer shall process the refund in the manner provided by subsection (l).

(b) No protest appealing the valuation or assessment of property shall be filed pertaining to any year's valuation or assessment when an appeal of such valuation or assessment was commenced pursuant to K.S.A. 79-1448, and amendments thereto, nor shall the second half payment of taxes be protested when the first half payment of taxes has been protested. Notwithstanding the foregoing, this provision shall not prevent any subsequent owner from protesting taxes levied for the year in which such property was acquired, nor shall it prevent any taxpayer from protesting taxes when the valuation or assessment of such taxpayer's property has been changed pursuant to an order of the director of property valuation.

(c) A protest shall not be necessary to protect the right to a refund of taxes in the event a refund is required because the final resolution of an appeal commenced pursuant to K.S.A. 79-1448, and amendments thereto, occurs after the final date prescribed for the protest of taxes.

(d) If the grounds of such protest shall be that the valuation or assessment of the property upon which the taxes so protested are levied is illegal or void, such statement shall further state the exact amount of

valuation or assessment which the taxpayer admits to be valid and the exact portion of such taxes which is being protested.

(e) If the grounds of such protest shall be that any tax levy, or any part thereof, is illegal, such statement shall further state the exact portion of such tax which is being protested.

(f) Upon the filing of a written statement of protest, the grounds of which shall be that any tax levied, or any part thereof, is illegal, the county treasurer shall mail a copy of such written statement of protest to the state court of tax appeals and the governing body of the taxing district making the levy being protested.

(g) Within 30 days after notification of the results of the informal meeting with the county appraiser pursuant to subsection (a), the protesting taxpayer may, if aggrieved by the results of the informal meeting with the county appraiser, appeal such results to the state court of tax appeals.

(h) After examination of the copy of the written statement of protest and a copy of the written notification of the results of the informal meeting with the county appraiser in cases where the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the court shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act, unless waived by the interested parties in writing. If the grounds of such protest is that the valuation or assessment of the property is illegal or void the court shall notify the county appraiser thereof.

(i) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the court. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination except that no such duty shall accrue to the county or district appraiser with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination. In all instances where the court sets a request for hearing and requires the representation of the county by its attorney or counselor at such hearing, the county shall be represented by its county attorney or counselor.

(j) When a determination is made as to the merits of the tax protest, the court shall render and serve its order thereon. The county treasurer

shall notify all affected taxing districts of the amount by which tax revenues will be reduced as a result of a refund.

(k) If a protesting taxpayer fails to file a copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the court within the time limit prescribed, such protest shall become null and void and of no effect whatsoever.

(l) (1) In the event the court orders that a refund be made pursuant to this section or the provisions of K.S.A. 79-1609, and amendments thereto, or a court of competent jurisdiction orders that a refund be made, and no appeal is taken from such order, or in the event a change in valuation which results in a refund pursuant to subsection (a), the county treasurer shall, as soon thereafter as reasonably practicable, refund to the taxpayer such protested taxes and, with respect to protests or appeals commenced after the effective date of this act, interest computed at the rate prescribed by K.S.A. 79-2968, and amendments thereto, minus two percentage points, per annum from the date of payment of such taxes from tax moneys collected but not distributed. Upon making such refund, the county treasurer shall charge the fund or funds having received such protested taxes, except that, with respect to that portion of any such refund attributable to interest the county treasurer shall charge the county general fund. In the event that the state court of tax appeals or a court of competent jurisdiction finds that any time delay in making its decision is unreasonable and is attributable to the taxpayer, it may order that no interest or only a portion thereof be added to such refund of taxes.

(2) No interest shall be allowed pursuant to paragraph (1) in any case where the tax paid under protest was inclusive of delinquent taxes.

(m) Whenever, by reason of the refund of taxes previously received or the reduction of taxes levied but not received as a result of decreases in assessed valuation, it will be impossible to pay for imperative functions for the current budget year, the governing body of the taxing district affected may issue no-fund warrants in the amount necessary. Such warrants shall conform to the requirements prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by such section and may be issued without the approval of the state court of tax appeals. The governing body of such taxing district shall make a tax levy at the time fixed for the certification of tax levies to the county clerk next following the issuance of such warrants sufficient to pay such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized by law.

(n) Whenever a taxpayer appeals to the court of tax appeals pursuant to the provisions of K.S.A. 79-1609, and amendments thereto, or pays taxes under protest related to one property whereby the assessed valuation of such property exceeds 5% of the total county assessed valuation of all property located within such county and the taxpayer receives a

refund of such taxes paid under protest or a refund made pursuant to the provisions of K.S.A. 79-1609, and amendments thereto, the county treasurer *or the governing body of any taxing subdivision within a county* may request the pooled money investment board to make a loan to such county *or taxing subdivision* as provided in this section. The pooled money investment board is authorized and directed to loan to such county *or taxing subdivision* sufficient funds to enable the county *or taxing subdivision* to refund such taxes to the taxpayer. The pooled money investment board is authorized and directed to use any moneys in the operating accounts, investment accounts or other investments of the state of Kansas to provide the funds for such loan. Each loan shall bear interest at a rate equal to the net earnings rate of the pooled money investment portfolio at the time of the making of such loan. The total aggregate amount of loans under this program shall not exceed \$50,000,000 of unencumbered funds pursuant to article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto. 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. Upon certification to the pooled money investment board by the county treasurer *or governing body* of the amount of each loan authorized pursuant to this subsection, the pooled money investment board shall transfer each such amount certified by the county treasurer *or governing body* from the state bank account or accounts prescribed in this subsection to the county treasurer who shall deposit such amount in the county treasury. Any such loan authorized pursuant to this subsection shall be repaid within four years. The county *or taxing subdivision* shall make not more than four equal annual tax levies at the time fixed for the certification of tax levies to the county clerk following the making of such loan sufficient to pay such loan within the time period required under such loan. All such tax levies shall be in addition to all other levies authorized by law.

(o) The county treasurer shall disburse to the proper funds all portions of taxes paid under protest and shall maintain a record of all portions of such taxes which are so protested and shall notify the governing body of the taxing district levying such taxes thereof and the director of accounts and reports if any tax protested was levied by the state.

(p) This statute shall not apply to the valuation and assessment of property assessed by the director of property valuation and it shall not be necessary for any owner of state assessed property, who has an appeal pending before the state court of tax appeals, to protest the payment of taxes under this statute solely for the purpose of protecting the right to a refund of taxes paid under protest should that owner be successful in that appeal.

Sec. 18. On July 1, 2013, K.S.A. 2012 Supp. 79-3702 is hereby amended to read as follows: 79-3702. For the purposes of this act: (a)

“Purchase price” means the consideration paid or given or contracted to be paid or given by any person to the seller of an article of tangible personal property for the article purchased. The term shall include, in addition to the consideration paid or given or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using the same in this state. If a cash discount is allowed and taken on the sale it shall be deducted in arriving at the purchase price.

(b) The meaning ascribed to words and phrases in K.S.A. 79-3602, and amendments thereto, insofar as is practicable, shall be applicable herein unless otherwise provided. The provisions of K.S.A. 79-3601 to 79-3625, inclusive, 79-3650, K.S.A. 2012 Supp. 79-3693 and 79-3694, and amendments thereto, relating to enforcement, collection and administration, insofar as practicable, shall have full force and effect with respect to taxes imposed under the provisions of this act.

(c) “Use” means the exercise within this state by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of the property in the regular course of business, and except storage as hereinafter defined.

(d) “Storage” means any keeping or retaining in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(e) “Storage” and “use” do not include the keeping, retaining or exercising of any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

(f) “Property used in processing” means: (1) Any tangible personal property which, when used in fabrication, compounding, manufacturing or germination, becomes an integral part of the new article resulting from such fabrication, compounding, manufacturing, or germination, and intended to be sold ultimately at retail; *and* (2) fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

(g) “Retailer” means every person engaged in the business of selling tangible personal property for use within the meaning of this act, except that, when in the opinion of the director it is necessary for the efficient administration of this act to regard any salesperson, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespec-

tive of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this act.

(h) (1) “Retailer doing business in this state” or any like term, means: (A) Any retailer ~~having or~~ maintaining in this state, permanently, temporarily, directly or indirectly through a subsidiary, agent or representative, an office, distribution house, sales house, warehouse or other place of business;

(B) any retailer ~~having~~ utilizing an employee, independent contractor, agent, representative, salesperson, canvasser ~~or~~ solicitor *or other person* operating in this state either permanently or temporarily, ~~under the authority of the retailer or its subsidiary,~~ for the purpose of selling, delivering, installing, assembling, servicing, repairing, soliciting sales or the taking of orders for tangible personal property;

(C) any retailer, including a contractor, repair person or other service provider, who enters this state to perform services that are enumerated in K.S.A. 79-3603, and amendments thereto, and who is required to secure a retailer’s sales tax registration certificate before performing those services;

(D) any retailer deriving rental receipts from a lease of tangible personal property situated in this state;

(E) ~~any person having a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers’ sales tax act;~~

(~~F~~) any person regularly maintaining a stock of tangible personal property in this state for sale in the normal course of business; and

(~~G~~/~~F~~) any retailer who has any other contact with this state that would allow this state to require the retailer to collect and remit tax under the provisions of the constitution and laws of the United States.

(2) A retailer shall be presumed to be doing business in this state if *any of the following occur*:

(A) ~~Both of the following conditions exist:~~

(i) ~~The retailer holds a substantial ownership interest in, or is owned in whole substantial part by, a retailer maintaining a sales location in Kansas; and~~

(ii) ~~the retailer sells the same or a substantially similar line of products as the related Kansas retailer and does so under the same or a substantially similar business name, or the Kansas facilities or Kansas employees of the related Kansas retailer are used to advertise, promote or facilitate sales by the retailer to consumers;~~

(B) ~~The retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a business that maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers property sold by the retailer to consumers.~~

~~(C) For purposes of paragraphs (A) and (B):~~

~~(i) “Substantial ownership interest” means an interest in an entity that is not less than the degree of ownership of equity interest in an entity that is specified by Section 78p of Title 15 of the United States Code, or any successor to that statute, with respect to a person other than a director or officer; and~~

~~(ii) “ownership” means and includes both direct ownership, and indirect ownership through a parent, subsidiary or affiliate. Any person, other than a common carrier acting in its capacity as such, that has nexus with the state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state:~~

~~(i) Sells the same or a substantially similar line of products as the retailer and does so under the same or a substantially similar business name;~~

~~(ii) maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers or facilitates the sale or delivery of property sold by the retailer to consumers;~~

~~(iii) uses trademarks, service marks, or trade names in the state that are the same or substantially similar to those used by the retailer;~~

~~(iv) delivers, installs, assembles or performs maintenance services for the retailer’s customers within the state;~~

~~(v) facilitates the retailer’s delivery of property to customers in the state by allowing the retailer’s customers to pick up property sold by the retailer at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the state;~~

~~(vi) has a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers’ sales tax act; or~~

~~(vii) conducts any other activities in the state that are significantly associated with the retailer’s ability to establish and maintain a market in the state for the retailer’s sales.~~

~~(B) Any affiliated person conducting activities in this state described in subparagraph (A) or (C) has nexus with this state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state.~~

~~(C) The retailer enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link or an internet website, by telemarketing, by an in-person oral presentation, or otherwise, to the retailer, if the cumulative gross receipts from sales by the retailer to customers in the state who are referred to the retailer by all residents with this type of an agreement with the retailer~~

is in excess of \$10,000 during the preceding 12 months. This presumption may be rebutted by submitting proof that the residents with whom the retailer has an agreement did not engage in any activity within the state that was significantly associated with the retailer's ability to establish or maintain the retailer's market in the state during the preceding 12 months. Such proof may consist of sworn written statements from all of the residents with whom the retailer has an agreement stating that they did not engage in any solicitation in the state on behalf of the retailer during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect 90 days after the enactment of this statute and shall apply to sales made and uses occurring on or after the effective date of this subparagraph and without regard to the date the retailer and the resident entered into the agreement described in this subparagraph. The term "preceding 12 months" as used in this subparagraph includes the 12 months commencing prior to the effective date of this subparagraph.

(D) The presumptions in subparagraphs (A) and (B) may be rebutted by demonstrating that the activities of the person or affiliated person in the state are not significantly associated with the retailer's ability to establish or maintain a market in this state for the retailer's sales.

(3) The processing of orders electronically, by fax, telephone, the internet or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is doing business in this state pursuant to this section.

(i) "Director" means the director of taxation.

(j) *As used in this section, "affiliated person" means any person that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code as the retailer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the retailer as a corporation that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code.*

Sec. 19. K.S.A. 79-32,109 and 79-3632 and K.S.A. 2012 Supp. 79-32,117, 79-32,117n, 79-32,118, 79-32,266, 79-3620, 79-3639a and 79-4217 are hereby repealed.

Sec. 20. On July 1, 2013, K.S.A. 2012 Supp. 74-2433f, 75-5162, 79-306e, 79-1448, 79-1609, 79-1701a, 79-1702, 79-2005 and 79-3702 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 16, 2013.

Published in the *Kansas Register* April 25, 2013.

CHAPTER 88

HOUSE BILL No. 2033
(Amended by Chapter 133)

AN ACT concerning regulation of knives; relating to carrying or using weapons; amending K.S.A. 2012 Supp. 21-6301 and 21-6302 and repealing the existing sections.

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

New Section 1. (a) A municipality shall not enact any ordinance, resolution, rule or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration or use of a knife or knife making components.

(b) A municipality shall not enact any ordinance, resolution or rule relating to the manufacture of a knife that is more restrictive than any such ordinance, resolution or rule relating to the manufacture of any other commercial goods.

(c) As used in this section:

(1) "Knife" means a cutting instrument and includes a sharpened or pointed blade.

(2) "Municipality" has the same meaning as defined in K.S.A. 75-6102, and amendments thereto, *but shall not include school districts, jails as defined in K.S.A. 38-2302, and amendments thereto, and juvenile correctional facilities as defined in K.S.A. 38-2302, and amendments thereto.*

Sec. 2. K.S.A. 2012 Supp. 21-6301 is hereby amended to read as follows: 21-6301. (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;

(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. 2012 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. 2012 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 organization 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 K.S.A. 2012 Supp. 21-5222, 21-5223 or 21-5225, 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. 3. K.S.A. 2012 Supp. 21-6302 is hereby amended to read as follows: 21-6302. (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 instruction 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 as-

sistant 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 handgun as authorized by K.S.A. 2012 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. 2012 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)~~(g) As used in this section, "throwing star" means the same as prescribed by K.S.A. 2012 Supp. 21-6301, and amendments thereto.

Sec. 4. K.S.A. 2012 Supp. 21-6301 and 21-6302 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 16, 2013.

CHAPTER 89

Senate Substitute for HOUSE BILL No. 2043

AN ACT concerning the attorney general; relating to duties, responsibilities and authority; relating to notice of intent to seek the death penalty; amending K.S.A. 2012 Supp. 21-6617 and 75-702 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 21-6617 is hereby amended to read as follows: 21-6617. (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. *In cases where the county or district attorney or a court determines that a conflict exists, such notice may be filed by the attorney general.* Such notice shall be filed with the court and served on the defendant or the defendant's attorney not later than seven days after the time of arraignment. If such notice is not filed and served as required by this subsection, the ~~county or district~~ prosecuting 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 K.S.A. 2012 Supp. 21-6618 and 21-6622, and amendments thereto, upon conviction of a defendant of capital murder, the court, upon motion of the ~~county or district~~ prosecuting 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 K.S.A. 2012 Supp. 21-6624, 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 K.S.A. 2012 Supp. 21-6624, 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, post-

release 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. 2. K.S.A. 2012 Supp. 75-702 is hereby amended to read as follows: 75-702. The attorney general shall appear for the state, and prosecute and defend *any and* all actions and proceedings, civil or criminal, in the *Kansas* supreme court, *the Kansas court of appeals and in all federal courts*, in which the state shall be interested or a party, and shall, *when so appearing, control the state's prosecution or defense. The attorney general shall* also, when required by the governor or either branch of the legislature, appear for the state and prosecute or defend, in any other court or before any officer, in any cause or matter, civil or criminal, in which this state may be a party or interested or when the constitutionality of any law of this state is at issue and when so directed shall seek final resolution of such issue in the supreme court of the state of Kansas. The attorney general shall have authority to prosecute any matter related to a violation of K.S.A. 12-189 or 75-5133, and amendment thereto, related to unlawful acts when the offender is an officer or employee of a city or county.

Sec. 3. K.S.A. 2012 Supp. 21-6617 and 75-702 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 16, 2013.

CHAPTER 90

Substitute for SENATE BILL No. 57

AN ACT concerning agriculture; relating to animal health; poultry improvement; duties of the animal health commissioner; domesticated deer; amending K.S.A. 2012 Supp. 2-907, 47-619 and 47-2101 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 47-650, 47-651, 47-653, 47-653d, 47-653e, 47-653f, 47-653g, 47-653h, 47-654, 47-655, 47-666, 47-667, 47-672 and 47-2101a.

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

New Section 1. In addition to or in lieu of any other civil or criminal penalty provided by law, the animal health commissioner, upon a finding that a person has violated or failed to comply with any provision of article 21 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation adopted thereunder, may impose on

such person a civil fine not exceeding \$1,000 for each violation. Each day any provision of article 21 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation adopted pursuant thereto is violated shall constitute a separate offense.

New Sec. 2. (a) All tests for chronic wasting disease must be conducted in laboratories in a method approved by the animal plant health inspection service of the United States department of agriculture.

(b) All results of testing for chronic wasting disease shall be reported to the animal health commissioner.

Sec. 3. K.S.A. 2012 Supp. 2-907 is hereby amended to read as follows: 2-907. The Kansas ~~poultry improvement association of Manhattan, Kansas, whose articles of incorporation are recorded in the office of the secretary of state,~~ department of agriculture is hereby designated ~~and declared to be~~ the official state agency for the state of Kansas, for the purpose of carrying out the national poultry improvement plan. The Kansas ~~poultry improvement association shall~~ department of agriculture may cooperate with the United States department of agriculture, and Kansas state university of agriculture and applied science, Kansas department of agriculture and the Kansas animal health commissioner for the purpose of promoting the poultry industry and its allied branches and shall supervise and administer the national improvement plan in this state.

Sec. 4. K.S.A. 2012 Supp. 47-619 is hereby amended to read as follows: 47-619. ~~When requested by the animal health commissioner, the owner or owners of any stockyards doing business in this state shall keep constantly in their employ a competent inspector of livestock appointed by the commissioner whose compensation shall be fixed and duties prescribed by the animal health commissioner. The animal health commissioner shall prescribe that portion of the compensation which shall be paid by the owner or owners of the stockyards. It shall be the duty of such inspector~~ *the animal health commissioner or the commissioner's designee* to work in conjunction with the United States government authorities to prohibit and prevent any stock affected with any contagious or infectious disease to be driven or shipped out of any such stockyards except to some licensed rendering establishment.

Sec. 5. K.S.A. 2012 Supp. 47-2101 is hereby amended to read as follows: 47-2101. (a) It shall be unlawful for any person to ~~engage in the business of raising~~ *possess* domesticated deer unless such person has obtained from the animal health commissioner a domesticated deer permit. Application for such permit shall be made in writing on a form provided by the commissioner. The permit period shall be for the permit year ending on June 30 following the issuance date.

(b) Each application for issuance or renewal of a permit shall be accompanied by a fee of not more than ~~\$150~~ *\$400* as established by the commissioner in rules and regulations.

(c) The animal health commissioner shall adopt any rules and regulations necessary to enforce ~~this section~~ *the provisions of article 21 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto, ensure compliance with federal requirements and protect domestic animals and wildlife from disease risks related to domestic deer production.*

(d) Any person who fails to obtain a permit as prescribed in ~~section subsection~~ (a) shall be deemed guilty of a *class C nonperson* misdemeanor and upon conviction shall be punished by a fine not exceeding ~~\$150~~ *\$1,000*. Continued operation, after a conviction, shall constitute a separate offense for each day of operation.

(e) The commissioner may refuse to issue or renew or may suspend or revoke any permit for any one of the following reasons:

(1) Material misstatement in the application for the original permit or in the application for any renewal of a permit;

(2) the conviction of any crime, an essential element of which is misstatement, fraud or dishonesty, or relating to the theft of or cruelty to animals;

(3) substantial misrepresentation;

(4) the person who is issued a permit is found to be ~~adding to such person's herd by~~ *poaching or illegally obtaining deer; or*

(5) ~~the permit holder's~~ *willful disregard to* of any rule or regulation adopted under this section.

(f) Any refusal to issue or renew a permit and any suspension or revocation of a permit under this section shall be in accordance with the provisions of the Kansas administrative procedure act and shall be subject to review in accordance with the Kansas judicial review act.

(g) Domesticated deer shall be identified through implantation of microchips, ear tags, ear tattoos, ear notches or any other permanent identification on such deer as to identify such deer as domesticated deer. Any person who receives a permit issued pursuant to subsection (a) shall keep records of ~~the such deer herd pursuant to~~ *as required by rules and regulations adopted pursuant to this section.*

(h) (1) The animal health commissioner ~~shall~~ *or the commissioner's representatives may inspect any* the premises and records of any person ~~where issued a domesticated deer herd has been issued a permit, but shall not inspect such premises and records more than once each permit year, upon receipt of a written, signed complaint that such premises is not being operated, managed or maintained in accordance with rules and regulations unless the commissioner has:~~

(A) *Discovered a violation of article 21 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto; or*

(B) *received a complaint that such premises is not being operated, managed or maintained in accordance with rules and regulations adopted pursuant to this section.*

(2) *The commissioner or the commissioner's representatives may in-*

spect unlicensed premises when the commissioner has reasonable grounds to believe that a person is violating the provisions of this section.

(i) The animal health commissioner, on a ~~quarterly~~ *an annual* basis, shall transmit to the secretary of wildlife and parks *and tourism* a current list of persons issued a permit pursuant to this section. *The department of agriculture may request assistance from the department of wildlife, parks and tourism to assist in implementing and enforcing article 21 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto.*

(j) All moneys received under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the animal disease control fund.

(k) As used in this section:

(1) “Deer” means any member of the family cervidae.

(2) “Domesticated deer” means any member of the family cervidae which was legally obtained and is being sold or raised in a confined area for: ~~(1)(A)~~ Breeding stock; ~~(2)(B)~~ any carcass, skin or part of such animal; ~~(3)(C)~~ exhibition; or ~~(4)(D)~~ companionship.

Sec. 6. K.S.A. 2012 Supp. 2-907, 47-619, 47-650, 47-651, 47-653, 47-653d, 47-653e, 47-653f, 47-653g, 47-653h, 47-654, 47-655, 47-666, 47-667, 47-672, 47-2101 and 47-2101a are hereby repealed.

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

Approved April 16, 2013.

CHAPTER 91

SENATE BILL No. 96

AN ACT concerning motor vehicles; relating to registration fees, multiple registration facilities; amending K.S.A. 2012 Supp. 8-145d and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 8-145d is hereby amended to read as follows: 8-145d. In addition to the annual vehicle registration fees prescribed by K.S.A. 8-143, 8-143b, 8-143c, 8-143g, 8-143h, 8-143i, 8-167, 8-172 and 8-195, and amendments thereto, and K.S.A. 2012 Supp. 8-143l, and amendments thereto, any applicant for vehicle registration or renewal thereof for registration shall pay a service fee in the amount of \$5 to the county treasurer at the time of making such application. In addition to such service fee, the county treasurer may charge any applicant for vehicle registration or renewal thereof for registration, a regis-

tration fee *as follows*: (1) In an amount not to exceed \$5 per vehicle registration or renewal thereof for registration, when such application is made at a registration facility in a county with multiple vehicle registration facilities as established by the county treasurer; and (2) *in an amount not to exceed \$2.50 per vehicle registration or renewal thereof for registration, when such application is made at a registration facility in a county with a single vehicle registration facility as established by the county treasurer.* ~~Such registration fee shall not be charged at a registration facility located within the county courthouse or administrative office used as the primary location for the county treasurer's operations and if a registration facility is not located within such courthouse or such administrative office, then at least one of the registration facilities established by the county treasurer shall not charge such registration fee.~~ The county treasurer shall deposit all amounts received under this section in the special fund created pursuant to K.S.A. 8-145, and amendments thereto, and such amounts shall be used by the county treasurer for all purposes for which such fund has been appropriated by law, and such additional amounts are hereby appropriated as other amounts deposited in such fund.

Sec. 2. K.S.A. 2012 Supp. 8-145d 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 16, 2013.

CHAPTER 92

SENATE BILL No. 164

AN ACT concerning motor vehicles; relating to definitions; administration of vehicle functions; amending K.S.A. 8-1436, 40-298 and 59-3508 and K.S.A. 2012 Supp. 8-126, 8-129 and 44-1204 and repealing the existing sections.

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

Section 1. K.S.A. 2012 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 primarily 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 trailers, 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. 2012 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.~~

(lkk) ~~“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.~~

(a) *“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.*

(b) *“Commission” or “state highway commission” means the director of vehicles of the department of revenue.*

(c) *“Contractor” means a person, partnership, corporation, local government, county government, county treasurer or other state agency that has contracted with the department to provide services associated with vehicle functions.*

(d) *“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.*

(e) *“Division” means the division of vehicles of the department of revenue.*

(f) “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.

(g) “Electric vehicle” means a vehicle that is powered by an electric motor drawing current from rechargeable storage batteries or other portable electrical energy storage devices, provided the recharge energy must be drawn from a source off the vehicle, such as, but not limited to:

(1) Residential electric service;

(2) an electric vehicle charging station, also called an EV charging station, an electric recharging point, a charging point, EVSE (Electric Vehicle Supply Equipment) or a public charging station.

(h) “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. 2012 Supp. 8-135d, and amendments thereto.

(i) “Electronic notice of security interest” means the division’s online internet program which enables a dealer or secured party to submit a notice of security interest as defined in this section, and to cancel the notice or release the security interest using the program. This program is also known as the Kansas elien or KSelien.

(j) “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.

(k) “Farm trailer” means every trailer and semitrailer as those terms are defined in this section, designed and used primarily as a farm vehicle.

(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) “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.

(n) “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.

(o) “Implement of husbandry” means every vehicle designed or adapted and used exclusively for agricultural operations, including feed-lots, 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.*
- (p) *“Lien” means a security interest as defined in this section.*
- (q) *“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.*
- (r) *“Manufacturer” means every person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.*
- (s) *“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.*
- (t) *“Motor vehicle” means every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.*
- (u) *“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 defined in this section.*
- (v) *“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.*
- (w) *“Motorized wheelchair” means any self-propelled vehicle designed specifically for use by a physically disabled person and such vehicle is incapable of a speed in excess of 15 miles per hour.*
- (x) *“New vehicle dealer” means every person actively engaged in the business of buying, selling or exchanging new motor vehicles, travel trailers, 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.

(y) *“Nonresident” means every person who is not a resident of this state.*

(z) *“Notice of security interest” means a notification to the division from a dealer or secured party of a purchase money security interest as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto, upon a vehicle which has been sold and delivered to the purchaser describing the vehicle and showing the name, address and acknowledgment of the secured party as well as the name and address of the debtor or debtors and other information the division requires.*

(aa) *“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 oil well servicing, oil well clean-out or oil well drilling machinery or equipment.*

(bb) *“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.*

(cc) *“Passenger vehicle” means every motor vehicle, as defined in this section, which is designed primarily to carry 10 or fewer passengers, and which is not used as a truck.*

(dd) *“Person” means every natural person, firm, partnership, association or corporation.*

(ee) *“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.*

(ff) *“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.*

(gg) *“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.*

(hh) *“Self-propelled farm implement” means every farm implement*

designed for specific use applications with its motive power unit permanently incorporated in its structural design.

(ii) *“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.*

(jj) *“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.*

(kk) *“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.*

(ll) *“Travel trailer” means every vehicle without motive power designed to be towed by a motor vehicle constructed primarily for recreational purposes.*

(mm) *“Truck” means a motor vehicle which is used for the transportation or delivery of freight and merchandise or more than 10 passengers.*

(nn) *“Truck tractor” means every motor vehicle designed and used primarily 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.*

(oo) *“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 or vehicles.*

(pp) *“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.*

(qq) *“Vehicle functions” means services relating to the application, processing, auditing or distribution of original or renewal vehicle registrations, certificates of title, driver’s licenses and division-issued identification cards associated with services and functions set out in articles 1, 2 and 13 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto. “Vehicle functions” may also include personal property taxation duties set out in article 51 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, and other vehicle-related events described in article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto.*

(rr) *“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.

Sec. 2. K.S.A. 2012 Supp. 8-129 is hereby amended to read as follows: 8-129. (a) Applications for the registration of a vehicle required to be registered shall be made by the owner, by mail, on-line, electronically or otherwise, in the office of the county treasurer of:

- (1) The county in which such owner resides; or
- (2) the county in which the owner has a bona fide place of business, if such vehicle is garaged in such county for a period exceeding 90 days. Such place of business shall not be an office or facility established or maintained solely for the purpose of obtaining registration.

Such applications for registration shall be made upon appropriate forms furnished by the department and every application shall contain the name of the owner, such owner's residence address or bona fide place of business, a brief description of the vehicle to be registered and such other information as may be required by the department. If the owner is not a resident of or does not have a bona fide place of business in this state, the owner may make application for registration in any county which the department shall designate, except that in the case of members of the armed forces of the United States, the application may be signed by the owner's spouse, parent, eldest brother or sister, in the order named. With reference to every foreign vehicle which has been registered outside of this state, the owner shall exhibit to the department the certificate of title and registration card, or other evidence of such former registration as may be in the applicant's possession or control, or such other evidence as will satisfy the department that the applicant is the lawful owner or possessor of the vehicle.

(b) The applicant for the registration of a vehicle required to be registered, upon the filing of the application, shall submit a statement certifying that such person has a certificate of title for the motor vehicle, showing the date and identification thereof, or file an application therefor, as provided in this act.

(c) *Any reference in article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, to a county treasurer or office of a county treasurer performing any services associated with vehicle functions and receiving compensation for such services shall also include contractors that have contracted with the department to perform such services if the director of vehicles determines that a county treasurer has failed to:*

- (1) *Comply with article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, relating to vehicle functions;*

(2) *comply with rules and regulations promulgated pursuant to subsection (e); or*

(3) *enter into and abide by a contract with the department to ensure minimum standards and practices are maintained by the county treasurer in the performance of assigned vehicle functions.*

(d) *The department may appoint contractors to perform some or all of the vehicle functions agreed to by the department and the contractor to be performed. In circumstances involving vehicle registrations, the department shall be required to make the findings required by subsection (c) before contracting with a contractor that is not a county treasurer.*

(e) *The secretary of revenue may adopt rules and regulations in order to implement and administer the provisions of subsections (c) and (d) to:*

(1) *Enter into contracts with the county treasurers to perform vehicle functions;*

(2) *create minimum standards and practices for the performance of vehicle functions;*

(3) *require criminal background reviews of county treasurers and their staff that will be performing vehicle functions, if needed;*

(4) *establish and set the limits on the additional, non-statutory fees, if any, that a contractor may charge a person for services relating to vehicle functions; and*

(5) *create efficient and rapid administrative processes for suspending or revoking a treasurer's ability to perform vehicle functions on behalf of the department if such treasurer violates applicable laws, rules and regulations, or the treasurer's written contract with the department.*

Any order of the department suspending or revoking a county treasurer's authorization to perform vehicle functions for the state of Kansas shall include requirements for the county treasurer's reinstatement.

Sec. 3. K.S.A. 8-1436 is hereby amended to read as follows: 8-1436. "Motor home" means every motor vehicle designed, ~~used or maintained primarily as a mobile dwelling, office or commercial space to provide temporary living quarters for recreational, camping or travel use.~~

Sec. 4. K.S.A. 40-298 is hereby amended to read as follows: 40-298. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Automobile dealer" means *a new vehicle dealer or a used vehicle dealer as defined by K.S.A. ~~8-178~~ 8-126, and amendments thereto;*

(b) "Automobile" means a passenger vehicle as defined by ~~subsection (x) of~~ K.S.A. 8-126, *and amendments thereto;*

(c) "Dealer" means any automobile dealer or lending agency;

(d) "Lending agency" means any person engaged in the business of financing or lending money to any person to be used in the purchase or financing of a motor vehicle; and

(e) “Person” means any individual, partnership, corporation or other association of persons.

Sec. 5. K.S.A. 2012 Supp. 44-1204 is hereby amended to read as follows: 44-1204. (a) On and after January 1, 1978, no employer shall employ any employee for a workweek longer than ~~forty-six (46)~~ hours, unless such employee receives compensation for employment in excess of ~~forty-six (46)~~ hours in a workweek at a rate of not less than ~~one and one-half (1½)~~ times the hourly wage rate at which such employee is regularly employed.

(b) No employer shall be deemed to have violated subsection (a) with respect to the employment of any employee who is covered by this section, who is engaged in the public or private delivery of emergency medical services as an attendant as defined by K.S.A. 65-6112, and amendments thereto, or who is engaged in fire protection or law enforcement activities, including any member of the security personnel in any correctional institution, and who is paid compensation at a rate of not less than 1½ times the regular rate at which such employee is employed:

(1) In any work period of 28 consecutive days in which such employee works for tours of duty which in the aggregate exceed 258 hours; or

(2) in the case of any such employee to whom a work period of at least seven but less than 28 days applies, in any such work period in which such employee works for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in such work period as 258 hours bears to 28 days.

(c) The provisions of this section shall not apply to the employment of:

(1) Any employee who is covered under the provisions of section 7 of the fair labor standards act of 1938 as amended ~~(, 29 U.S.C.A. § 207)~~, and as amended by the fair labor standards amendments of 1974, and ~~any other acts amendatory thereof or supplemental amendments~~ thereto; or

(2) any employee who is primarily engaged in selling motor vehicles, as defined in ~~subsection (b) of~~ K.S.A. 8-126, ~~and amendments thereto~~, for a nonmanufacturing employer primarily engaged in the business of selling such vehicles to ultimate purchasers;

(3) any person who is sentenced to the custody of the secretary of corrections and any person serving a sentence in a county jail.

(d) For the purposes of this section, the agreement or practice by employees engaged in fire protection or law enforcement activities of substituting for one another on regularly scheduled tours of duty, or a part thereof, shall be deemed to have no effect on hours of work if:

(1) The substituting is done voluntarily by the employees and not at the behest of the employer;

(2) the reason for substituting is due not to the employer’s business

practice but to the employee's desire or need to attend to a personal matter;

(3) a record is maintained by the employer of all time substituted by the employer's employees; and

(4) the period during which time is substituted and paid back does not exceed 12 months.

Sec. 6. K.S.A. 59-3508 is hereby amended to read as follows: 59-3508. A motor vehicle, as defined by ~~subsection (b) of~~ K.S.A. 8-126, and amendments thereto, may be titled in transfer-on-death, TOD, form by including in the certificate of title a designation of a beneficiary or beneficiaries to whom the motor vehicle shall be transferred on death of the owner or the last survivor of the joint tenant with right of survivorship owners, subject to the rights of all lien holders.

Sec. 7. K.S.A. 8-1436, 40-298 and 59-3508 and K.S.A. 2012 Supp. 8-126, 8-129 and 44-1204 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 16, 2013.

CHAPTER 93

SENATE BILL No. 168

AN ACT concerning agriculture; relating to agricultural activities; protection of farmland and agricultural activities from certain nuisance actions; amending K.S.A. 2-3202 and 2-3203 and repealing the existing sections.

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

New Section 1. (a) The exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from farmland primarily used for agricultural activity shall be as follows:

(1) If the nuisance is determined to be a permanent nuisance, compensatory damages shall be limited to the reduction in the fair market value of the claimant's property caused by such nuisance, not to exceed the fair market value of such claimant's property; and

(2) if the nuisance is determined to be a temporary nuisance, compensatory damages shall be limited to the lesser of:

(A) The diminution in fair rental value of the claimant's property caused by such nuisance;

(B) the value of the loss of the use and enjoyment of the claimant's property; or

(C) the reasonable cost to repair or mitigate any injury to the claimant caused by such nuisance.

(b) If any claimant or claimant's successor in interest brings a subsequent nuisance claim against the same defendant or defendant's successors in interest for an alleged nuisance related to the same or a substantially similar agricultural activity, such claimant and claimant's successors in interest shall be limited to the compensatory damages for a permanent nuisance as provided in subsection (a)(1). Damages from any previous final court order or judgment against the defendant or defendant's successors in interest shall be considered in any subsequent case for the purposes of determining that the total amount of damages awarded shall not exceed the fair market value of such claimant's property.

(c) If a defendant in a private nuisance case where the nuisance is alleged to originate from farmland used for agricultural activity demonstrates a good faith effort to abate a condition that is determined to constitute a nuisance, and such good faith effort is unsuccessful, such nuisance shall be deemed to be not capable of abatement and compensatory damages shall be limited as provided in subsection (a)(1). Substantial compliance with a court order regarding such farmland shall constitute a good faith effort as a matter of law.

(e) No person shall have standing to bring an action for private nuisance pursuant to this section unless such person has an ownership interest in the property alleged to be affected by the nuisance.

(f) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

(g) This section shall be part of and supplemental to article 32 of chapter 2 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 2. K.S.A. 2-3202 is hereby amended to read as follows: 2-3202.

(a) Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding *agricultural* or nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance, public or private, unless the activity has a substantial adverse effect on the public health and safety.

(b) If such agricultural activity is undertaken in conformity with federal, state, and local laws and *rules and* regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

(c) *An owner of farmland who conducts agricultural activity protected pursuant to the provisions of this section:*

(1) *May reasonably expand the scope of such agricultural activity, including, but not limited to, increasing the acreage or number of animal units or changing agricultural activities, without losing such protection so long as such agricultural activity complies with all applicable local,*

state, and federal environmental codes, resolutions, laws and rules and regulations;

(2) may assign or transfer such protection to any successor in interest; and

(3) shall not be deemed to waive such protection by temporarily ceasing or decreasing the scope of such agricultural activity.

Sec. 3. K.S.A. 2-3203 is hereby amended to read as follows: 2-3203. As used in this act:

(a) “Agricultural activity” means the growing or raising of horticultural and agricultural crops, hay, poultry and livestock, and livestock, poultry and dairy products for commercial purposes and includes activities related to the handling, storage and transportation of agricultural commodities.

(b) “Farmland” means land devoted primarily to an agricultural activity.

(c) “Person” means any individual, partnership, profit or nonprofit corporation, trust, organization or any other business entity, but does not include any governmental entity.

(d) “Agricultural chemical” means those agricultural chemicals as defined in the agricultural chemical act set forth in K.S.A. 2-2201 et seq., and amendments thereto.

Sec. 4. K.S.A. 2-3202 and 2-3203 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 16, 2013.

CHAPTER 94

HOUSE BILL No. 2025

AN ACT establishing the Robert G. (Bob) Bethell joint committee on home and community based services and KanCare oversight; amending K.S.A. 2012 Supp. 39-7,160 and 39-7,162 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 39-7,161 and 46-3501.

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

Section 1. K.S.A. 2012 Supp. 39-7,160 is hereby amended to read as follows: 39-7,160.(a) There is hereby established the *Robert G. (Bob) Bethell* joint committee on home and community based services and *KanCare* oversight. The joint committee shall review the number of individuals who are transferred from state or private institutions and long-term care facilities to the home and community based services and the associated cost savings and other outcomes of the money-follows-the-

person program. The joint committee shall review the funding targets recommended by the interim report submitted for the 2007 legislature by the joint committee on legislative budget and use them as guidelines for the future funding planning and policy making. The joint committee shall have oversight of savings resulting from the transfer of individuals from state or private institutions to home and community based services. As used in K.S.A. 2012 Supp. 39-7,159 through 39-7,162, and amendments thereto, "savings" means the difference between the average cost of providing services for individuals in an institutional setting and the cost of providing services in a home and community based setting. The joint committee shall study and determine the effectiveness of the program and cost-analysis of the state institutions or long-term care facilities based on the success of the transfer of individuals to home and community based services. The joint committee shall consider the issues of whether sufficient funding is provided for enhancement of wages and benefits of direct individual care workers and their staff training and whether adequate progress is being made to transfer individuals from the institutions and to move them from the waiver waiting lists to receive home and community based services. The joint committee shall review and ensure that any proceeds resulting from the successful transfer be applied to the system of provision of services for long-term care and home and community based services. *The joint committee shall monitor and study the implementation and operations of the home and community based service programs, the children's health insurance program, the program for the all-inclusive care of the elderly and the state medicaid programs including, but not limited to, access to and quality of services provided and any financial information and budgetary issues. Any state agency shall provide data and information on KanCare programs, including, but not limited to, pay for performance measures, quality measures and enrollment and disenrollment in specific plans, KanCare provider network data and appeals and grievances made to the KanCare ombudsman, to the joint committee, as requested.*

(b) The joint committee shall consist of ~~nine~~ 11 members of the legislature appointed as follows: (1) ~~One member~~ Two members of the house of representatives committee on health and human services appointed by the speaker of the house of representatives; (2) one member of the house of representatives committee on health and human services appointed by the minority leader of the house of representatives; (3) ~~one member~~ two members of the senate committee on public health and welfare appointed by the president of the senate; (4) one member of the senate committee on public health and welfare appointed by the minority leader of the senate; (5) one member of the house of representatives committee on appropriations appointed by the chairperson of the house committee on appropriations; (6) one member of the senate committee on ways and means appointed by the chairperson of the senate committee on ways

and means; (7) one member of the house of representatives ~~committee on appropriations~~ appointed by the ranking minority member of the house committee on appropriations; (8) one member of the senate ~~committee on ways and means~~ appointed by the ranking minority member of the senate committee on ways and means; and (9) one member of the house of representatives appointed by the majority leader of the house of representatives.

(c) Members shall be appointed for terms coinciding with the legislative terms for which such members are elected or appointed. All members appointed to fill vacancies in the membership of the joint committee and all members appointed to succeed members appointed to membership on the joint committee shall be appointed in the manner provided for the original appointment of the member succeeded. ~~The first meeting of the joint committee shall be held before August 1, 2008.~~

(d) The members originally appointed as members of the joint committee shall meet upon the call of the member appointed by the speaker of the house of representatives, who shall be the first chairperson, within 30 days of the effective date of this act. The vice-chairperson of the joint committee shall be appointed by the president of the senate. Chairperson and vice-chairperson shall alternate annually between the members appointed by the speaker of the house of representatives and the president of the senate. The ranking minority member shall be from the same chamber as the chairperson. ~~The joint committee shall meet at least four times each year at the call of the chairperson of the joint committee. On and after the effective date of this act, the joint committee shall meet at least once in January and once in April when the legislature is in regular session and at least once during each of the third and fourth calendar quarters, on the call of the chairperson, but not to exceed six meetings in a calendar year, except additional meetings may be held on call of the chairperson when urgent circumstances exist which require such meetings.~~ Five Six members of the joint committee shall constitute a quorum.

(e) (1) At the beginning of each regular session of the legislature, the committee shall submit to the president of the senate ~~and~~, the speaker of the house of representatives, ~~the house committee on health and human services and the senate committee on public health and welfare~~ a written report on numbers of individuals transferred from the state or private institutions to the home and community based services including the average daily census in the state institutions and long-term care facilities, savings resulting from the transfer certified by ~~the secretary of social and rehabilitation services and the secretary of aging for aging and disability services~~ in a quarterly report filed in accordance with K.S.A. 2012 Supp. 39-7,161 and 39-7,162, and amendments thereto, and the current balance in the home and community based services savings fund of the ~~department of social and rehabilitation services and the department on aging. Kansas department for aging and disability services.~~

(2) *Such report submitted under this subsection shall also include, but not be limited to, the following information on the KanCare program:*

(A) *Quality of care and health outcomes of individuals receiving state medicaid services under the KanCare program, as compared to the provision of state medicaid services prior to January 1, 2013;*

(B) *integration and coordination of health care procedures for individuals receiving state medicaid services under the KanCare program;*

(C) *availability of information to the public about the provision of state medicaid services under the KanCare program, including, but not limited to, accessibility to health services, expenditures for health services, extent of consumer satisfaction with health services provided and grievance procedures, including quantitative case data and summaries of case resolution by the KanCare ombudsman;*

(D) *provisions for community outreach and efforts to promote the public understanding of the KanCare program;*

(E) *comparison of the actual medicaid costs expended in providing state medicaid services under the KanCare program after January 1, 2013, to the actual costs expended under the provision of state medicaid services prior to January 1, 2013, including the manner in which such cost expenditures are calculated;*

(F) *comparison of the estimated costs expended in a managed care system of providing state medicaid services under the KanCare program after January 1, 2013, to the actual costs expended under the KanCare program of providing state medicaid services after January 1, 2013;*

(G) *comparison of caseload information for individuals receiving state medicaid services prior to January 1, 2013, to the caseload information for individuals receiving state medicaid services under the KanCare program after January 1, 2013; and*

(H) *all written testimony provided to the joint committee regarding the impact of the provision of state medicaid services under the KanCare program upon residents of adult care homes.*

(3) *The joint committee shall consider the external quality review reports and quality assessment and performance improvement program plans of each managed care organization providing state medicaid services under the KanCare program in the development of the report submitted under this subsection.*

(4) *The report submitted under this subsection shall be published on the official website of the legislative research department.*

(f) *Members of the committee shall have access to any medical assistance report and caseload data generated by the Kansas department of health and environment division of health care finance. Members of the committee shall have access to any report submitted by the Kansas department of health and environment division of health care finance to the centers for medicare and medicaid services of the United States department of health and human services.*

~~(f)~~(g) Members of the committee shall be paid compensation, travel expenses and subsistence expenses or allowance as provided in K.S.A. 75-3212, and amendments thereto, for attendance at any meeting of the joint committee or any subcommittee meeting authorized by the committee.

(h) *In accordance with K.S.A. 46-1204, and amendments thereto, the legislative coordinating council may provide for such professional services as may be requested by the joint committee.*

(i) *The joint committee may make recommendations and introduce legislation as it deems necessary in performing its functions.*

Sec. 2. K.S.A. 2012 Supp. 39-7,162 is hereby amended to read as follows: 39-7,162. (a) (1) There is hereby established the home and community based services savings fund in the state treasury which shall be administered by the secretary ~~of aging~~ *for aging and disability services*. All savings resulting from transferring individuals from the institutions to home and community based services shall be deposited in this fund. All expenditures from the home and community based services savings fund shall be in accordance with the provisions of appropriation acts upon vouchers approved by the secretary ~~of aging~~ *for aging and disability services* or the secretary's designee.

(2) Whenever an individual, who is residing in an institution, transfers to home and community based services, the secretary ~~of aging~~ *for aging and disability services* shall determine the savings attributable to such transfer and shall certify the amount or amounts of such savings to the director of accounts and reports. Upon receipt of each such certification, the director of accounts and reports shall transfer the amount or amounts specified in such certification from the funds and accounts specified to the home and community based services savings fund of the ~~department on aging~~ *Kansas department for aging and disability services* in accordance with such certification. The secretary ~~of aging~~ *for aging and disability services* shall transmit a copy of each such certification to the director of the budget and to the director of legislative research.

(b) The secretary shall certify to the *Robert G. (Bob) Bethell* joint committee on home and community based services *and KanCare* oversight at the beginning of each calendar quarter the amount of savings resulting from transferring individuals from institutions to home and community based services that have been transferred during the preceding calendar quarter to the home and community based services savings fund from each institution during the preceding quarter.

Sec. 3. K.S.A. 2012 Supp. 39-7,160, 39-7,161, 39-7,162 and 46-3501 are hereby repealed.

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

CHAPTER 95

HOUSE BILL No. 2078

AN ACT concerning certain licensing boards; relating to licensure and military service members; amending K.S.A. 2012 Supp. 48-3406, 65-1116 and 65-6129 and repealing the existing sections.

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

New Section 1. (a) For the purposes of this section:

(1) "Applicant" means a person who entered into military service and separated from such military service with an honorable discharge or a general discharge under honorable conditions;

(2) "licensing body" has the meaning ascribed thereto in K.S.A. 74-146, and amendments thereto, except for licensing boards under K.S.A. 65-1116 and 65-6129, and amendments thereto; and

(3) "military service" means the army, navy, marine corps, air force, air or army national guard of any state, coast guard or any branch of the military reserves of the United States.

(b)(1) Notwithstanding any other provision of law, upon presentation of a completed application by an applicant with an honorable discharge for certification or licensure, a licensing body shall accept education, training or service completed in military service by the applicant towards any educational requirements for certification or licensure in this state if the applicant demonstrates to the satisfaction of the licensing body that such education, training or service obtained is substantially equivalent to the existing educational requirements of such licensure or certification. No education, training or service shall count towards any examination requirements unless such licensing body has provided a waiver for such requirement. The licensing body may require the applicant to provide documentation of such education, training or service as deemed necessary by the licensing body to determine substantial equivalency.

(2) A licensing board under this section may accept education, training or service completed in military service towards any educational requirements for certification or licensure in this state if an applicant was separated from military service with a general discharge under honorable conditions.

(c) Each licensing body may adopt rules and regulations necessary to implement and carry out the provisions of this section.

(d) This section shall not apply to the practice of law or the regulation of attorneys pursuant to K.S.A. 7-103, and amendments thereto.

Sec. 2. K.S.A. 2012 Supp. 48-3406 is hereby amended to read as follows: 48-3406. (a) *For the purposes of this section:*

(1) "Licensing body" has the meaning ascribed thereto in K.S.A. 74-146, and amendments thereto;

(2) "military service" means the army, navy, marine corps, air force,

air or army national guard of any state, coast guard or any branch of the military reserves of the United States;

(3) *“military service member” means a member who entered into military service and separated from such military service with an honorable discharge or a general discharge under honorable conditions; and*

(4) *“military spouse” means the spouse of an individual who is currently in active service in any branch of the armed forces of the United States.*

(b) Notwithstanding any other provision of law, any licensing body; ~~as defined by K.S.A. 74-146, and amendments thereto;~~ shall;

(1) Upon *submission of a completed* application, issue a license to a nonresident military spouse, so that the nonresident military spouse may lawfully practice the person’s occupation; *and*

(2) *upon submission of a completed application within six months following release from military service, issue a license to a military service member with an honorable discharge so that the military service member may lawfully practice the person’s occupation.*

~~(b)~~(c) A *military service member with an honorable discharge or nonresident military spouse* shall receive a license under subsection ~~(a)~~(b) of this section:

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

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

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

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

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

(D) pays any fees required by the licensing body of this state; and

(E) submits with the application a signed affidavit stating that the application information, including necessary prior employment history, is true and accurate. Upon receiving such affidavit, the licensing body shall issue the license to the *military service member or nonresident military spouse* on a probationary basis, but may revoke the license at any time if the information provided in the application is found to be false.

Any probationary license issued under this section to a military service member or nonresident military spouse shall not exceed three months.

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

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

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

(f) *In the event the licensing body determines that the license currently held by the military service member under subsection (c)(2)(A) is not equivalent to those issued by the licensing body of this state, the licensing body may issue a temporary permit for a limited period of time to allow the military service member to lawfully practice the person's occupation while completing any specific requirements that are required in this state for licensure that were not required in the state, district or territory of the United States in which the military service member was licensed or certified.*

(g) *A licensing board may grant certification, licensure or a temporary permit to any person who meets the requirements under this section but was separated from such military service with a general discharge under honorable conditions.*

(h) *Each licensing body may adopt rules and regulations necessary to implement and carry out the provisions of this section.*

~~(f)~~(i) This section shall not apply to the practice of law or the regulation of attorneys pursuant to K.S.A. 7-103, and amendments thereto.

Sec. 3. K.S.A. 2012 Supp. 65-1116 is hereby amended to read as follows: 65-1116. (a) *Qualification*. An applicant for a license to practice as a licensed practical nurse shall:

(1) Have graduated from an approved school of practical nursing or professional nursing in the United States or its territories or from a school of practical nursing or professional nursing in a foreign country which is approved by the board as defined in rules and regulations;

(2) have obtained other qualifications not in conflict with this act as the board may prescribe by rule and regulation; and

(3) file with the board a written application for a license.

(b) If the board finds in evaluating any applicant that such applicant is deficient in qualification or in the quality of such applicant's educational experience, the board may require such applicant to fulfill such remedial or other requirements as the board may prescribe.

(c) *License*. (1) The board shall issue a license to an applicant to practice as a practical nurse who has:

(A) Met the qualifications set forth in subsections (a) and (b);

(B) passed a written examination as prescribed by the board; and

(C) no disqualifying factors under K.S.A. 65-1120, and amendments thereto.

(2) The board may issue a license to practice nursing as a practical nurse to an applicant who has been duly licensed as a practical nurse by examination under the laws of another state or territory if, in the opinion of the board, the applicant meets the qualifications required of a practical nurse in this state. Verification of the applicant's licensure status shall be required from the original state of licensure.

(3) *The board may authorize the educational requirement under subsection (a)(1) to be waived for an applicant who has attained a passing score on the national council licensure examination for practical nurses and provided evidence to the board of such applicant's practical nursing experience with the military. To qualify for such a waiver, the applicant must have been a member of the army, navy, marine corps, air force, air or army national guard, coast guard or any branch of the military reserves of the United States, and separated from such military service with an honorable discharge. If such applicant was separated from such military service with a general discharge under honorable conditions and meets the requirements of this paragraph, the board may authorize the educational requirements under subsection (a)(1) be waived.*

~~(3)~~(4) *Refresher course*. Notwithstanding the provisions of subsections (a) and (b), an applicant for a license to practice as a licensed practical nurse who has not been licensed to practice practical nursing for five

years preceding application shall be required to successfully complete a refresher course as defined by the board.

~~(4)~~(5) *Renewal license.* A licensed practical nurse licensed under this act shall be eligible for renewal licenses upon compliance with K.S.A. 65-1117, and amendments thereto.

~~(5)~~(6) *Licensure examination within 24 months of graduation.* (A) Persons who do not take the licensure examination within 24 months after graduation shall petition the board for permission prior to taking the licensure examination. The board may require the applicant to submit and complete a plan of study prior to taking the licensure examination.

(B) Persons who are unsuccessful in passing the licensure examination within 24 months after graduation shall petition the board for permission prior to subsequent attempts. The board may require the applicant to submit and complete a plan of study prior to taking the licensure examination a subsequent time. The study plan shall contain subjects related to deficiencies identified on the failed examination profiles.

~~(6)~~(7) An application for initial licensure or endorsement will be held awaiting completion of meeting qualifications for a time period specified in rules and regulations.

(d) *Title and abbreviation.* Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title, "licensed practical nurse," and the abbreviation, "L.P.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs or figures to indicate that the person is a licensed practical nurse.

(e) *Temporary permit.* The board may issue a temporary permit to practice nursing as a licensed practical nurse for a period not to exceed 120 days. A temporary permit for 120 days may be issued to an applicant for licensure as a licensed practical nurse who is a graduate of a practical school of nursing in a foreign country after verification of licensure in that foreign country and approval of educational credentials.

(f) *Exempt license.* The board may issue an exempt license to any licensee as defined in rules and regulations who makes written application for such license on a form provided by the board, who remits a fee as established pursuant to K.S.A. 65-1118, and amendments thereto, and who is not regularly engaged in the practice of practical nursing in Kansas but volunteers practical nursing service or is a charitable health care provider as defined by K.S.A. 75-6102, and amendments thereto. Each exempt licensee shall be subject to all provisions of the nurse practice act, except as otherwise provided in this subsection (f). Each exempt license may be renewed biennially subject to the provisions of this section. The holder of the exempt license shall not be required to submit evidence of satisfactory completion of a program of continuing nursing education for renewal. To convert an exempt license to an active license, the exempt licensee shall meet all the requirements of subsection (c) or K.S.A. 65-

1117, and amendments thereto. The board shall have authority to write rules and regulations to carry out the provisions of this section.

Sec. 4. K.S.A. 2012 Supp. 65-6129 is hereby amended to read as follows: 65-6129. (a) (1) Application for an attendant's certificate shall be made to the board. The board shall not grant an attendant's certificate unless the applicant meets the following requirements:

~~(1)~~ (A) (i) Has successfully completed coursework required by the rules and regulations adopted by the board; ~~or~~

~~(B)~~ (ii) has successfully completed coursework in another jurisdiction that is substantially equivalent to that required by the rules and regulations adopted by the board; or

(iii) *has provided evidence that such applicant holds a current and active certification with the national registry of emergency medical technicians, completed emergency medical technician training as a member of the army, navy, marine corps, air force, air or army national guard, coast guard or any branch of the military reserves of the United States that is substantially equivalent to that required by the rules and regulations adopted by the board, and such applicant separated from such military service with an honorable discharge;*

~~(2)~~ (A) (B) (i) has passed the examination required by the rules and regulations adopted by the board; or

~~(B)~~ (ii) has passed the certification or licensing examination in another jurisdiction that has been approved by the board; and

~~(3)~~ (C) has paid an application fee required by the rules and regulations adopted by the board.

(2) *The board may grant an attendant's certificate to any applicant who meets the requirements under subsection (a)(1)(A)(iii) but was separated from such military service with a general discharge under honorable conditions.*

(b) (1) The board shall not grant a temporary attendant's certificate unless the applicant meets the following requirements:

(A) If the applicant is certified or licensed as an attendant in another jurisdiction, but the applicant's coursework is determined not to be substantially equivalent to that required by the board, such temporary certificate shall be valid for one year from the date of issuance or until the applicant has completed the required coursework, whichever occurs first; or

(B) if the applicant has completed the required coursework, has taken the required examination, but has not received the results of the examination, such temporary certificate shall be valid for 120 days from the date of the examination.

(2) An applicant who has been granted a temporary certificate shall be under the direct supervision of a physician, a physician's assistant, a

professional nurse or an attendant holding a certificate at the same level or higher than that of the applicant.

(c) The board shall not grant an initial emergency medical technician-intermediate certificate, advanced emergency medical technician certificate, mobile intensive care technician certificate or paramedic certificate as a result of successful course completion in the state of Kansas, unless the applicant for such an initial certificate is certified as an emergency medical technician.

(d) An attendant's certificate shall expire on the date prescribed by the board. An attendant's certificate may be renewed for a period of two years upon payment of a fee as prescribed by rule and regulation of the board and upon presentation of satisfactory proof that the attendant has successfully completed continuing education as prescribed by the board.

(e) All fees received pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the emergency medical services operating fund established by K.S.A. 65-6151, and amendments thereto.

(f) If a person who was previously certified as an attendant applies for an attendant's certificate after the certificate's expiration, the board may grant a certificate without the person completing an initial course of instruction or passing a certification examination if the person has completed education requirements and has paid a fee as specified in rules and regulations adopted by the board.

(g) The board shall adopt, through rules and regulations, a formal list of graduated sanctions for violations of article 61 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, which shall specify the number and severity of violations for the imposition of each level of sanction.

Sec. 5. K.S.A. 2012 Supp. 48-3406, 65-1116 and 65-6129 are hereby repealed.

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

Approved April 16, 2013.

CHAPTER 96

Senate Substitute for HOUSE BILL No. 2093

AN ACT concerning crimes, criminal procedure and punishment; relating to identity theft; unlawful acts concerning computers; DNA evidence; felony murder; capital murder; amending K.S.A. 21-2512 and K.S.A. 2012 Supp. 21-5402, 21-5839 and 21-6107 and repealing the existing sections.

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

Section 1. K.S.A. 21-2512 is hereby amended to read as follows: 21-2512. (a) Notwithstanding any other provision of law, a person in state custody, at any time after conviction for murder *in the first degree* as defined by K.S.A. 21-3401, *prior to its repeal*, or K.S.A. 2012 Supp. 21-5402, and amendments thereto, or for rape as defined by K.S.A. 21-3502, *prior to its repeal*, or K.S.A. 2012 Supp. 21-5503, and amendments thereto, may petition the court that entered the judgment for forensic DNA testing (deoxyribonucleic acid testing) of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the conviction;

(2) is in the actual or constructive possession of the state; and

(3) was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(b) (1) The court shall notify the prosecuting attorney of a petition made under subsection (a) and shall afford the prosecuting attorney an opportunity to respond.

(2) Upon receiving notice of a petition made under subsection (a), the prosecuting attorney shall take such steps as are necessary to ensure that any remaining biological material that was secured in connection with the case is preserved pending the completion of proceedings under this section.

(c) The court shall order DNA testing pursuant to a petition made under subsection (a) upon a determination that testing may produce non-cumulative, exculpatory evidence relevant to the claim of the petitioner that the petitioner was wrongfully convicted or sentenced.

(d) The cost of DNA testing ordered under subsection (c) shall be borne by the state or the petitioner, as the court may order in the interests of justice, if it is shown that the petitioner is not indigent and possesses the means to pay.

(e) The court may at any time appoint counsel for an indigent applicant under this section.

(f) (1) *Except as provided in subsection (f)(3)*, if the results of DNA testing conducted under this section are unfavorable to the petitioner, the court:

(A) Shall dismiss the petition; and

(B) in the case of a petitioner who is not indigent, may assess the petitioner for the cost of such testing.

(2) If the results of DNA testing conducted under this section are favorable to the petitioner *and are of such materiality that a reasonable probability exists that the new evidence would result in a different outcome at trial or sentencing*, the court shall:

(A) Order a hearing, notwithstanding any provision of law that would bar such a hearing; and

(B) enter any order that serves the interests of justice, including, but not limited to, an order:

- (i) Vacating and setting aside the judgment;
- (ii) discharging the petitioner if the petitioner is in custody;
- (iii) resentencing the petitioner; or
- (iv) granting a new trial.

(3) If the results of DNA testing conducted under this section are inconclusive, the court may order a hearing to determine whether there is a substantial question of innocence. If the petitioner proves by a preponderance of the evidence that there is a substantial question of innocence, the court shall proceed as provided in subsection (f)(2).

(g) Nothing in this section shall be construed to limit the circumstances under which a person may obtain DNA testing or other postconviction relief under any other provision of law.

Sec. 2. K.S.A. 2012 Supp. 21-5402 is hereby amended to read as follows: 21-5402. (a) Murder in the first degree is the killing of a human being committed:

(1) Intentionally, and with premeditation; or

(2) in the commission of, attempt to commit, or flight from any inherently dangerous felony.

(b) Murder in the first degree is an off-grid person felony.

(c) As used in this section, an “inherently dangerous felony” means:

(1) Any of the following felonies, whether such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Kidnapping, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5408, and amendments thereto;

(B) aggravated kidnapping, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5408, and amendments thereto;

(C) robbery, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5420, and amendments thereto;

(D) aggravated robbery, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5420, and amendments thereto;

(E) rape, as defined in K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(F) aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(G) abuse of a child, as defined in K.S.A. 2012 Supp. 21-5602, and amendments thereto;

(H) felony theft of property, as defined in subsection (a)(1) or (a)(3) of K.S.A. 2012 Supp. 21-5801, and amendments thereto;

(I) burglary, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5807, and amendments thereto;

(J) aggravated burglary, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5807, and amendments thereto;

(K) arson, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5812, and amendments thereto;

(L) aggravated arson, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5812, and amendments thereto;

(M) treason, as defined in K.S.A. 2012 Supp. 21-5901, and amendments thereto;

(N) any felony offense as provided in K.S.A. 2012 Supp. 21-5703, 21-5705 or 21-5706, and amendments thereto;

(O) any felony offense as provided in subsection (a) or (b) of K.S.A. 2012 Supp. 21-6308, and amendments thereto;

(P) endangering the food supply, as defined in subsection (a) of K.S.A. 2012 Supp. 21-6317, and amendments thereto;

(Q) aggravated endangering the food supply, as defined in subsection (b) of K.S.A. 2012 Supp. 21-6317, and amendments thereto;

(R) fleeing or attempting to elude a police officer, as defined in subsection (b) of K.S.A. 8-1568, and amendments thereto;

(S) aggravated endangering a child, as defined in subsection (b)(1) of K.S.A. 2012 Supp. 21-5601, and amendments thereto;

(T) abandonment of a child, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5605, and amendments thereto; or

(U) aggravated abandonment of a child, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5605, and amendments thereto; and

(2) any of the following felonies, only when such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as to not be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Murder in the first degree, as defined in subsection (a)(1);

(B) murder in the second degree, as defined in subsection (a)(1) of K.S.A. 2012 Supp. 21-5403, and amendments thereto;

(C) voluntary manslaughter, as defined in subsection (a)(1) of K.S.A. 2012 Supp. 21-5404, and amendments thereto;

(D) aggravated assault, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5412, and amendments thereto;

(E) aggravated assault of a law enforcement officer, as defined in subsection (d) of K.S.A. 2012 Supp. 21-5412, and amendments thereto;

(F) aggravated battery, as defined in subsection (b)(1) of K.S.A. 2012 Supp. 21-5413, and amendments thereto; or

(G) aggravated battery against a law enforcement officer, as defined in subsection (d) of K.S.A. 2012 Supp. 21-5413, and amendments thereto.

(d) Murder in the first degree as defined in subsection (a)(2) is an alternative method of proving murder in the first degree and is not a separate crime from murder in the first degree as defined in subsection (a)(1). The provisions of K.S.A. 21-5109, and amendments thereto, are not applicable to murder in the first degree as defined in subsection (a)(2). Murder in the first degree as defined in subsection (a)(2) is not a lesser included offense of murder in the first degree as defined in subsection (a)(1), and is not a lesser included offense of capital murder as defined in K.S.A. 21-5401, and amendments thereto. As set forth in subsection (b) of K.S.A. 21-5109, and amendments thereto, there are no lesser included offenses of murder in the first degree under subsection (a)(2).

(e) The amendments to this section by this act establish a procedural rule for the conduct of criminal prosecutions and shall be construed and applied retroactively to all cases currently pending.

Sec. 3. K.S.A. 2012 Supp. 21-5839 is hereby amended to read as follows: 21-5839. (a) It is unlawful for any person to:

(1) knowingly and without authorization access and damage, modify, alter, destroy, copy, disclose or take possession of a computer, computer system, computer network or any other property;

(2) use a computer, computer system, computer network or any other property for the purpose of devising or executing a scheme or artifice with the intent to defraud or to obtain money, property, services or any other thing of value by means of false or fraudulent pretense or representation;

(3) knowingly exceed the limits of authorization and damage, modify, alter, destroy, copy, disclose or take possession of a computer, computer system, computer network or any other property;

(4) knowingly and without authorization, disclose a number, code, password or other means of access to a computer ~~or~~, computer network, *social networking website or personal electronic content*; or

(5) knowingly and without authorization, access or attempt to access any computer, computer system, *social networking website*, computer network or computer software, program, documentation, data or property contained in any computer, computer system or computer network.

(b) (1) *Except as provided in (b)(2), violation of subsections (a)(1), (a)(2) or (a)(3) is a severity level 8, nonperson felony.*

(2) *Violation of subsections (a)(1), (a)(2) or (a)(3) is a severity level 5, nonperson felony if the monetary loss to the victim or victims is more than \$100,000.*

~~(2)~~(3) Violation of subsections (a)(4) or (a)(5) is a class A nonperson misdemeanor.

(c) In any prosecution for a violation of subsections (a)(1), (a)(2) or (a)(3), it shall be a defense that the property or services were appropriated openly and avowedly under a claim of title made in good faith.

(d) As used in this section:

(1) “Access” means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network;

(2) “computer” means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic or communication and includes all input, output, processing, storage, software or communication facilities which are connected or related to such a device in a system or network;

(3) “computer network” means the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals, or a complex consisting of two or more interconnected computers;

(4) “computer program” means a series of instructions or statements in a form acceptable to a computer which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system;

(5) “computer software” means computer programs, procedures and associated documentation concerned with the operation of a computer system;

(6) “computer system” means a set of related computer equipment or devices and computer software which may be connected or unconnected;

(7) “financial instrument” means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, debit card or marketable security;

(8) “*personal electronic content*” means the electronically stored content of an individual including, but not limited to, pictures, videos, emails and other data files;

~~(8)~~(9) “property” includes, but is not limited to, financial instruments, information, electronically produced or stored data, supporting documentation and computer software in either machine or human readable form;

~~(9)~~(10) “services” includes, but is not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work; ~~and~~

(11) “*social networking website*” means a privacy-protected internet website which allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom the individual shares a connection within the system

and view and navigate the list of users with whom the individual shares a connection and those lists of users made by others within the system; and

~~(10)~~(12) “supporting documentation” includes, but is not limited to, all documentation used in the construction, classification, implementation, use or modification of computer software, computer programs or data.

Sec. 4. K.S.A. 2012 Supp. 21-6107 is hereby amended to read as follows: 21-6107. (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:

(1) Defraud that person, or anyone else, in order to receive any benefit; or

(2) *misrepresent that person in order to subject that person to economic or bodily harm.*

(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) 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:

(1) “*Personal electronic content*” means the electronically stored content of an individual including, but not limited to, pictures, videos, emails and other data files;

(2) “personal identifying information” includes, but is not limited to, the following:

~~(1)~~(A) Name;

~~(2)~~(B) birth date;

~~(3)~~(C) address;

~~(4)~~(D) telephone number;

~~(5)(E)~~ driver's license number or card or nondriver's identification number or card;
~~(6)(F)~~ social security number or card;
~~(7)(G)~~ place of employment;
~~(8)(H)~~ employee identification numbers or other personal identification numbers or cards;
~~(9)(I)~~ mother's maiden name;
~~(10)(J)~~ birth, death or marriage certificates;
~~(11)(K)~~ electronic identification numbers;
~~(12)(L)~~ electronic signatures; ~~and~~
~~(13)(M)~~ any financial number, or password that can be used to access a person's financial resources, including, but not limited to, checking or savings accounts, credit or debit card information, demand deposit or medical information; *and*

(N) passwords, usernames or other log-in information that can be used to access a person's personal electronic content, including, but not limited to, content stored on a social networking website; and

(3) "social networking website" means a privacy-protected internet website which allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom the individual shares a connection within the system and view and navigate the list of users with whom the individual shares a connection and those lists of users made by others within the system.

Sec. 5. K.S.A. 21-2512 and K.S.A. 2012 Supp. 21-5402, 21-5839 and 21-6107 are hereby repealed.

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

Approved April 16, 2013.

CHAPTER 97

HOUSE BILL No. 2107

AN ACT concerning insurance; enacting the electronic notice and document act; relating to adverse underwriting decisions; relating to the Kansas uninsurable health plan act; relating to updating certain statutory references; relating to mandate lite health benefit plans; amending K.S.A. 39-719e, 40-2,112, 40-12a08, 40-1612 and 40-19a10 and K.S.A. 2012 Supp. 40-19c09 and 40-2124 and repealing the existing sections; also repealing K.S.A. 40-254.

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

New Section 1. The provisions of sections 1 through 4, and amendments thereto, shall be known and may be cited as the electronic notice and document act.

New Sec. 2. This act allows the use of electronic notices and documents in lieu of any other provision of law for the sending of insurance notices and documents. In order to send electronic notices and documents to another party the insurer must obtain the consent of the other party as provided in this act.

New Sec. 3. For the purposes of this act:

(a) “Delivered by electronic means” includes:

(1) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(2) posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet or any other electronic device, together with separate notice of the posting, which shall be provided by electronic mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

(b) “Party” means any recipient of any notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder or an annuity contract holder.

New Sec. 4. (a) Subject to subsection (c), any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored and presented by electronic means so long as it meets the requirements of this act.

(b) Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

(c) A notice or document may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to that method of delivery and has not withdrawn the consent;

(2) the party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(A) Any right or option of the party to have the notice or document provided or made available in paper or another non-electronic form;

(B) the right of the party to withdraw consent to have a notice or document delivered by electronic means and any fees, conditions or consequences imposed in the event consent is withdrawn;

(C) whether the party’s consent applies: (i) Only to the particular transaction as to which the notice or document must be given; or (ii) to identified categories of notices or documents that may be delivered by electronic means during the course of the parties’ relationship;

(D) (i) the means, after consent is given, by which a party may obtain

a paper copy of a notice or document delivered by electronic means; and (ii) the fee, if any, for the paper copy; and

(E) the procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

(3) the party, before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent; and

(4) after consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, provides the party with a statement of: (A) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and (B) the right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed under subsection (c)(2).

(d) This act does not affect requirements related to content or timing of any notice or document required under applicable law.

(e) If a provision of this act or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(f) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with subsection (c)(3).

(g) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer. Failure by an insurer to comply with subsection (c)(4) may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(h) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this act to a party who, before that date, has consented to receive a notice or document in an electronic form otherwise allowed by law.

(i) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this act, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall notify the party of the notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically and the party's right to withdraw consent to have notices or documents delivered by electronic means.

(j) Notwithstanding any other provisions of this section, insurance policies and endorsements that do not contain personally identifiable information may be mailed, delivered or posted on the insurer's website. If the insurer elects to post insurance policies and endorsements on its website in lieu of mailing or delivering such policies and endorsements to the insured, such insurer shall comply with all of the following conditions:

(1) The policy and endorsements shall be easily accessible and remain that way for as long as the policy is in force;

(2) after the expiration of the policy, the insurer shall archive its expired policies and endorsements for five years and make them available upon request;

(3) the policies and endorsements shall be posted in a manner that enables the insured to print and save the policy and endorsements using programs or applications that are widely available on the internet and free to use;

(4) the insurer shall provide notice, at the time of issuance of the initial policy forms and any renewal forms, of a method by which insureds may obtain, upon request and without charge, a paper or electronic copy of their policy or endorsements;

(5) on each declarations page issued to an insured, the insurer shall clearly identify the exact policy and endorsement forms purchased by the insured; and

(6) the insurer shall provide notice of any changes to the forms or endorsements, and of the insured's right to obtain, upon request and without charge, a paper or electronic copy of such forms or endorsements.

(k) Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as a notice or document delivered by electronic means for purposes of this section. If a provision of this title or applicable law requires a signature or notice or document to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice or document.

(l) This section shall not affect any obligation of the insurer to provide notice to any person other than the insured of any notice provided to the insured.

(m) This section shall not be construed to modify, limit or supersede the provisions of the federal electronic signatures in global and national commerce act, public law 106-229, or the provisions of the uniform electronic transactions act, K.S.A. 16-1601 et seq., and amendments thereto.

(n) The provisions of this act shall not apply to any mutual insurance company organized pursuant to article 12a of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 5. K.S.A. 40-2,112 is hereby amended to read as follows: 40-2,112. (a) In the event of an adverse underwriting decision the insurance company, health maintenance organization or agent responsible for the decision shall either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such persons that upon written request they may receive the specific reason or reasons in writing.

(b) Upon receipt of a written request within 60 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance company, health maintenance organization or agent shall furnish to such person within 21 business days of the receipt of such written request:

(1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (a); or

(2) if specific items of medical-record information are supplied by a health care institution or health care provider it shall be disclosed either directly to the individual about whom the information relates or to a health care provider designated by the individual and licensed to provide health care with respect to the condition to which the information relates, whichever the insurance company, health maintenance organization or agent prefers; and

(3) the names and addresses of the institutional sources that supplied the specific items of information given pursuant to subsection (b)(2) if the identity of any health care provider or health care institution is disclosed either directly to the individual or to the designated health care provider, whichever the insurance company, health maintenance organization or agent prefers.

(c) The obligations imposed by this section upon an insurance company, health maintenance organization or agent may be satisfied by another insurance company, health maintenance organization or agent authorized to act on its behalf.

(d) The company, health maintenance organization or the agent,

whichever is in possession of the money, shall refund to the applicant, *policy holder* or individual proposed for coverage, the difference between the payment and the earned premium, if any, in the event of a declination of insurance coverage, termination of insurance coverage, or any other adverse underwriting decision.

(1) If coverage is in effect, such refund ~~shall~~ *may* accompany the notice of the adverse underwriting decision, ~~except such refund obligation shall not apply if:~~

~~(A) Material underwriting information requested by the application for coverage is clearly misstated or omitted and the company or health maintenance organization attempts to provide coverage based on the proper underwriting information, or~~

~~(B) or such refund may separately be returned in not more than 10 days from the date of such notice. The notice shall contain language indicating that any refund due will be returned in not more than 10 days from the date on such notice. The refund requirement shall not apply to life insurance if the company or health maintenance organization includes with the notice of the adverse underwriting decision an offer of coverage to an applicant for life insurance under a different policy or at an increased premium. If such a counter-offer is made by the insurer, the insured or the insured's legal representative shall have 10 business days after receipt thereof in which to notify the company or health maintenance organization of acceptance of the counter-offer, during which time coverage will be deemed to be in effect under the terms of the policy for which application has been made, but such coverage shall not extend beyond 30 calendar days following the date of issuance of the counter-offer by the insurance company or health maintenance organization. The insurance company or health maintenance organization shall promptly refund the premium upon notice of the insured's refusal to accept the counter-offer or upon expiration of such 30 calendar day period, whichever occurs first.~~

(2) If coverage is not in effect and payment therefor is in the possession of the company, health maintenance organization or the agent, the underwriting decision shall be made within 20 business days from receipt of the application by the agent unless the underwriting decision is dependent upon substantive information available only from an independent source. In such cases, the underwriting decision shall be made within 10 business days from receipt of the external information by the party that makes the decision. The refund ~~shall~~ *may* accompany the notice of an adverse underwriting decision, *or such refund may separately be returned in not more than 10 days from the date of such notice. The notice shall contain language indicating that any refund due will be returned in not more than 10 days from the date on such notice.*

Sec. 6. K.S.A. 2012 Supp. 40-2124 is hereby amended to read as

follows: 40-2124. (a) Coverage under the plan shall be subject to both deductible and coinsurance provisions set by the board. The plan shall offer to current participants and new enrollees no fewer than four choices of deductible and copayment options. Coverage shall contain a coinsurance provision for each service covered by the plan, and such copayment requirement shall not be subject to a stop-loss provision. Such coverage may provide for a percentage or dollar amount of coinsurance reduction at specific thresholds of copayment expenditures by the insured.

(b) Coverage under the plan shall be subject to a maximum lifetime benefit of ~~\$3,000,000~~-\$4,000,000 per covered individual.

(c) Coverage under the plan shall exclude charges or expenses incurred during the first 90 days following the effective date of coverage as to any condition:

(1) Which manifested itself during the six-month period immediately prior to the application for coverage in such manner as would cause an ordinarily prudent person to seek diagnosis, care or treatment; or

(2) for which medical advice, care or treatment was recommended or received in the six-month period immediately prior to the application for coverage. In succeeding years of operation of the plan, coverage of preexisting conditions may be excluded as determined by the board, except that no such exclusion shall exceed 180 calendar days, and no exclusion shall be applied to either a federally defined eligible individual provided that application for coverage is made not later than 63 days following the applicant's most recent prior creditable coverage or an individual under the age of 19 years who is eligible for enrollment in the plan under paragraph (3) of subsection (b) of K.S.A. 40-2122, and amendments thereto. For any individual who is eligible for the credit for health insurance costs under section 35 of the internal revenue code of 1986, the preexisting conditions limitation will not apply whenever such individual has maintained creditable health insurance coverage for an aggregate period of three months, not counting any period prior to a 63-day break in coverage, as of the date on which such individual seeks to enroll in coverage provided by this act.

(d) (1) Benefits otherwise payable under plan coverage shall be reduced by all amounts paid or payable through any other health insurance, or insurance arrangement, and by all hospital and medical expense benefits paid or payable under any workers compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(2) The association shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not covered expenses. Benefits due from the plan may be reduced or refused as a set-off against any amount recoverable under this section.

Sec. 7. K.S.A. 40-12a08 is hereby amended to read as follows: 40-12a08. No insured shall be liable for any amounts other than the annual premium. The business of the company shall be conducted so as to preclude any distribution of income, profit or property of the company to the individual members thereof except in payment of dividends, debts, claims or indemnities or upon the final dissolution of the company. *Dividends may be credited to a member's account and distributed in accordance with a plan adopted by the board of directors.*

Sec. 8. K.S.A. 39-719e is hereby amended to read as follows: 39-719e. (a) Upon the request of the secretary ~~of social and rehabilitation services~~ *for aging and disability services or the Kansas department of health and environment, or both*, each medical benefit plan provider that provides or maintains a medical benefit plan, that provides any hospital or medical services or any other health care or other medical benefits or services, or both, in Kansas, shall provide the secretary with information, to the extent known by the medical benefit plan provider, identifying each person who is covered by such medical benefit plan or who is otherwise provided any such hospital or medical services or any other such health care or other medical benefits or services, or both, in Kansas under such medical benefit plan. The information shall be provided in such form as is prescribed by the secretary for the purpose of comparing such information with medicaid beneficiary information maintained by the secretary to assist in identifying other health care or medical benefit coverage available to medicaid beneficiaries. The secretary shall reimburse each medical benefit plan provider that provides information under this section for the reasonable cost of providing such information.

(b) All information provided by medical benefit plan providers under this section shall be confidential and shall not be disclosed pursuant to the provisions of the open records act or under the provisions of any other law. Such information may be used solely for the purpose of determining whether medical assistance has been paid or is eligible to be paid by the secretary for which a recovery from a medical benefit plan provider is due under K.S.A. 39-719a, and amendments thereto.

(c) Failure to provide information pursuant to a request by the secretary ~~of social and rehabilitation services~~ *for aging and disability services or the Kansas department of health and environment, or both*, under this section shall constitute a failure to reply to an inquiry of the commissioner of insurance and shall be subject to the penalties applicable thereto under K.S.A. ~~40-226-40-2,125~~, and amendments thereto. If a medical plan provider fails to provide information to the secretary ~~of social and rehabilitation services~~ *for aging and disability services or the Kansas department of health and environment, or both*, pursuant to a request under this section, the secretary shall notify the commissioner of such failure. The commissioner of insurance may pursue each such failure to provide such

information in accordance with K.S.A. ~~40-226~~40-2,125, and amendments thereto.

(d) As used in this section:

(1) “Medical benefit plan” means any accident and health insurance or any other policy, contract, plan or agreement that provides benefits or services, or both, for any hospital or medical services or any other health care or medical benefits or services, or both, in Kansas, whether or not such benefits or services, or both, are provided pursuant to individual, group, blanket or certificates of accident and sickness insurance, any other insurance providing any accident and health insurance, or any other policy, contract, plan or agreement providing any such benefits or services, or both, in Kansas, and includes any policy, plan, contract or agreement offered in Kansas pursuant to the federal employee retirement income security act of 1974 (ERISA) that provides any hospital or medical services or any other health care or medical benefits or services, or both, in Kansas; and

(2) “medical benefit plan provider” means any insurance company, nonprofit medical and hospital service corporation, health maintenance organization, fraternal benefit society, municipal group-funded pool, group-funded workers compensation pool or any other entity providing or maintaining a medical benefit plan.

(e) No medicaid provider who rendered professional services to a medicaid beneficiary and was paid by the secretary for such services shall be liable to the medical benefit plan provider for any amounts recovered pursuant to this act or pursuant to the provisions of K.S.A. 39-719a, and amendments thereto.

Sec. 9. K.S.A. 40-1612 is hereby amended to read as follows: 40-1612. In addition to the provisions of this article, the provisions set forth in the following sections of the Kansas Statutes Annotated, and amendments thereto, which govern other types of insurance companies shall apply to reciprocals to the extent that such provisions do not conflict with the provisions of this article: Sections 40-208, 40-209, 40-214, 40-215, 40-216, 40-218, 40-220, 40-221a, 40-222, 40-223, 40-224, 40-225, 40-229, 40-229a, 40-231, 40-233, 40-234, 40-234a, 40-235, 40-236, 40-237, 40-238, 40-239, 40-240, 40-241, 40-242, 40-244, 40-245, 40-246, except as to contracts written through traveling salaried representatives to whom no commissions are paid, 40-246a, 40-247, 40-248, 40-249, 40-250, 40-251, 40-253, ~~40-254~~40-256, 40-281, 40-2,125, 40-2,126, 40-2,127, 40-2,128, 40-2,156, 40-2,156a, 40-2,157, 40-2,159, 40-952, 40-2001, 40-2002, 40-2003, 40-2004, 40-2005, 40-2006 and 40-2404 and article 2a of *chapter 40* of the Kansas Statutes Annotated, and amendments thereto, and any other provision of law pertaining to insurance which specifically refers to reciprocals.

Sec. 10. K.S.A. 40-19a10 is hereby amended to read as follows: 40-

19a10. (a) Such corporations shall be subject to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, ~~40-226~~, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, ~~40-254~~, 40-2,102, 40-2a01 et seq., 40-2215 to 40-2220, inclusive, 40-2253, 40-2401 to 40-2421, inclusive, 40-3301 to 40-3313, inclusive, K.S.A. 40-2,125, 40-2,154 and 40-2,161, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 11. K.S.A. 2012 Supp. 40-19c09 is hereby amended to read as follows: 40-19c09. (a) Corporations organized under the nonprofit medical and hospital service corporation act shall be subject to the provisions of the Kansas general corporation code, articles 60 to 74, inclusive, of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, applicable to nonprofit corporations, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, ~~40-226~~, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, ~~40-254~~, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, ~~40-2,125~~, 40-2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163 through 40-2,170, inclusive, 40-2a01 et seq., 40-2111 to 40-2116, inclusive, 40-2215 to 40-2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3313, inclusive, K.S.A. 2012 Supp. 40-2,105a, 40-2,105b, 40-2,184 and 40-2,190, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

New Sec. 12. (a) This section shall apply to all insurers transacting business in the state offering individual or group sickness and accident insurance. Such insurers also may offer a mandate lite health benefit plan.

A group or individual carrier may also offer a mandate lite health benefit plan.

(b) A mandate lite health benefit plan means an individual or group sickness and accident insurance plan that does not contain one or more of the Kansas-mandated benefits other than K.S.A. 40-2,100 and 40-2,166, and amendments thereto.

(c) The mandate lite health benefit plan shall contain the definitions of group or individual sickness and accident insurance with respect to major medical benefits and standard provisions or rights of coverage.

(d) The mandate lite health benefit plan may be issued on a group or individual basis.

(e) The insured shall be provided with a written notice that one or more of the state-mandated benefits are not included in the mandate lite health benefit plan.

(1) The mandate lite health benefit plan shall specify the health services that are included and shall specifically list the health services that will be limited or not covered from the list of state-mandated coverage other than K.S.A. 40-2,100 and 40-2,166, and amendments thereto.

(2) The insurer is required to retain a signed copy of this notice on file as a part of the original application as evidence that the insured has acknowledged such notice.

(3) Such signed copy may be in original form, electronic file form or in any other reproducible file form as may be consistent with the insurer's method of retaining application copies.

(f) The definition of preexisting conditions may not be more restrictive than the definition of preexisting conditions normally used for the corresponding regular individual or group insurance contracts.

(g) The mandate lite health benefit plan may offer:

(1) Various optional combinations of coverage for generic, formulary and non-formulary drugs.

(2) The mandate lite health benefit plan may offer drug discount plans.

(h) A mandate lite health benefit plan may charge additional premiums for each optional benefit offered. Optional benefits may include mandated benefits that are not included in the mandate lite health benefit plan.

(i) This section shall be known and may be cited as the mandate lite health benefit plan act.

New Sec. 13. (a) Any portion of the health insurance premiums paid by consumers that are in fact passed through as commissions shall not be considered a part of administrative expenses and shall be excluded from all determinations of the medical loss ratio calculations when totaling the ratio of premiums paid by a consumer used for claims versus administrative expenses for a policy. Any portion of premiums identified as com-

missions must be paid to a nonemployee in order to be excluded. Any portion of the premiums retained by the insurance company or its employees must be considered as a part of the calculation of the medical loss ratio as administrative related income.

(b) For the purposes of this section, “commission” means commissions to agents, consultation fees, counseling fees, consultant fees, and similar advising or sales compensation to a nonemployee licensed agent.

New Sec. 14. (a) For the purposes of this section:

(1) “Specially designed policy” means an insurance policy that by design may not meet all or part of the definitions of a group or individual sickness and accident insurance policy and includes temporary sickness and accident insurance on a short-term basis.

(2) “Short-term” means an insurance policy period of six months or 12 months, based upon policy design, which offers not more than one renewal period with or without a requirement of medical re-underwriting or medical requalification.

(A) Because a short-term policy addresses the special needs for temporary coverage, a short-term policy is not subject to continuation provisions of the health insurance portability and accountability act of 1996 (public law 104-191).

(B) Because a short-term policy addresses the special needs for temporary coverage, a short-term policy shall be exempt from medical loss ratio calculations associated with individual sickness and accident insurance issued within the state unless such calculation excludes any monthly administration fee associated with the sale of such policy.

(b) Specially designed policies shall include policies designed to provide sickness and accident insurance for specific coverage of benefits or services that may be excluded as benefits or services cited under section 12, and amendments thereto. Specially designed policies may include the following stand-alone policies and coverages:

- (1) Chiropractic plans;
- (2) acupuncture coverage plans;
- (3) holistic medical treatment plans;
- (4) podiatrist plans;
- (5) pharmacy plans;
- (6) psychiatric plans;
- (7) allergy plans; and
- (8) such other stand-alone plans or combinations of plans of accepted traditional and nontraditional medical practice as shall be allowable for exclusion from group or individual plans under section 12, and amendments thereto.

(c) No specially designed policy shall be deemed to be included under the definition of group sickness and accident insurance, including short-

term, limited-duration health insurance, issued or renewed inside or outside of this state and covering persons residing in this state.

Sec. 15. K.S.A. 39-719e, 40-254, 40-2,112, 40-12a08, 40-1612 and 40-19a10 and K.S.A. 2012 Supp. 40-19c09 and 40-2124 are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 16, 2013.

CHAPTER 98

HOUSE BILL No. 2109*

AN ACT creating the Kansas children's internet protection act.

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

Section 1. (a) Any school district that provides public access to a computer shall implement and enforce technology protection measures to ensure that no minor has access to visual depictions that are child pornography, harmful to minors or obscene. Each board of education shall adopt policies for the enforcement of this subsection. Such policies and any standards or rules promulgated pursuant to such policies shall be made available to the public.

(b) (1) Any public library that provides public access to a computer shall implement and enforce technology protection measures to:

(A) Ensure that no minor has access to visual depictions that are child pornography, harmful to minors or obscene; and

(B) ensure that no person has access to visual depictions that are child pornography or obscene.

(2) An employee of a public library may disable a technology protection measure if:

(A) Requested to do so by a library patron who is not a minor; and

(B) the technology protection measure is disabled only to enable access for legitimate research or other lawful purpose.

(c) The state librarian shall establish standards and promulgate rules and regulations for the enforcement of the provisions of subsection (b). Such standards and rules and regulations shall be distributed to the public libraries in this state, posted in a conspicuous place in such public libraries and made available to the public.

(d) The governing body of each public library shall adopt a policy to implement and enforce the provisions of subsection (b) in accordance with the standards and rules and regulations described in subsection (c). Such policy shall be reviewed at least once every three years by such governing body and shall:

(1) State that the purpose of the policy is to restrict access to those materials that are child pornography, harmful to minors or obscene;

(2) provide how such public library will meet the requirements of this section;

(3) require such public library to inform its patrons of the standards and rules and regulations that library employees follow to enforce the provisions of this section; and

(4) require such public library to inform its patrons that procedures for the submission of complaints about the standards and rules and regulations, the enforcement thereof, or observed patron behavior, have been adopted and are available for review.

(e) Any school district or public library that is in compliance with the provisions of this section shall not be liable for any damages arising out of or related to a minor gaining access to visual depictions that are child pornography, harmful to minors or obscene through the use of a computer that is owned or controlled by such school district or public library.

(f) As used in this section:

(1) “Board of education” means the board of education of any school district;

(2) “child pornography” means a visual depiction of a minor 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) “harmful to minors” shall have the same meaning as that term is defined in K.S.A. 2012 Supp. 21-6402, and amendments thereto;

(4) “minor” means any person under 18 years of age;

(5) “obscene” shall have the same meaning as that term is defined in K.S.A. 2012 Supp. 21-6401, and amendments thereto;

(6) “public library” means any library established pursuant to article 12 of chapter 12 of the Kansas Statutes Annotated, and amendments thereto, and any other library which serves the general public and is funded in whole or in part from moneys derived from tax levies;

(7) “school district” means any public school district organized under the laws of this state;

(8) “technology protection measure” means any computer technology or other process that blocks or filters online access to visual depictions; and

(9) “visual depiction” shall have the same meaning as that term is defined in K.S.A. 2012 Supp. 21-5510, and amendments thereto.

(g) This act shall be known and may be cited as the Kansas children’s internet protection act.

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

CHAPTER 99

SENATE BILL No. 23

AN ACT concerning school districts; amending K.S.A. 72-8804 and 72-8812 and K.S.A. 2012 Supp. 72-6431, 72-6441, 72-6448, 72-8801, 72-8254 and 79-201x and repealing the existing sections.

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

New Section 1. The director of budget and the director of legislative research shall jointly certify to the secretary of state that the aggregate amount of appropriations for the school district capital outlay state aid fund is equal to 100% of the amount that school districts are entitled to receive from the school district capital outlay state aid fund for such school year pursuant to K.S.A. 2012 Supp. 72-8814, and amendments thereto. Upon receipt of such certification, the secretary of state shall cause a notice of such certification to be published in the Kansas register.

Sec. 2. K.S.A. 2012 Supp. 72-6431 is hereby amended to read as follows: 72-6431. (a) The board of each district shall levy an ad valorem tax upon the taxable tangible property of the district in the school years specified in subsection (b) for the purpose of:

(1) Financing that portion of the district's general fund budget which is not financed from any other source provided by law;

(2) paying a portion of the costs of operating and maintaining public schools in partial fulfillment of the constitutional obligation of the legislature to finance the educational interests of the state; and

(3) with respect to any redevelopment district established prior to July 1, 1997, pursuant to K.S.A. 12-1771, and amendments thereto, paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district.

(b) The tax required under subsection (a) shall be levied at a rate of 20 mills in the school year ~~2011-2012-2013-2014~~ and school year ~~2012-2013-2014-2015~~.

(c) The proceeds from the tax levied by a district under authority of this section, except the proceeds of such tax levied for the purpose of paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district, shall be deposited in the general fund of the district.

(d) On June 6 of each year, the amount, if any, by which a district's local effort exceeds the amount of the district's state financial aid, as determined by the state board, shall be remitted to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the same in the state treasury to the credit of the state school district finance fund.

(e) No district shall proceed under K.S.A. 79-1964, 79-1964a or 79-1964b, and amendments thereto.

Sec. 3. K.S.A. 2012 Supp. 72-6441 is hereby amended to read as follows: 72-6441. (a) (1) The board of any district to which the provisions of this subsection apply may levy an ad valorem tax on the taxable tangible property of the district each year for a period of time not to exceed two years in an amount not to exceed the amount authorized by the state court of tax appeals under this subsection for the purpose of financing the costs incurred by the state that are directly attributable to assignment of ancillary school facilities weighting to enrollment of the district. The state court of tax appeals may authorize the district to make a levy which will produce an amount that is not greater than the difference between the amount of costs directly attributable to commencing operation of one or more new school facilities and the amount that is financed from any other source provided by law for such purpose, including any amount attributable to assignment of school facilities weighting to enrollment of the district for each school year in which the district is eligible for such weighting. If the district is not eligible, or will be ineligible, for school facilities weighting in any one or more years during the two-year period for which the district is authorized to levy a tax under this subsection, the state court of tax appeals may authorize the district to make a levy, in such year or years of ineligibility, which will produce an amount that is not greater than the actual amount of costs attributable to commencing operation of the facility or facilities.

(2) The state court of tax appeals shall certify to the state board of education the amount authorized to be produced by the levy of a tax under subsection (a).

(3) The state court of tax appeals may adopt rules and regulations necessary to effectuate the provisions of this subsection, including rules and regulations relating to the evidence required in support of a district's claim that the costs attributable to commencing operation of one or more new school facilities are in excess of the amount that is financed from any other source provided by law for such purpose.

(4) The provisions of this subsection apply to any district that: (A) Commenced operation of one or more new school facilities in the school year preceding the current school year or has commenced or will commence operation of one or more new school facilities in the current school year or any or all of the foregoing; (B) is authorized to adopt and has adopted a local option budget which is at least equal to that amount required to qualify for school facilities weighting under K.S.A. 2012 Supp. 72-6415b, and amendments thereto; and (C) is experiencing extraordinary enrollment growth as determined by the state board of education.

(b) The board of any district that has levied an ad valorem tax on the taxable tangible property of the district each year for a period of two years

under authority of subsection (a) may continue to levy such tax under authority of this subsection each year for an additional period of time not to exceed ~~three~~ six years in an amount not to exceed the amount computed by the state board of education as provided in this subsection if the board of the district determines that the costs attributable to commencing operation of one or more new school facilities are significantly greater than the costs attributable to the operation of other school facilities in the district. The tax authorized under this subsection may be levied at a rate which will produce an amount that is not greater than the amount computed by the state board of education as provided in this subsection. In computing such amount, the state board shall:

(1) Determine the amount produced by the tax levied by the district under authority of subsection (a) in the second year for which such tax was levied and add to such amount the amount of general state aid directly attributable to school facilities weighting that was received by the district in the same year;

(2) compute ~~75%~~ 90% of the amount of the sum obtained under *paragraph (1)*, which computed amount is the amount the district may levy in the first year of the ~~three-year~~ six-year period for which the district may levy a tax under authority of this subsection;

(3) compute ~~50%~~ 75% of the amount of the sum obtained under *paragraph (1)*, which computed amount is the amount the district may levy in the second year of the ~~three-year~~ six-year period for which the district may levy a tax under authority of this subsection; ~~and~~

(4) compute ~~25%~~ 60% of the amount of the sum obtained under *paragraph (1)*, which computed amount is the amount the district may levy in the third year of the ~~three-year~~ six-year period for which the district may levy a tax under authority of this subsection;

(5) *compute 45% of the amount of the sum obtained under paragraph (1), which computed amount is the amount the district may levy in the fourth year of the six-year period for which the district may levy a tax under authority of this subsection;*

(6) *compute 30% of the amount of the sum obtained under paragraph (1), which computed amount is the amount the district may levy in the fifth year of the six-year period for which the district may levy a tax under authority of this subsection; and*

(7) *compute 15% of the amount of the sum obtained under paragraph (1), which computed amount is the amount the district may levy in the sixth year of the six-year period for which the district may levy a tax under authority of this subsection.*

In determining the amount produced by the tax levied by the district under authority of subsection (a), the state board shall include any moneys which have been apportioned to the ancillary facilities fund of the district from taxes levied under the provisions of K.S.A. 79-5101 et seq. and 79-5118 et seq., and amendments thereto.

(c) The proceeds from the tax levied by a district under authority of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state school district finance fund.

Sec. 4. K.S.A. 2012 Supp. 72-6448 is hereby amended to read as follows: 72-6448. (a) As used in this section:

(1) "Pupil" means a person who is a dependent of a full-time active duty member of the military service or a dependent of a member of any of the United States military reserve forces who has been ordered to active duty under section 12301, 12302 or 12304 of Title 10 of the United States Code, or ordered to full-time active duty for a period of more than 30 consecutive days under section 502(f) or 512 of Title 32 of the United States Code for the purposes of mobilizing for war, international peace-keeping missions, national emergency or homeland defense activities.

(2) "School year" means school year ~~2009-2010, 2010-2011, 2011-2012 or 2012-2013~~ 2013-2014, 2014-2015, 2015-2016, 2016-2017 or 2017-2018.

(b) Each school year, the state board shall:

(1) Determine the number of pupils enrolled in each district on September 20; *and*

(2) determine the number of military pupils enrolled in each district on February 20, who were not enrolled on the preceding September 20;

(c) (1) If the number obtained under *subsection* (b)(2) is 25 or more, an amount equal to the number obtained under *subsection* (b)(2) shall be added to the number determined under *subsection* (b)(1). The sum is the enrollment of the district.

(2) If the number obtained under *subsection* (b)(2) is at least 1% of the number determined under *subsection* (b)(1), an amount equal to the number obtained under *subsection* (b)(2) shall be added to the number determined under *subsection* (b)(1). The sum is the enrollment of the district.

(d) The state board shall recompute the adjusted enrollment of the district and the general fund budget of the school district based on the enrollment as determined under this section.

(e) Districts desiring to determine enrollment under this section shall submit any documentation or information required by the state board.

Sec. 5. On July 1, 2013, and the date of publication in the Kansas register of the notice prescribed in section 1, K.S.A. 2012 Supp. 72-8801 is hereby amended to read as follows: 72-8801. (a) The board of education of any school district may make an annual tax levy at a mill rate not to exceed the statutorily prescribed mill rate for a period of not to exceed five years upon the taxable tangible property in the school district for the

purposes specified in this act and for the purpose of paying a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the school district. No levy shall be made under this act until a resolution is adopted by the board of education in the following form:

Unified School District No. _____,
_____ County, Kansas.

RESOLUTION

Be It Resolved that:

The above-named school board shall be authorized to make an annual tax levy for a period not to exceed _____ years in an amount not to exceed _____ mills upon the taxable tangible property in the school district for the purpose of acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing, *maintaining* and equipping of ~~buildings~~ *school district property and equipment* necessary for school district purposes, including: (1) *Acquisition of computer software*; (2) *acquisition of performance uniforms*; (3) housing and boarding pupils enrolled in an area vocational school operated under the board; (4) architectural expenses ~~incidental thereto, the~~; (5) acquisition of building sites; ~~the~~; (6) undertaking and maintenance of asbestos control projects; ~~the~~; (7) acquisition of school buses ~~and the~~; and (8) acquisition of other ~~equipment~~ *fixed assets*, and for the purpose of paying a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the school district. The tax levy authorized by this resolution may be made, unless a petition in opposition to the same, signed by not less than 10% of the qualified electors of the school district, is filed with the county election officer of the home county of the school district within 40 *calendar* days after the last publication of this resolution. In the event a petition is filed, the county election officer shall submit the question of whether the tax levy shall be authorized to the electors in the school district at an election called for ~~the~~ *that* purpose or at the next general election, as is specified by the board of education of the above school district.

CERTIFICATE

This is to certify that the above resolution was duly adopted by the board of education of Unified School District No. _____, _____ County, Kansas, on the _____ day of _____, _____

Clerk of the board of education.

All of the blanks in the above resolution shall be appropriately filled. The blank preceding the word "years" shall be filled with a specific num-

ber, and the blank preceding the word “mills” shall be filled with a specific number, and no word shall be inserted in either of the blanks. The resolution shall be published once a week for two consecutive weeks in a newspaper having general circulation in the school district. If no petition as specified above is filed in accordance with the provisions of the resolution, the board of education may make the tax levy specified in the resolution. If a petition is filed as provided in the resolution, the board of education may notify the county election officer of the date of an election to be held to submit the question of whether the tax levy shall be authorized. If the board of education fails to notify the county election officer within 60 *calendar* days after a petition is filed, the resolution shall be deemed abandoned and no like resolution shall be adopted by the board of education within the nine months following the first publication of the resolution.

(b) As used in this act:

(1) “Unconditionally authorized to make a capital outlay tax levy” means that the school district has adopted a resolution under this section, has published the same, and either that the resolution was not protested or that it was protested and an election has been held by which the tax levy specified in the resolution was approved;

(2) “statutorily prescribed mill rate” means: (A) Eight mills; (B) the mill levy rate in excess of eight mills if the resolution fixing such rate was approved at an election prior to the effective date of this act; or (C) the mill levy rate in excess of eight mills if no petition or no sufficient petition was filed in protest to a resolution fixing such rate in excess of eight mills and the protest period for filing such petition has expired;

(3) “asbestos control project” means any activity which is necessary or incidental to the control of asbestos-containing material in buildings of school districts and includes, but not by way of limitation, any activity undertaken for the removal or encapsulation of asbestos-containing material, for any remodeling, renovation, replacement, rehabilitation or other restoration necessitated by such removal or encapsulation, for conducting inspections, reinspections and periodic surveillance of buildings, performing response actions, and developing, implementing and updating operations and maintenance programs and management plans;

(4) “asbestos” means the asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonitegrunerite), anthophyllite, tremolite, and actinolite; and

(5) “asbestos-containing material” means any material or product which contains more than 1% asbestos.

Sec. 6. On July 1, 2013, and the date of publication in the Kansas register of the notice prescribed in section 1, K.S.A. 72-8804 is hereby amended to read as follows: 72-8804. (a) Any moneys in the capital outlay fund of any school district and any moneys received from issuance of

bonds under K.S.A. 72-8805 or 72-8810, and amendments thereto, may be used for the purpose of the acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing, *maintaining* and equipping of ~~buildings~~ *school district property and equipment* necessary for school district purposes, including: (1) *Acquisition of computer software*; (2) *acquisition of performance uniforms*; (3) housing and boarding pupils enrolled in an area vocational school operated under the board of education; (4) architectural expenses ~~incidental thereto, the~~; (5) acquisition of building sites, ~~the~~; (6) undertaking and maintenance of asbestos control projects, ~~the~~; (7) acquisition of school buses ~~and the~~; and (8) acquisition of other ~~equipment~~ *fixed assets*.

(b) The board of education of any school district is hereby authorized to invest any portion of the capital outlay fund of the school district which is not currently needed in investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein, or may invest the same in direct obligations of the United States government maturing or redeemable at par and accrued interest within three years from date of purchase, the principal and interest whereof is guaranteed by the government of the United States. All interest received on any such investment shall upon receipt thereof be credited to the capital outlay fund.

Sec. 7. On July 1, 2013, and the date of publication in the Kansas register of the notice prescribed in section 1, K.S.A. 72-8812 is hereby amended to read as follows: 72-8812. This act shall not in any manner be construed as affecting the validity of any tax levies authorized to be made under article 88 of chapter 72 of *the Kansas Statutes Annotated* prior to the effective date of this act, nor shall this act in any manner be construed as affecting the validity of any bonds issued or authorized to be issued under ~~said~~ *article 88 of chapter 72 of the Kansas Statutes Annotated* prior to the effective date of this act.

Sec. 8. K.S.A. 2012 Supp. 72-8254 is hereby amended to read as follows: 72-8254. (a) This section shall be known and may be cited as the Kansas uniform financial accounting and reporting act.

(b) As used in this section:

(1) “*Budget summary*” means a summary of the official budget adopted by the board of education of the school district, and shall include, but is not limited to, graphs depicting the total expenditures in the budget by category, supplemental and general fund expenditures, instruction expenditures, enrollment figures, mill rates by fund and average salaries. For purposes of this section, the budget at a glance format developed by the state board, and any successor format shall be deemed a budget summary, provided it complies with the requirements of this section.

(2) “*Reporting system*” means the uniform reporting system, including a uniform chart of accounts, developed by the state board as required by this section.

~~(2)~~(3) “School district” means ~~any a unified~~ school district ~~in the organized and operated under the laws of this state.~~

~~(3)~~(4) “State board” means the state board of education.

(c) The state board shall develop and maintain a uniform reporting system for the receipts and expenditures of school districts. The accounting records maintained by each school district shall be coordinated with the uniform reporting system. Each school district shall record the receipts and expenditures of the district in accordance with a uniform classification of accounts or chart of accounts and reports as shall be prescribed by the state board. Each school district shall submit such reports and statements as may be required by the state board. The state board shall design, revise and direct the use of accounting records and fiscal procedures and prescribe uniform classifications for receipts and expenditures for all school districts. The reporting system shall include all funds held by a school district regardless of the source of the moneys held in such funds, including, but not limited to, all funds funded by fees or other sources of revenue not derived from tax levies. The state board shall prescribe the necessary forms to be used by school districts in connection with such uniform reporting system.

(d) The reporting system developed by the state board shall be developed in such a manner that allows school districts to record and report any information required by state or federal law.

(e) The reporting system shall provide records showing by funds, accounts and other pertinent classifications, the amounts appropriated, the estimated revenues, actual revenues or receipts, the amounts available for expenditure, the total *and itemized* expenditures, the unencumbered cash balances, excluding state aid receivable, actual balances on hand and the unencumbered balances of allotments or appropriations for each school district.

(f) The reporting system shall allow a person to search the data and allow for the comparison of data by school district.

(g) Each school district shall annually submit a report to the state board on all construction activity undertaken by the school district which was financed by the issuance of bonds and which such bonds have not matured. Such report shall include all revenue receipts, all expenditures of bond proceeds authorized by law, the dates for commencement and completion of such construction activity, the estimated cost and the actual cost of such construction activity. The information provided in the report shall be in a form so as to readily identify such information with a specific construction project. Such report shall be submitted in a form and manner prescribed by the state board in accordance with the provisions of this section.

(h) From and after July 1, 2012, the board of education of each school district shall record and report the receipts and expenditures of the dis-

trict in the manner prescribed by the state board in accordance with this section.

(i) (1) Each school district shall annually publish on such district's internet website:

(A) A copy of form 150, estimated legal maximum general fund budget, or any successor document containing the same or similar information, that was submitted by such district to the state board of education for the immediately preceding school year. ~~A copy of such document shall also be annually published by the department of education on its internet website; and~~

(B) *the budget summary for the current school year and actual expenditures for the immediately preceding two school years showing total dollars net of transfers and dollars per pupil for each of the following:*

- (1) *Function 1000, instruction;*
- (2) *function 2100, student support;*
- (3) *function 2200, instructional staff support;*
- (4) *functions 2300 through 2500, administration;*
- (5) *function 2600, operation and maintenance;*
- (6) *function 2700, transportation;*
- (7) *function 3100, food service;*
- (8) *functions 2900, 3200 and 3300, other current spending;*
- (9) *function 4000, capital outlay;*
- (10) *function 5100, debt service;*
- (11) *the total expenditures which is the sum of the amounts in paragraphs (1) through (10);*
- (12) *the spending allocated to function 1000, instruction, excluding capital outlay and debt service expenditures, as a percentage of total expenditures;*
- (13) *the spending allocated to function 1000, instruction, excluding capital outlay and debt service expenditures, as a percentage of current spending, which is the sum of expenditures for functions 1000 through 3300 less capital outlay and debt service expenditures included in any of those functions; and*
- (14) *the revenue in total dollars net of transfers both in total and disaggregated to show the amount of revenue received from local, state and federal revenue sources.*

For purposes of subsection (i)(1)(B), all per pupil amounts shall be calculated using the full-time equivalent enrollment of the school district. All function categories and other accounting categories shall refer to those same categories as established and required for financial accounting purposes by the state board as published in the Kansas state department of education's Kansas accounting handbook for unified school districts, as published in August 2012, or later versions as established in rules and regulations adopted by the state board.

- (2) ~~Publications pursuant to~~ *required by this subsection shall be con-*

ducted in such manner as to make the document readily accessible to the public published with an easily identifiable link located on such district's website homepage.

(j) (1) The department of education shall annually publish on its internet website:

(A) All of the publications required under subsection (i); and

(B) the following expenditures for each school district on a per pupil basis:

~~(1)~~(i) Total expenditures;

~~(2)~~(ii) capital outlay expenditures;

~~(3)~~(iii) bond and interest expenditures; and

~~(4)~~(iv) all other expenditures not included in ~~(2)~~(ii) or ~~(3)~~(iii).

(2) Publications required by this subsection shall be published with an easily identifiable link located on the department's website homepage.

Sec. 9. K.S.A. 2012 Supp. 79-201x is hereby amended to read as follows: 79-201x. For taxable years ~~2011-2013~~ and ~~2012-2014~~, the following described property, to the extent herein specified, shall be and is hereby exempt from the property tax levied pursuant to the provisions of K.S.A. 72-6431, and amendments thereto: Property used for residential purposes to the extent of \$20,000 of its appraised valuation.

Sec. 10. K.S.A. 2012 Supp. 72-6431, 72-6441, 72-6448, 72-8254 and 79-201x are hereby repealed.

Sec. 11. On July 1, 2013, and the date of publication in the Kansas register of the notice prescribed in section 1, K.S.A. 72-8804 and 72-8812 and K.S.A. 2012 Supp. 72-8801 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 16, 2013.

CHAPTER 100

SENATE BILL No. 102*

AN ACT enacting the second amendment protection act.

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

Section 1. Sections 1 through 11, and amendments thereto, may be cited as the second amendment protection act.

Sec. 2. The legislature declares that the authority for sections 1 through 11, and amendments thereto, is the following:

(a) The tenth amendment to the constitution of the United States guarantees to the states and their people all powers not granted to the

federal government elsewhere in the constitution and reserves to the state and people of Kansas certain powers as they were understood at the time that Kansas was admitted to statehood in 1861. The guaranty of those powers is a matter of contract between the state and people of Kansas and the United States as of the time that the compact with the United States was agreed upon and adopted by Kansas in 1859 and the United States in 1861.

(b) The ninth amendment to the constitution of the United States guarantees to the people rights not granted in the constitution and reserves to the people of Kansas certain rights as they were understood at the time that Kansas was admitted to statehood in 1861. The guaranty of those rights is a matter of contract between the state and people of Kansas and the United States as of the time that the compact with the United States was agreed upon and adopted by Kansas in 1859 and the United States in 1861.

(c) The second amendment to the constitution of the United States reserves to the people, individually, the right to keep and bear arms as that right was understood at the time that Kansas was admitted to statehood in 1861, and the guaranty of that right is a matter of contract between the state and people of Kansas and the United States as of the time that the compact with the United States was agreed upon and adopted by Kansas in 1859 and the United States in 1861.

(d) Section 4 of the bill of rights of the constitution of the state of Kansas clearly secures to Kansas citizens, and prohibits government interference with, the right of individual Kansas citizens to keep and bear arms. This constitutional protection is unchanged from the constitution of the state of Kansas, which was approved by congress and the people of Kansas, and the right exists as it was understood at the time that the compact with the United States was agreed upon and adopted by Kansas in 1859 and the United States in 1861.

Sec. 3. As used in sections 1 through 11, and amendments thereto, the following definitions apply:

(a) “Borders of Kansas” means the boundaries of Kansas described in the act for admission of Kansas into the union, 12 stat. 126, ch. 20, § 1.

(b) “Firearms accessories” means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of a firearm, including, but not limited to, telescopic or laser sights, magazines, flash or sound suppressors, collapsible or adjustable stocks and grips, pistol grips, thumbhole stocks, speedloaders, ammunition carriers and lights for target illumination.

(c) “Manufacture” means to assemble using multiple components to create a more useful finished product.

Sec. 4. (a) A personal firearm, a firearm accessory or ammunition that

is manufactured commercially or privately and owned in Kansas and that remains within the borders of Kansas is not subject to any federal law, treaty, federal regulation, or federal executive action, including any federal firearm or ammunition registration program, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory or ammunition that is manufactured commercially or privately and owned in the state of Kansas.

(b) Component parts are not firearms, firearms accessories or ammunition, and their importation into Kansas and incorporation into a firearm, a firearm accessory or ammunition manufactured and owned in Kansas does not subject the firearm, firearm accessory or ammunition to federal regulation. It is declared by the legislature that such component parts are not firearms, firearms accessories or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories and ammunition under interstate commerce as if they were actually firearms, firearms accessories or ammunition.

(c) Firearms accessories that are imported into Kansas from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Kansas.

Sec. 5. A firearm manufactured in Kansas within the meaning of sections 1 through 11, and amendments thereto, must have the words "Made in Kansas" clearly stamped on a central metallic part, such as the receiver or frame.

Sec. 6. (a) Any act, law, treaty, order, rule or regulation of the government of the United States which violates the second amendment to the constitution of the United States is null, void and unenforceable in the state of Kansas.

(b) No official, agent or employee of the state of Kansas, or any political subdivision thereof, shall enforce or attempt to enforce any act, law, treaty, order, rule or regulation of the government of the United States regarding any personal firearm, firearm accessory or ammunition that is manufactured commercially or privately and owned in the state of Kansas and that remains within the borders of Kansas.

Sec. 7. It is unlawful for any official, agent or employee of the government of the United States, or employee of a corporation providing services to the government of the United States to enforce or attempt to enforce any act, law, treaty, order, rule or regulation of the government of the United States regarding a firearm, a firearm accessory, or ammunition that is manufactured commercially or privately and owned in the state of Kansas and that remains within the borders of Kansas. Violation of this section is a severity level 10 nonperson felony. Any criminal pros-

ecution for a violation of this section shall be commenced by service of complaint and summons upon such official, agent or employee. Such official, agent or employee shall not be arrested or otherwise detained prior to, or during the pendency of, any trial for a violation of this section.

Sec. 8. A county or district attorney, or the attorney general, may seek injunctive relief in any court of competent jurisdiction to enjoin any official, agent or employee of the government of the United States or employee of a corporation providing services to the government of the United States from enforcing any act, law, treaty, order, rule or regulation of the government of the United States regarding a firearm, a firearm accessory, or ammunition that is manufactured commercially or privately and owned in the state of Kansas and that remains within the borders of Kansas.

Sec. 9. Sections 1 through 11, and amendments thereto, do not apply to: (a) A firearm that cannot be carried and used by one person;

(b) ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm; or

(c) other than shotguns, a firearm that discharges two or more projectiles with one activation of the trigger or other firing device.

Sec. 10. Sections 1 through 11, and amendments thereto, apply to firearms, firearms accessories and ammunition that are manufactured, as defined in section 3, and amendments thereto, owned and remain within the borders of Kansas on and after October 1, 2009.

Sec. 11. If any provision of sections 1 through 10, and amendments thereto, or the application to any persons or circumstances is held to be invalid, such invalidity shall not affect the other provisions or application of sections 1 through 10, and amendments thereto, and to this end the provisions of section 1 through 10, and amendments thereto, are declared to be severable.

Sec. 12. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 16, 2013.

Published in the *Kansas Register* April 25, 2013.

CHAPTER 101

SENATE BILL No. 122

AN ACT concerning elections; relating to unauthorized voting disclosures; amending K.S.A. 25-2422 and repealing the existing section.

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

Section 1. K.S.A. 25-2422 is hereby amended to read as follows: 25-2422. (a) Unauthorized voting disclosure is, while being charged with any election duty, intentionally:

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

~~(b)(2)~~ ~~endeavoring to induce~~ *inducing or attempting to induce* any voter to show how the voter marks or has marked the voter's ballot.

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

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

(d) *Nothing in this section shall prohibit authorized poll agents from observing elections as authorized by K.S.A. 25-3004, 25-3005 and 25-3005a, and amendments thereto.*

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

Sec. 2. K.S.A. 25-2422 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 16, 2013.

CHAPTER 102

SENATE BILL No. 124

AN ACT concerning the Kansas restraint of trade act; amending K.S.A. 50-101, 50-112, 50-158 and 50-161 and repealing the existing sections; also repealing K.S.A. 50-108 and 50-115.

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

New Section 1. (a) The purpose of this section, and the amendments to K.S.A. 50-101, 50-112, 50-158 and 50-161 by this act, is to clarify and reduce any uncertainty or ambiguity as to the application of the Kansas

restraint of trade act and applicable evidentiary standards to certain types of business contracts, agreements and arrangements that are not intended to unreasonably restrain trade or commerce and do not contravene public welfare.

(b) Except as otherwise provided in subsections (d) and (e), the Kansas restraint of trade act shall be construed in harmony with ruling judicial interpretations of federal antitrust law by the United States supreme court. If such judicial interpretations are in conflict with or inconsistent with the express provisions of subsection (c), the provisions of subsection (c) shall control.

(c) An arrangement, contract, agreement, trust, understanding or combination shall not be deemed a trust pursuant to the Kansas restraint of trade act and shall not be deemed unlawful, void, prohibited or wrongful under any provision of the Kansas restraint of trade act if that arrangement, contract, agreement, trust, understanding or combination is a reasonable restraint of trade or commerce. An arrangement, contract, agreement, trust, understanding or combination is a reasonable restraint of trade or commerce if such restraint is reasonable in view of all of the facts and circumstances of the particular case and does not contravene public welfare.

(d) The Kansas restraint of trade act shall not be construed to prohibit:

- (1) Actions or proceedings concerning intrastate commerce;
- (2) actions or proceedings by indirect purchasers pursuant to K.S.A. 50-161, and amendments thereto;
- (3) recovery of damages pursuant to K.S.A. 50-161, and amendments thereto;
- (4) any remedy or penalty provided in the Kansas restraint of trade act, including, but not limited to, recovery of civil penalties pursuant to K.S.A. 50-160, and amendments thereto; and
- (5) any action or proceeding brought by the attorney general pursuant to authority provided in the Kansas restraint of trade act, or any other power or duty of the attorney general provided in such act.

(e) The Kansas restraint of trade act shall not be construed to apply to:

- (1) Any association that complies with the provisions and application of article 16 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, the cooperative marketing act;
- (2) any association, trust, agreement or arrangement that is governed by the provisions and application of 7 U.S.C. § 291 et seq., the Capper-Volstead act;
- (3) any corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in any manner therein provided; or any limited liability company or corporation, or wholly owned subsidiary

thereof, providing electric service at wholesale in the state of Kansas that is owned by four or more electric cooperatives that provide retail service in the state of Kansas; or any member-owned corporation formed prior to 2004;

(4) any association that is governed by the provisions and application of article 22 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, the credit union act;

(5) any association, trust, agreement or arrangement that is governed by the provisions and application of 7 U.S.C. § 181 et seq., the packers and stockyards act; and

(6) any franchise agreements or covenants not to compete.

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(g) This section shall be a part of and supplemental to the Kansas restraint of trade act.

Sec. 2. K.S.A. 50-101 is hereby amended to read as follows: 50-101. *Except as provided in section 1, and amendments thereto*, a trust is a combination of capital, skill, or acts, by two or more persons, for either, any or all of the following purposes:

First. To create or carry out restrictions in trade or commerce, ~~or aids to commerce~~, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.

Second. To increase or reduce the price of merchandise, produce or commodities, or to control the cost or rates of insurance.

Third. To prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, ~~or to prevent competition in aids to commerce.~~

Fourth. To fix any standard or figure, whereby such person's price to the public shall be, in any manner, controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

Fifth. To make or enter into, or execute or carry out, any contract, obligation or agreement of any kind or description by which such person shall: (a) Bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure;

(b) agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure;

(c) in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to pre-

clude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity; or

(d) agree to pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that such person's price in any manner is affected. Any such combinations are hereby declared to be against public policy, unlawful and void.

Sec. 3. K.S.A. 50-112 is hereby amended to read as follows: 50-112. *Except as provided in section 1, and amendments thereto*, all arrangements, contracts, agreements, trusts, or combinations between persons made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this state, or in the product, manufacture or sale of articles of domestic growth or product of domestic raw material, or for the loan or use of money, or to fix attorney or doctor fees, and all arrangements, contracts, agreements, trusts or combinations between persons, designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of moneys to the borrower, or any other services, are hereby declared to be against public policy, unlawful and void.

Sec. 4. K.S.A. 50-158 is hereby amended to read as follows: 50-158. ~~The provisions of article 1 of chapter 50 of the Kansas Statutes Annotated, and amendments thereto, and the provisions of K.S.A. 50-158 through 50-160~~ K.S.A. 50-101 through 50-162 and section 1, and amendments thereto, may be cited as the Kansas restraint of trade act.

Sec. 5. K.S.A. 50-161 is hereby amended to read as follows: 50-161. (a) As used in this section, the term "person" means any individual, corporation, partnership, firm, company or other association of persons, and such term shall include the state of Kansas and any of its political subdivisions.

(b) Except as provided in K.S.A. 12-205, and amendments thereto, any person who may be damaged or injured by any agreement, monopoly, trust, conspiracy or combination which is declared unlawful by ~~any of the acts contained in chapter 50 of the Kansas Statutes Annotated, and amendments thereto, relating to unlawful acts, agreements, monopolies, trusts, conspiracies or combinations in restraint of trade;~~ *the Kansas restraint of trade act* shall have a cause of action against any person causing such damage or injury. Such action may be brought by any person who is injured in such person's business or property by reason of anything forbidden or declared unlawful by ~~this~~ *the Kansas restraint of trade act*, regardless of whether such injured person dealt directly or indirectly with the defendant. The plaintiff in any action commenced hereunder in the district court of the county wherein such plaintiff resides, or the district

court of the county of the defendant's principal place of business, may sue for and recover treble the *actual* damages sustained. In addition, any person who is threatened with injury or additional injury by reason of any person's violation of ~~such acts~~ the *Kansas restraint of trade act* may commence an action in such district court to enjoin any such violation, and any damages suffered may be sued for and recovered in the same action in addition to injunctive relief. Any suit for injunctive relief against a municipality shall be subject to the provisions of K.S.A. 12-205, and amendments thereto.

(c) In any action commenced under this section, the plaintiff may be allowed reasonable attorney fees and costs. The remedies provided herein shall be alternative and in addition to any other remedies now provided by law.

New Sec. 6. Section 1 and the amendments to K.S.A. 50-101 and 50-112 by this act shall be applied retroactively to any choses in action or defenses premised on any provision of the *Kansas restraint of trade act* amended or repealed by this act, and any such choses in action or defenses that have accrued as of the effective date of this act shall be abated, but causes of action that were pending in any court before the effective date of this act, shall not be abated. All other non-remedial provisions of this section shall be applied prospectively.

Sec. 7. K.S.A. 50-101, 50-112, 50-108, 50-115, 50-158 and 50-161 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the *Kansas register*.

Approved April 16, 2013.

Published in the *Kansas Register* April 18, 2013.

CHAPTER 103

SENATE BILL No. 129
(Amends Chapter 29)

AN ACT concerning mortgage interest rates; amending K.S.A. 16-207 and repealing the existing section; also repealing K.S.A. 16-207, as amended by 2013 Senate Bill No. 52.

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

Section 1. K.S.A. 16-207 is hereby amended to read as follows: 16-207. (a) Subject to the following provision, the parties to any bond, bill, promissory note or other instrument of writing for the payment or forbearance of money may stipulate therein for interest receivable upon the amount of such bond, bill, note or other instrument of writing, at a rate

not to exceed 15% per annum unless otherwise specifically authorized by law.

~~(b)~~ The interest rate limitation set forth in this subsection applies to all first mortgage loans and contracts for deed to real estate, unless the parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto. The interest rate limitation set forth in this subsection does not apply to a second mortgage loan governed by the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, unless the lender and the borrower agree in writing that the interest rate for the loan is to be governed by this subsection. The maximum rate of interest per annum for notes secured by real estate mortgages and contracts for deed to real estate governed by this subsection shall be at an amount equal to 1½ percentage points above the yield of thirty-year fixed rate conventional home mortgages committed for delivery within 61 to 90 days accepted under the federal home loan mortgage corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month unless otherwise specifically authorized by law. Such interest rate shall be computed for each calendar month and be effective on the first day thereof. The secretary of state shall publish notice of such maximum interest rate not later than the second issue of the Kansas register published each month.

~~(c)~~ No penalty shall be assessed against any party for prepayment of any home loan evidenced by a note secured by a real estate mortgage where such prepayment is made more than six months after execution of such note.

~~(d)~~ (c) The lender may collect from the borrower:

(1) The actual fees paid a public official or agency of the state, or federal government, for filing, recording or releasing any instrument relating to a loan subject to the provisions of this section; and

(2) reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting or renewing of loans subject to the provisions of this section.

~~(e)~~ (d) Any person so contracting for a greater rate of interest than that authorized by this section shall forfeit all interest so contracted for in excess of the amount authorized under this section; and in addition thereto shall forfeit a sum of money, to be deducted from the amount due for principal and lawful interest, equal to the amount of interest contracted for in excess of the amount authorized by this section and such amounts may be set up as a defense or counterclaim in any action to enforce the collection of such obligation and the borrower shall also recover a reasonable attorney fee.

~~(f)~~ (e) The interest rates prescribed in ~~subsections (a) and (b) of this section~~ subsection (a) shall not apply to a business or agricultural loan. For the purpose of this section unless a loan is made primarily for per-

sonal, family or household purposes, the loan shall be considered a business or agricultural loan. For the purpose of this subsection, a business or agricultural loan shall include credit sales and notes secured by contracts for deed to real estate.

~~(g)~~ (f) Loans made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant, are not subject to the interest rates prescribed in ~~subsections (a) and (b) of this section~~ subsection (a).

~~(h)~~ (g) The interest rates prescribed in ~~subsections (a) and (b) of this section~~ subsection (a) shall not apply to a note secured by a real estate mortgage or a contract for deed to real estate where the note or contract for deed permits adjustment of the interest rate, the term of the loan or the amortization schedule.

~~(i)~~ (h) A first mortgage loan incurred for personal, family or household purposes may be subject to certain provisions of the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, as follows:

(1) Certain high loan-to-value first mortgage loans are subject to the provisions of the uniform consumer credit code, other than its usury provisions. Examples of provisions of the uniform consumer credit code applicable to high loan-to-value first mortgage loans include, but are not limited to: Limitations on prepaid finance charges; mandatory appraisals; required disclosures; restrictions on balloon payments and negative amortization; limitations on late fees and collection costs; and mandatory default notices and cure rights.

(2) Certain high interest rate first mortgage loans are subject to certain provisions of the uniform consumer credit code, including, without limitation, provisions which impose restrictions on balloon payments and negative amortization.

(3) If the parties to a first mortgage loan agree in writing to make the transaction subject to the uniform consumer credit code, than all applicable provisions of the uniform consumer credit code, including its usury provisions, apply to the loan.

This subsection is for informational purposes only and does not limit or expand the scope of the uniform consumer credit code.

~~(j)~~ (i) ~~Subsections (e), (d) and (e) of this section~~ (b), (c) and (d) do not apply to a first mortgage loan if:

(1) The parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto; or

(2) the loan is a high loan-to-value first mortgage loan subject to any provision of the uniform consumer credit code.

In the case of a loan described in ~~subparts~~ paragraphs (1) or (2) of the preceding sentence, the applicable provisions of the uniform consumer

credit code shall govern the loan in lieu of subsections ~~(e), (d) and (c) of this section~~ (b), (c) and (d).

Sec. 2. K.S.A. 16-207 and K.S.A. 16-207, as amended by 2013 Senate Bill No. 52 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 16, 2013.

CHAPTER 104

SENATE BILL No. 187
(Amended by Chapter 133)

AN ACT concerning workers; relating to workers compensation; relating to the employment security act; relating to the state workplace health and safety program; amending K.S.A. 44-510j, 44-512, 44-557 and 44-578 and K.S.A. 2012 Supp. 2-224a, 44-508, 44-510d, 44-510e, 44-520, 44-523, 44-532a, 44-551, 44-555c, 44-575, 44-577, 44-709 and 75-5708 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 44-551 is hereby amended to read as follows: 44-551. (a) The duties of the assistant directors of workers compensation may include, but not be limited to, acting in the capacity of an administrative law judge.

(b) Each administrative law judge shall be an attorney regularly admitted to practice law in Kansas. Such attorney shall have at least five years of experience as an attorney, with at least one year of experience practicing law in the area of workers compensation.

(c) Except as provided in subsection ~~(g)~~ (k), the annual salary of each administrative law judge shall be an amount equal to ~~75%~~ 85% of the annual salary paid by the state to a district judge, other than a district judge designated as a chief judge. Administrative law judges shall devote full time to the duties of such office and shall not engage in the private practice of law during their term of office. No administrative law judge may receive additional compensation for official services performed by the administrative law judge. Each administrative law judge shall be reimbursed for expenses incurred in the performance of such official duties under the same circumstances and to the same extent as district judges are reimbursed for such expenses.

(d) Applications for administrative law judge positions shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for an administrative law judge as prescribed in subsection (b). Qualified applicants for a position of administrative law judge shall be submitted by the director to the workers compensation ~~administrative law judge nominating and review com-~~

~~mittee and employment security boards nominating committee~~ for consideration.

(e) ~~There is hereby established the workers compensation administrative law judge nominating and review committee which shall be composed of two members appointed as follows: The Kansas AFL-CIO and the Kansas chamber of commerce and industry shall each select one representative to serve on the workers compensation administrative law judge nominating and review committee and shall each give written notice of such selection to the secretary who shall appoint such selected persons to the committee. In the event of a vacancy occurring for any reason on the workers compensation administrative law judge nominating and review committee, the vacating member shall be replaced by the organization which originally selected such member with written notice provided to the secretary within 30 days of such vacancy.~~

(f) (1) ~~Upon being notified of any vacancy in the position of administrative law judge, the administrative law judge nominating and review committee shall consider all qualified applicants submitted by the director for the vacant position of administrative law judge and nominate a person qualified therefor. The administrative law judge nominating and review committee shall be required to reach unanimous agreement on any nomination to the position of administrative law judge. With respect to each person nominated, the secretary either shall accept and appoint the person nominated by the administrative law judge nominating and review committee to the position of administrative law judge for which the nomination was made or shall reject the nomination and request the administrative law judge nominating and review committee to nominate another person for that position. Upon receipt of any such request for the nomination of another person, the administrative law judge nominating and review committee shall nominate another person for that position in the same manner.~~ *There is hereby established the workers compensation and employment security boards nominating committee. Whenever the workers compensation administrative law judge nominating and review committee or the workers compensation board nominating committee, 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 workers compensation and employment security boards nominating committee. The workers compensation and employment security boards nominating committee shall be composed of seven members who are appointed by the governor. Each of the following shall select one member to serve on the nominating committee by giving written notice of the selection to the governor who shall appoint such representatives to the committee:*

- (1) *The Kansas secretary of labor;*
- (2) *the Kansas chamber of commerce;*
- (3) *the national federation of independent business;*

- (4) *the Kansas AFL-CIO;*
- (5) *the Kansas state council of the society for human resource management (KS SHRM);*
- (6) *the Kansas self-insurers association; and*
- (7) *the secretary of labor, who shall select a nominee from either an employee organization as defined in K.S.A. 75-4322, and amendments thereto, or a professional employees' organization as defined in K.S.A. 72-5413, and amendments thereto.*

In the event the governor refuses to appoint a member selected by one of the organizations in this subsection, the organization may replace that selection with another, subject to the same appointment requirements.

(f) Of the members first appointed to the workers compensation and employment security boards nominating committee, three shall be appointed for terms of two years and four shall be appointed for terms of four years as specified by the governor. Thereafter, members of the nominating committee shall be appointed for a term of four years. Members may not serve more than two consecutive terms.

(g) In the event of a vacancy on the nominating committee occurring for any reason, the respective member whose position becomes vacant shall be replaced by the selecting organization by submitting written notice of the replacement selection to the governor within 30 days of such vacancy. The governor shall either appoint or reject the replacement selection as provided in this section.

(h) The nominating committee shall meet as needed to provide the workers compensation and employment security board of review appointing authorities with nominees for appointments to the position of:

- (1) Workers compensation administrative law judge;*
- (2) workers compensation appeals board member; and*
- (3) employment security board of review.*

No action of the committee shall be effective unless approved by two-thirds of the committee.

(i) When notified of a vacancy in the position of workers compensation administrative law judge or workers compensation appeals board member, the committee shall review all qualified applicants as submitted by the director of workers compensation. The committee shall nominate a qualified person to fill the vacancy and submit that nomination to the secretary of labor. The secretary shall either accept and appoint the person nominated by the nominating committee to the position for which the nomination was made or reject the nomination and request the nominating committee to nominate another person for that position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for that position in the same manner as set forth above.

~~(2)~~(j) (1) Each administrative law judge shall hold office for a term of four years and may be reappointed. Each administrative law judge shall

continue to serve for the term of the appointment or until a successor is appointed. ~~Successors to such administrative law judge positions shall be appointed for terms of four years. An administrative law judge who wishes to be considered for reappointment shall be deemed to have met the qualification requirements for appointment as administrative law judge. If such administrative law judge wishes to be considered for reappointment by the nominating committee, such administrative law judge shall submit an application as provided in subsection (d) no sooner than 150 days before and no later than 90 days prior to the expiration of such judge's term. Within sixty days prior to the expiration of the term of the administrative law judge seeking reappointment, the nominating committee described above shall meet to vote on reappointment of the administrative law judge. The administrative law judge shall be submitted to the secretary for reappointment unless $\frac{2}{3}$ of the nominating committee votes not to submit the administrative law judge for reappointment.~~

~~(3)(2)~~ (2) If a vacancy should occur in the position of an administrative law judge during the term of an administrative law judge, the ~~administrative law judge~~ nominating and review committee shall nominate an individual from the qualified applicants submitted by the director to complete the remainder of the unexpired portion of the term.

~~(g)(k)~~ (k) Except as otherwise provided in this subsection, administrative law judges appointed on and after July 1, 2006, shall serve a term of office of four years. Administrative law judges hired before July 1, 2006, may continue as administrative law judges under the classified service under the Kansas civil service act at the salary provided under the civil service act or may elect to be appointed to a term and receive the annual salary equal to ~~75%~~ 85% of the salary prescribed for a district judge if the currently employed administrative law judge within 60 days of the effective date of this section notifies the director in writing that the administrative law judge elects to serve an appointed term of office rather than continuing in the classified service. The term of office for an administrative law judge who elects a term of office shall begin on the date the written election is received by the director and the first term of office for such person shall be for two, three or four years as specified by the secretary so that administrative law judges appointed under this subsection serve staggered terms. Thereafter, any such person if reappointed as an administrative law judge shall be appointed for a term of four years.

~~(h)~~ (h) Following the completion of a term, an administrative law judge who wishes to be considered for reappointment to such judge's position shall be deemed to have met the qualification requirements for appointment as administrative law judge and shall be considered for renomination by the workers compensation administrative law judge nominating and review committee.

~~(i)(l)~~ (l) (1) Administrative law judges shall have power to administer oaths, certify 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 the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges. All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a, and amendments thereto, made by an administrative law judge shall be subject to review by the *workers compensation appeals* board upon written request of any interested party within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. Review by the board shall be a prerequisite to judicial review as provided for in K.S.A. 44-556, and amendments thereto. On any such review, the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings. The orders of the board under this subsection shall be issued within 30 days from the date arguments were presented by the parties.

(2) (A) If an administrative law judge has entered a preliminary award under K.S.A. 44-534a, and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. Such an appeal from a preliminary award may be heard and decided by a single member of the board. Members of the board shall hear such preliminary appeals on a rotating basis and the individual board member who decides the appeal shall sign each such decision. The orders of the board under this subsection shall be issued within 30 days from the date arguments were presented by the parties.

(B) If an order on review is not issued by the board within the applicable time period prescribed by subsection ~~(j)(1)~~ (l)(1), medical compensation and any disability compensation as provided in the award of the administrative law judge shall be paid commencing with the first day after such time period and shall continue to be paid until the order of the board is issued, except that no payments shall be made under this provision for any period before the first day after such time period. Nothing in this section shall be construed to limit or restrict any other remedies available to any party to a claim under any other statute.

(C) In any case in which the final award of an administrative law judge is appealed to the board for review under this section and in which the compensability is not an issue to be decided on review by the board, medical compensation shall be payable in accordance with the award of the administrative law judge and shall not be stayed pending such review. The employee may proceed under K.S.A. 44-510k, and amendments thereto, and may have a hearing in accordance with that statute to enforce the provisions of this subsection.

~~(j)~~(m) Each assistant director and each administrative law judge or

special administrative law judge shall be allowed all reasonable and necessary expenses actually incurred while in the actual discharge of official duties in administering the workers compensation act, but such expenses shall be sworn to by the person incurring the same and be approved by the secretary.

~~(k)~~(n) In case of emergency the director may appoint special local administrative law judges and assign to them the examination and hearing of any designated case or cases. Such special local administrative law judges shall be attorneys and admitted to practice law in the state of Kansas and shall, as to all cases assigned to them, exercise the same powers as provided by this section for the regular administrative law judges. Special local administrative law judges shall receive a fee commensurate with the services rendered as fixed by rules and regulations adopted by the director. The fees prescribed by this section prior to the effective date of this act shall be effective until different fees are fixed by such rules and regulations.

~~(l)~~(o) All special local administrative law judge's fees and expenses, with the exception of settlement hearings, shall be paid from the workers compensation administration fee fund, as provided in K.S.A. 74-712, and amendments thereto. Where there are no available funds or where the special local administrative law judge conducted a settlement hearing, the fees shall be taxed as costs in each case heard by such special local administrative law judge and when collected shall be paid directly to such special local administrative law judge by the party charged with the payment of the same.

~~(m)~~(p) Except as provided for judicial review under K.S.A. 44-556, and amendments thereto, the decisions and awards of the board shall be final.

Sec. 2. K.S.A. 2012 Supp. 44-555c is hereby amended to read as follows: 44-555c. (a) There is hereby established the workers compensation *appeals* board. *Whenever the workers compensation board, 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 workers compensation appeals board.* The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the *appeals* board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge. The *appeals* board shall be within the division of workers compensation of the department of labor and all budgeting, personnel, purchasing and related management functions of the board shall be administered under the supervision and direction of the secretary of labor. The *appeals* board shall consist of five members who shall be appointed by

the secretary in accordance with this section and who shall each serve for a term of four years, ~~except as provided for the first members appointed to the board under subsection (f).~~

(b) Each board member shall be an attorney regularly admitted to practice law in Kansas for a period of at least seven years *with at least five years experience practicing law in the area of workers compensation* and shall have engaged in the active practice of law during such period as a lawyer, judge of a court of record or any court in Kansas or a full-time teacher of law in an accredited law school, or any combination of such types of practice.

(c) Each board member shall receive an annual salary in an amount equal to the salary prescribed by law for a district judge, except that the member who is the chairperson of the workers compensation board shall receive an annual salary in an amount equal to the salary prescribed for a district judge designated as chief judge of a district court of Kansas. The board members shall devote full time to the duties of such office and shall not engage in the private practice of law during their term of office. No board member may receive additional compensation for official services performed by the board member. Each board member shall be reimbursed for expenses incurred in the performance of such official duties under the same circumstances and to the same extent as judges of the district court are reimbursed for such expenses.

(d) Applications for membership on the board shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for membership on the board prescribed in subsection (b). Qualified applicants for the board will be submitted by the director to the workers compensation ~~board~~ *and employment security boards* nominating committee for consideration.

~~(e) There is hereby established the workers compensation board nominating committee which shall be composed of two members appointed as follows: The Kansas AFL-CIO and the Kansas chamber of commerce and industry shall each select one representative to serve on the workers compensation board nominating committee and shall give written notice of the selection to the secretary who shall appoint such representatives to the committee. In the event of a vacancy occurring for any reason on the nominating committee, the respective member shall be replaced by the appointing organization with written notice of the appointment to the secretary of labor within 30 days of such vacancy.~~

~~(f) (1) Upon being notified of any vacancy on the board or of the need to appoint a member pro tem under subsection (i), the nominating committee shall consider all qualified applicants submitted by the director for the vacant position on the board or the member pro tem position and nominate a person qualified therefor. The nominating committee shall be required to reach unanimous agreement on any nomination to the board. With respect to each person nominated, the secretary either shall~~

accept and appoint the person nominated by the nominating committee to the position on the board for which the nomination was made or shall reject the nomination and request the nominating committee to nominate another person for that position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for that position in the same manner.

~~(2) The first members of the board established by this section are hereby appointed as follows: Each person who was a member of the workers compensation board which was in existence on January 12, 1995, is hereby appointed, effective January 13, 1995, as a member of the board established by this section. The term of office of each person so appointed as a member of the board established by this section is for the period equal to the remainder of the term of office such person had as of January 12, 1995, as a member of the workers compensation board which was in existence on January 12, 1995.~~

~~(3) Each member of the board shall hold office for the term of the appointment and until the successor shall have been appointed. Successors to such members shall be appointed for terms of four years.~~

~~(4) If a vacancy should occur on the board during the term of a member, the nominating committee shall nominate an individual from the qualified applicants submitted by the director to complete the remainder of the unexpired portion of the term. With respect to each person so nominated, the secretary either shall accept and appoint the person nominated to the board or shall reject the nomination and request the nominating committee to nominate another person for the position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for the position in the same manner.~~

~~(g) Following the completion of a term, board members who wish to be considered for reappointment to the board shall be deemed to have met the qualification requirements for selection to the board and shall be considered for renomination by the workers compensation board nominating committee.~~

(f) A board member who wishes to be considered for reappointment shall be deemed to have met the qualification requirements for appointment as a board member. If a board member wishes to be considered for reappointment by the workers compensation and employment security boards nominating committee, such board member shall submit an application as provided in subsection (d) no sooner than 150 days before and no later than 90 days prior to the expiration of such member's term. No later than thirty days prior to the expiration of the term, the nominating committee shall convene to vote on the reappointment of the board member. The board member shall be submitted to the secretary for reappointment unless 2/3 of the nominating committee votes not to submit the board member's name for reappointment.

~~(h)~~(g) The members of the board shall annually elect one member to serve as chairperson.

~~(i)~~(h) If illness or other temporary disability of a member of the board will not permit the member to serve during a case or in any case in which a member of the board must be excused from serving because of a conflict or is otherwise disqualified with regard to such case, the director shall ~~notify the workers compensation nominating committee of the need to~~ appoint a member pro tem. ~~Upon receipt of such notice, the committee shall act as soon as possible and nominate a qualified person to serve as member pro tem in such case in accordance with subsection (f).~~ Each member pro tem shall receive compensation at the same rate as a member of the board receives, prorated for the hours of actual service as a member pro tem and shall receive expenses under the same circumstances and to the same extent as a member of the board receives. Each member pro tem shall have all the powers, duties and functions of a member of the board with regard to the case.

(j) The board shall maintain principal offices in Topeka, Kansas, and the board may conduct hearings at a courthouse of any county in Kansas or at another location specified by the board. The secretary of labor shall provide a courtroom and other suitable quarters in Topeka, Kansas, for the use of the board and its staff. When the board conducts hearings at any location other than in Topeka, Kansas, the director shall make suitable arrangements for such hearings. Subject to the provisions of appropriation acts, the director shall provide such supplies and equipment and shall appoint such support personnel as may be necessary for the board to fulfill the duties imposed by this act, subject to approval by the secretary.

(k) For purposes of hearing cases, the board may sit together or in panels of two members or more, designated by the chairperson of the board, except that an appeal from a preliminary award entered under K.S.A. 44-534a, and amendments thereto, may be heard by a panel of one member designated by the chairperson. All members of the board shall determine each matter before the board. All decisions, reviews and determinations by the board shall be approved in writing by at least three board members. Whenever the board enters a final order in any proceeding, the board shall make written findings of fact and conclusions of law forming the basis of the board's determination and final order. The findings of fact and conclusions of law of the board shall be made a part of the final order. The board shall mail a copy of the final order of the board to all parties to the proceeding within three days following the issuance of the final order.

Sec. 3. K.S.A. 2012 Supp. 44-709 is hereby amended to read as follows: 44-709. (a) *Filing*. Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting

them. Each employer shall post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer.

(b) *Determination.* (1) Except as otherwise provided in this subsection (b)(1), a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706, and amendments thereto. The information may be submitted by the employing unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit 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 *employment security* board of review or any court, except that the employing unit's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of subsection (d) of K.S.A. 44-706, and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c). The appeal must be filed within 16 calendar days after the mailing of notice to the last known addresses of

the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the *employment security* board of review is filed within 16 calendar days after the mailing of the decision to the parties' last known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision.

(d) *Referees.* The secretary shall appoint, in accordance with subsection (c) of K.S.A. 44-714, and amendments thereto, one or more referees to hear and decide disputed claims.

(e) *Time, computation and extension.* In computing the period of time for an employing unit response or for 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.

(f) *Board of review.* (1) There is hereby created ~~a~~ an *employment security* board of review, hereinafter referred to as the board, consisting of three members. ~~Except as provided by paragraph (2) of this subsection,~~ Each member of the board shall be appointed for a term of four years as provided in this subsection. ~~Two members shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601,~~ and amendments thereto, no person appointed to the board, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate. One member shall be representative of employees, one member shall be representative of employers, and one member shall be representative of the public in general. The appointment of the employee representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas chamber of commerce and industry. The appointment of the public representative member of the board, who, because of vocation, occupation or affiliation may be deemed not to be representative of either management or labor, shall be made by the members appointed by the governor as employee representative and employer representative. If the two members do not agree and fail to make the appointment of the public member within 30

days after the expiration of the public member's term of office, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

~~(2) The terms of members who are serving on the board on the effective date of this act shall expire on March 15 of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed. When a vacancy on the employment security board of review occurs, the workers compensation and employment security boards nominating committee established under K.S.A. 44-551, and amendments thereto, shall convene and submit a nominee to the governor for appointment to each vacancy on the employment security board of review, subject to confirmation by the senate as provided by K.S.A. 75-4315b, and amendments thereto. The governor shall either: (A) Accept and submit to the senate for confirmation the person nominated by the nominating committee; or (B) reject the nomination and request the nominating committee to nominate another person for that position. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the employment security board of review, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate.~~

(3) *No member of the employment security board of review shall serve more than two consecutive terms.*

~~(3)(4) Each member of the employment security board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member. Each member shall be appointed as representative of the same special interest group represented by the predecessor of the member.~~

~~(4)(5) Each member of the board employment security board of review shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.~~

~~(5)(6) The board employment security board of review shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. The board shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of labor shall appoint an executive~~

secretary of the board and the executive secretary shall attend the meetings of the board.

~~(6)~~(7) The ~~board~~-*employment security board of review*, on its own motion, may affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board shall permit such further appeal by any of the parties interested in a decision of a referee which overrules or modifies the decision of an examiner. The board may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board shall be heard in accordance with the requirements of subsection (c). The board shall promptly notify the interested parties of its findings and decision.

~~(7)~~(8) Two members of the ~~board~~-*employment security board of review* shall constitute a quorum and no action of the board shall be valid unless it has the concurrence of at least two members. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(g) *Procedure.* The manner in which disputed claims are presented, the reports on claims required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the ~~board~~-*employment security board of review* for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings and decisions in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. In the performance of its official duties, the board shall have access to all of the records which pertain to the disputed claim and are in the custody of the secretary of labor and shall receive the assistance of the secretary upon request.

(h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary travel expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) *Court review.* Any action of the ~~board~~-*employment security board of review* is subject to review in accordance with the Kansas judicial review act. No bond shall be required for commencing an action for such review. In the absence of an action for such review, the action of ~~the such~~ board shall become final 16 calendar days after the date of the mailing of the decision. In addition to those persons having standing pursuant to K.S.A. 77-611, and amendments thereto, the examiner shall have standing to obtain judicial review of an action of ~~the such~~ board. The review proceeding, and the questions of law certified, shall be heard in a summary

manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the *employment security* board of review or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the ~~board~~ *employment security board of review* either personally or by means of a designated representative to present evidence and to state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

Sec. 4. K.S.A. 2012 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 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 director 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)~~ (f) of K.S.A. 65-6112, and amendments thereto, drivers of ambulances as defined in subsection ~~(b)~~ (d) 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 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, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. 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.

(f) (1) “Personal injury” and “injury” mean any lesion or change in the physical structure of the body, causing damage or harm thereto. 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.

(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.

(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.

(i) “Director” means the director of workers compensation as provided for in K.S.A. 75-5708, and amendments thereto.

(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.

(k) “Secretary” means the secretary of labor.

(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.

(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.

(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.

(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) “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) “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) On and after the effective date of this act, “workers compensation board” or “board” means the workers compensation *appeals* board established under K.S.A. 44-555c, and amendments thereto.

(s) “Usual charge” means the amount most commonly charged by health care providers for the same or similar services.

(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 med-

ical 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. 5. K.S.A. 44-510j is hereby amended to read as follows: 44-510j. When an employer's insurance carrier or a self-insured employer disputes all or a portion of a bill for services rendered for the care and treatment of an employee under this act, the following procedures apply:

(a) (1) The employer or carrier shall notify the service provider within 30 days of receipt of the bill of the specific reason for refusing payment or adjusting the bill. Such notice shall inform the service provider that additional information may be submitted with the bill and reconsideration of the bill may be requested. The provider shall send any request for reconsideration within 30 days of receiving written notice of the bill dispute. If the employer or carrier continues to dispute all or a portion of the bill after receiving additional information from the provider, the employer, carrier or provider may apply for an informal hearing before the director.

(2) If a provider sends a bill to such employer or carrier and receives no response within 30 days as allowed in subsection (a) and if a provider sends a second bill and receives no response within 60 days of the date the provider sent the first bill, the provider may apply for an informal hearing before the director.

(3) Payments shall not be delayed beyond 60 days for any amounts not in dispute. Acceptance by any provider of a payment amount which is less than the full amount charged for the services shall not affect the right to have a review of the claim for the outstanding or remaining amounts.

(b) The application for informal hearing shall include copies of the disputed bills, all correspondence concerning the bills and any additional written information the party deems appropriate. When anyone applies for an informal hearing before the director, copies of the application shall be sent to all parties to the dispute and the employee. Within 20 days of receiving the application for informal hearing, the other parties to the dispute shall send any additional written information deemed relevant to the dispute to the director.

(c) The director or the director's designee shall hold the informal hearing to hear and determine all disputes as to such bills and interest due thereon. Evidence in the informal hearing shall be limited to the written submissions of the parties. The informal hearing may be held by electronic means. Any employer, carrier or provider may personally appear in or be represented at the hearing. If the parties are unable to reach

a settlement regarding the dispute, the officer hearing the dispute shall enter an order so stating.

(d) After the entry of the order indicating that the parties have not settled the dispute after the informal hearing, the director shall schedule a formal hearing.

(1) Prior to the date of the formal hearing, the director may conduct a utilization review concerning the disputed bill. The director shall develop and implement, or contract with a qualified entity to develop and implement, utilization review procedures relating to the services rendered by providers and facilities, which services are paid for in whole or in part pursuant to the workers compensation act. The director may contract with one or more private foundations or organizations to provide utilization review of service providers pursuant to the workers compensation act. Such utilization review shall result in a report to the director indicating whether a provider improperly utilized or otherwise rendered or ordered unjustified treatment or services or that the fees for such treatment or services were excessive and a statement of the basis for the report's conclusions. After receiving the utilization review report, the director also may order a peer review. A copy of such reports shall be provided to all parties to the dispute at least 20 days prior to the formal hearing. No person shall be subject to civil liability for libel, slander or any other relevant tort cause of action by virtue of performing a peer or utilization review under contract with the director.

(2) The formal hearing shall be conducted by hearing officers, the medical administrator or both as appointed by the director. During the formal hearing parties to the dispute shall have the right to appear or be represented and may produce witnesses, including expert witnesses, and such other relevant evidence as may be otherwise allowed under the workers compensation act. If the director finds that a provider or facility has made excessive charges or provided or ordered unjustified treatment, services, hospitalization or visits, the provider or facility may, subject to the director's order, receive payment pursuant to this section from the carrier, employer or employee for the excessive fees or unjustified treatment, services, hospitalization or visits and such provider may be ordered to repay any fees or charges collected therefor. If it is determined after the formal hearing that a provider improperly utilized or otherwise rendered or ordered unjustified treatment or services or that the fees for such treatment or services were excessive, the director may provide a report to the licensing board of the service provider with full documentation of any such determination, except that no such report shall be provided until after judicial review if the order is appealed. Any decision rendered under this section may be reviewed by the workers compensation *appeals* board. A party must file a notice of appeal within 10 days of the issuance of any decision under this section. The record on appeal shall be limited only to the evidence presented to the hearing officer. The

decision of the director shall be affirmed unless the board determines that the decision was not supported by substantial competent evidence.

(e) By accepting payment pursuant to this section for treatment or services rendered to an injured employee, the provider shall be deemed to consent to submitting all necessary records to substantiate the nature and necessity of the service or charge and other information concerning such treatment to utilization review under this section. Such health care provider shall comply with any decision of the director pursuant to this section.

(f) Except as provided in K.S.A. 60-437, and amendments thereto, and this section, findings and records which relate to utilization and peer review conducted pursuant to this section shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding, except those proceedings authorized pursuant to this section. In any proceedings where there is an application by an employee, employer, insurance carrier or the workers compensation fund for a hearing pursuant to K.S.A. 44-534a, and amendments thereto, for a change of medical benefits which has been filed after a health care provider, employer, insurance carrier or the workers compensation fund has made application to the medical services section of the division for the resolution of a dispute or matter pursuant to the provisions of this section, all reports, information, statements, memoranda, proceedings, findings and records which relate to utilization and peer review including the records of contract reviewers and findings and records of the medical services section of the division shall be admissible at the hearing before the administrative law judge on the issue of the medical benefits to which an employee is entitled.

(g) A provider may not improperly overcharge or charge for services which were not provided for the purpose of obtaining additional payment. Any dispute regarding such actions shall be resolved in the same manner as other bill disputes as provided by this section. Any violation of the provisions of this section or K.S.A. 44-510i, and amendments thereto, which is willful or which demonstrates a pattern of improperly charging or overcharging for services rendered pursuant to this act constitutes grounds for the director to impose a civil fine not to exceed \$5,000. Any civil fine imposed under this section shall be subject to review by the board. All moneys received for civil fines imposed under this section shall be deposited in the state treasury to the credit of the workers compensation fund.

(h) Any health care provider, nurse, physical therapist, any entity providing medical, physical or vocational rehabilitation services or providing reeducation or training pursuant to K.S.A. 44-510g, and amendments thereto, medical supply establishment, surgical supply establishment, ambulance service or hospital which accept the terms of the workers com-

compensation act by providing services or material thereunder shall be bound by the fees approved by the director and no injured employee or dependent of a deceased employee shall be liable for any charges above the amounts approved by the director. If the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider required by this act, the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director. No action shall be filed in any court by a health care provider or other provider of services under this act for the payment of an amount for medical services or materials provided under the workers compensation act and no other action to obtain or attempt to obtain or collect such payment shall be taken by a health care provider or other provider of services under this act, including employing any collection service, until after final adjudication of any claim for compensation for which an application for hearing is filed with the director under K.S.A. 44-534, and amendments thereto. In the case of any such action filed in a court prior to the date an application is filed under K.S.A. 44-534, and amendments thereto, no judgment may be entered in any such cause and the action shall be stayed until after the final adjudication of the claim. In the case of an action stayed hereunder, any award of compensation shall require any amounts payable for medical services or materials to be paid directly to the provider thereof plus an amount of interest at the rate provided by statute for judgments. No period of time under any statute of limitation, which applies to a cause of action barred under this subsection, shall commence or continue to run until final adjudication of the claim under the workers compensation act.

(i) As used in this section, unless the context or the specific provisions clearly require otherwise, “carrier” means a self-insured employer, an insurance company or a qualified group-funded workers compensation pool and “provider” means any health care provider, vocational rehabilitation service provider or any facility providing health care services or vocational rehabilitation services, or both, including any hospital.

Sec. 6. K.S.A. 2012 Supp. 75-5708 is hereby amended to read as follows: 75-5708. (a) There is hereby established within and as a part of the department of labor a division of workers compensation. The division shall be administered, under the supervision of the secretary of labor, by the director of workers compensation, who shall be the chief administrative officer of the division. The director of workers compensation shall be appointed by the secretary of labor and shall serve at the pleasure of the secretary. The director shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of labor, with the approval of the governor. The director of workers compensation shall be an attorney admitted to practice law in

the state of Kansas. The director shall devote full time to the duties of such office and shall not engage in the private practice of law during the director's term of office.

(b) The director of workers compensation may appoint two assistant directors of workers compensation. The secretary of labor may appoint not to exceed 10 administrative law judges. Such assistant directors shall be in the classified service. Such administrative law judges shall be in the unclassified service under the Kansas civil service act unless an administrative law judge elects to stay in the classified service under subsection (g) of K.S.A. 44-551, and amendments thereto. The assistant directors shall act for and exercise the powers of the director of workers compensation to the extent authority to do so is delegated by the director. The assistant directors and administrative law judges shall be attorneys admitted to practice law in the state of Kansas, and shall have such powers, duties and functions as are assigned to them by the director or are prescribed by law. The assistant directors and administrative law judges shall devote full time to the duties of their offices and shall not engage in the private practice of law during their terms of office.

(c) Assistant directors shall be selected by the director of workers compensation, with the approval of the secretary of labor. Except as otherwise provided under K.S.A. 44-551, and amendments thereto, on and after July 1, ~~2006~~ 2013, administrative law judges shall be selected by the ~~administrative law judge nominating and review~~ *workers compensation and employment security boards nominating* committee and appointed by the secretary of labor. Each assistant director and administrative law judge shall be subject to either dismissal or suspension of up to 30 days for any of the following:

- (1) Failure to conduct oneself in a manner appropriate to the appointee's professional capacity;
- (2) failure to perform duties as required by the workers compensation act; or
- (3) any reason set out for dismissal or suspension in the Kansas civil service act or rules and regulations adopted pursuant thereto.

No appointee shall be appointed, dismissed or suspended for political, religious or racial reasons or by reason of the appointee's sex.

Sec. 7. K.S.A. 2012 Supp. 2-224a is hereby amended to read as follows: 2-224a. (a) Notwithstanding the provisions of K.S.A. 44-576, and amendments thereto, the state fair board is hereby authorized to purchase workers compensation insurance from an admitted carrier. Any contract for the purchase of workers compensation insurance entered into by the state fair board shall be purchased in the manner prescribed for the purchase of supplies, materials, equipment and contractual services as provided in K.S.A. 75-3738 through 75-3744, and amendments thereto, and any such contract having a premium or rate in excess of \$500 shall be

purchased on the basis of sealed bids. Such contract shall not be subject to the provisions of K.S.A. 75-4101 through 75-4114 and K.S.A. 2012 Supp. 75-4125, and amendments thereto.

(b) If the state fair board enters into a contract for the purchase of workers compensation insurance as described in subsection (a), from and after the end of the payroll period in which such workers compensation policy takes effect, the state fair board shall not be subject to the self-insurance assessment prescribed by K.S.A. 44-576, and amendments thereto, and the director of accounts and reports shall cease to transfer any amounts for such self-assessment for the state fair board pursuant to such statute, except that any moneys paid relating to existing claims with the state workers compensation self-insurance fund made by the state fair board shall be assessed to the state fair board until all such claims have been closed and settled.

(c) Notwithstanding the provisions of K.S.A. 44-575, and amendments thereto, if the state fair board enters into a contract for the purchase of workers compensation insurance as described in subsection (a), the state workers compensation self-insurance fund shall not be liable for any compensation claims under the workers compensation act relating to the state fair board and arising during the term of such contract, or for any other amounts otherwise required to be paid under the workers compensation act during the term of such contract.

(d) The state fair board shall notify ~~the secretary of administration~~ and the secretary of health and environment of the effective date of any workers compensation policy acquired pursuant to this section.

Sec. 8. K.S.A. 2012 Supp. 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. 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 or temporary partial disability as provided in the following schedule, 66 $\frac{2}{3}$ % of the average 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 $\frac{1}{2}$ of such thumb or finger, and the compensation shall be $\frac{1}{2}$ 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, *until January 1, 2015, but for injuries occurring on and after January 1, 2015, shall be determined by using the sixth 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 *until January 1, 2015, but for injuries occurring on and after January 1, 2015, shall be combined pursuant to*

the sixth edition of the American medical association guides to the evaluation of permanent impairment, and compensation awarded shall be calculated to the highest scheduled member actually impaired.

(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 66 $\frac{2}{3}$ %; 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); and (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. 2012 Supp. 44-510e is hereby amended to read as follows: 44-510e. (a) In case of whole body injury resulting in temporary or permanent partial general disability not covered by the schedule in K.S.A. 44-510d, and amendments thereto, the employee shall receive weekly compensation as determined in this subsection during 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 weekly wage that the employee was earning prior to the date of injury and the amount the

employee is actually earning after such injury in any type of employment. 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. 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, *until January 1, 2015, but for injuries occurring on and after January 1, 2015, based on the sixth 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 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 $\frac{2}{3}$ %; 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; *and* (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 payment rate until fully paid or modified. 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. 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 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. 44-512 is hereby amended to read as follows: 44-512. Workers compensation payments shall be made at the same time, place and in the same manner as the wages of the worker were payable at the time of the accident, but upon the application of either party the administrative law judge may modify such requirements in a particular case as the administrative law judge deems just, except that: (a) Payments from the workers compensation fund established by K.S.A. 44-566a, and amendments thereto, shall be made in the manner approved by the commissioner of insurance; (b) payments from the state workers compensation self-insurance fund established by K.S.A. 44-575, and amendments thereto, shall be made in a manner approved by the secretary of ~~administration~~ *health and environment*; and (c) whenever temporary total disability compensation is to be paid under the workers compensation act, payments shall be made only in cash, by check or in the same manner that the employee is normally compensated for salary or wages and not by any other means, except that any such compensation may be paid by warrant of the director of accounts and reports issued for payment of such compensation from the workers compensation fund or the state workers compensation self-insurance fund under the workers compensation act.

Sec. 11. K.S.A. 2012 Supp. 44-520 is hereby amended to read as follows: 44-520. (a) (1) Proceedings for compensation under the workers compensation act shall not be maintainable unless notice of injury by accident or repetitive trauma is given to the employer by the earliest of the following dates:

(A) ~~30~~20 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~~10 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. 12. K.S.A. 2012 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~~ ensure 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 thereafter. 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 prehearing 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, *within 10 days of the refusal*, file in the district court of the county in which the accident or injury occurred the affidavit provided in subsection (c)(2). If an affidavit is to be filed in the district court, it shall be filed within 10 days an appeal with the workers compensation board.

(2) If a party or a party's attorney files an affidavit alleging any of the grounds specified in subsection (c)(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 determining 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. *The party or a party's attorney shall file with the workers compensation board an affidavit alleging one or more of the grounds specified in subsection (e).*

(3) *If a majority of the workers compensation board finds legally sufficient grounds, it shall direct the director to assign the case to another administrative law judge.*

~~(3)~~(4) 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)~~(5) 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~~ *belief* that bias or prejudice exists.

(6) *Notwithstanding the provisions of K.S.A. 44-556, and amendments thereto, no interlocutory appeal to the court of appeals of the workers compensation appeals board's decision regarding recusal shall be allowed while the resolution of the claim for compensation is pending before an administrative law judge or the workers compensation appeals board.*

(f) (1) In any claim that has not proceeded to a regular hearing, a settlement hearing, or an agreed award under the workers compensation act within three years from the date of filing an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, 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 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. 13. K.S.A. 2012 Supp. 44-532a is hereby amended to read as follows: 44-532a. (a) If an employer has no insurance *or has an insufficient self-insurance bond or letter of credit* 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. 14. K.S.A. 44-557 is hereby amended to read as follows: 44-557. (a) It is hereby made the duty of every employer to make or cause to be

made a report to the director of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's supervisor has knowledge, which report shall be made upon a form to be prepared by the director, within 28 days, after the receipt of such knowledge, if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

(b) When such accident has been reported and subsequently such person has died, a supplemental report shall be filed with the director within 28 days after receipt of knowledge of such death, stating such fact and any other facts in connection with such death or as to the dependents of such deceased employee which the director may require. Such report or reports shall not be used nor considered as evidence before the director, any administrative law judge, the board or in any court in this state.

~~(c) No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced by serving upon the employer a written claim pursuant to K.S.A. 44-520a and amendments thereto within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.~~

~~(d)~~(c) The repeated failure of any employer to file or cause to be filed any report required by this section shall be subject to a civil penalty for each violation of not to exceed \$250.

~~(e)~~(d) Any civil penalty imposed by this section shall be recovered, by the assistant attorney general upon information received from the director, by issuing and serving upon such employer a summary order or statement of the charges with respect thereto and a hearing shall be conducted thereon in accordance with the provisions of the Kansas administrative procedure act, except that, at the discretion of the director, such civil penalties may be assessed as costs in a workers compensation proceeding by an administrative law judge upon a showing by the assistant attorney general that a required report was not filed which pertains to a claim pending before the administrative law judge.

Sec. 15. K.S.A. 2012 Supp. 44-575 is hereby amended to read as follows: 44-575. (a) As used in K.S.A. 44-575 through 44-580, and amendments thereto, "state agency" means the state, or any department or agency of the state, but not including the Kansas turnpike authority, the

university of Kansas hospital authority, any political subdivision of the state or the district court with regard to district court officers or employees whose total salary is payable by counties.

(b) For the purposes of providing for the payment of compensation for claims arising on and after July 1, 1974, and all other amounts required to be paid by any state agency as a self-insured employer under the workers compensation act and any amendments or additions thereto, there is hereby established the state workers compensation self-insurance fund in the state treasury. The name of the state workmen's compensation self-insurance fund is hereby changed to the state workers compensation self-insurance fund. Whenever the state workmen's compensation self-insurance fund is referred to or designated by any statute, contract or other document, such reference or designation shall be deemed to apply to the state workers compensation self-insurance fund.

(c) The state workers compensation self-insurance fund shall be liable to pay: (1) All compensation for claims arising on and after July 1, 1974, and all other amounts required to be paid by any state agency as a self-insured employer under the workers compensation act and any amendments or additions thereto; (2) the amount that all state agencies are liable to pay of the "carrier's share of expense" of the administration of the office of the director of workers' compensation as provided in K.S.A. 74-712 through 74-719, and amendments thereto, for each fiscal year; (3) all compensation for claims remaining from the self-insurance program which existed prior to July 1, 1974, for institutional employees of the division of mental health and retardation services of the department of social and rehabilitation services; (4) the cost of administering the state workers compensation self-insurance fund including the defense of such fund and any costs assessed to such fund in any proceeding to which it is a party; and (5) the cost of establishing and operating the state workplace health and safety program under subsection (f). For the purposes of K.S.A. 44-575 through 44-580, and amendments thereto, all state agencies are hereby deemed to be a single employer whose liabilities specified in this section are hereby imposed solely upon the state workers compensation self-insurance fund and such employer is hereby declared to be a fully authorized and qualified self-insurer under K.S.A. 44-532, and amendments thereto, but such employer shall not be required to make any reports thereunder.

(d) The secretary of ~~administration~~ *health and environment* shall administer the state workers compensation self-insurance fund and all payments from such fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of ~~administration~~ *health and environment* or a person or persons designated by the secretary. The director of accounts and reports may issue warrants pursuant to vouchers approved by the secretary for payments from the state workers compensation self-insurance fund notwithstanding the fact

that claims for such payments were not submitted or processed for payment from money appropriated for the fiscal year in which the state workers compensation self-insurance fund first became liable to make such payments.

(e) The secretary of ~~administration~~ *health and environment* shall remit all moneys received by or for the secretary in the capacity as administrator of the state workers compensation self-insurance 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 to the credit of the state workers compensation self-insurance fund.

(f) There is hereby established the state workplace health and safety program within the state workers compensation self-insurance program of the department of ~~administration~~ *health and environment*. The secretary of ~~administration~~ *health and environment* shall implement and ~~administer~~ *the division of industrial health and safety of the Kansas department of labor shall assist in administering* the state workplace health and safety program for state agencies. The state workplace health and safety program shall include, but not be limited to:

- (1) Workplace health and safety hazard surveys in all state agencies, including onsite interviews with employees;
- (2) workplace health and safety hazard prevention services, including inspection and consultation services;
- (3) procedures for identifying and controlling workplace hazards;
- (4) development and dissemination of health and safety informational materials, plans, rules and work procedures; and
- (5) training for supervisors and employees in healthful and safe work practices.

Sec. 16. K.S.A. 2012 Supp. 44-577 is hereby amended to read as follows: 44-577. (a) All claims for compensation under the workers compensation act against any state agency for claims arising on and after July 1, 1974, and claims for compensation remaining from the self-insurance program which existed prior to July 1, 1974, for institutional employees of the division of mental health and retardation services of the department of social and rehabilitation services shall be made against the state workers compensation self-insurance fund. Such claims shall be served upon the secretary of ~~administration~~ *health and environment* in the secretary's capacity as administrator of the state workers compensation self-insurance fund in the manner provided for claims against other employers under the workers compensation act. The chief attorney for the department of ~~administration~~ *health and environment*, or another attorney of the department of ~~administration~~ *health and environment* designated by the chief attorney, shall represent and defend the state workers compensation

self-insurance fund in all proceedings under the workers compensation act.

(b) The secretary of ~~administration~~ *health and environment* shall investigate, or cause to be investigated, each claim for compensation against the state workers compensation self-insurance fund. For the purposes of such investigations, the secretary of ~~administration~~ *health and environment* is authorized to obtain expert medical advice regarding the injuries, occupational diseases and disabilities involved in such claims. If, based upon such investigation and any other available information, the secretary of ~~administration~~ *health and environment* finds that there is no material dispute as to any issue involved in the claim, that the claim is valid and that the claim should be settled by agreement, the secretary of ~~administration~~ *health and environment* may proceed to enter into such an agreement with the claimant, for the state workers compensation self-insurance fund. Any such agreement may provide for lump-sum settlements subject to approval by the director and all such agreements shall be filed in the office of the director for approval as provided in K.S.A. 44-527, and amendments thereto. All other claims for compensation against such fund shall be paid in accordance with the workers compensation act pursuant to final awards or orders of an administrative law judge or the board or pursuant to orders and findings of the director under the workers compensation act.

(c) For purposes of the workers compensation act, a volunteer member of a regional emergency medical response team as provided in K.S.A. 48-928, and amendments thereto, shall be considered a person in the service of the state in connection with authorized training and upon activation for emergency response, except when such duties arise in the course of employment or as a volunteer for an employer other than the state.

Sec. 17. K.S.A. 44-578 is hereby amended to read as follows: 44-578. The secretary of ~~administration~~ *health and environment* may adopt rules and regulations necessary for the administration of the state workers compensation self-insurance fund, including the processing and settling of claims for compensation made against such fund. ~~Such rules and regulations shall be subject to the provisions of K.S.A. 75-3706 and amendments thereto and shall be adopted in accordance therewith.~~

Sec. 18. K.S.A. 44-510j, 44-512, 44-557 and 44-578 and K.S.A. 2012 Supp. 2-224a, 44-508, 44-510d, 44-510e, 44-520, 44-523, 44-532a, 44-551, 44-555c, 44-575, 44-577, 44-709 and 75-5708 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 16, 2013.

Published in the *Kansas Register* April 25, 2013.

CHAPTER 105

Senate Substitute for HOUSE BILL No. 2052
(Amended by Chapter 133)

AN ACT concerning firearms; dealing with the personal and family protection act; amending K.S.A. 2012 Supp. 21-6302, 21-6309, 45-221, 75-7c05, 75-7c06, 75-7c10 and 75-7c17 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 45-221j and 45-221k.

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

New Section 1. (a) Unlawful discharge of a firearm is the reckless discharge of a firearm within or into the corporate limits of any city.

(b) This section shall not apply to the discharge of any firearm within or into the corporate limits of any city if:

(1) The firearm is discharged in the lawful defense of one's person, another person or one's property;

(2) the firearm is discharged at a private or public shooting range;

(3) the firearm is discharged to lawfully take wildlife unless prohibited by the department of wildlife, parks and tourism or the governing body of the city;

(4) the firearm is discharged by authorized law enforcement officers, animal control officers or a person who has a wildlife control permit issued by the Kansas department of wildlife, parks and tourism;

(5) the firearm is discharged by special permit of the chief of police or by the sheriff when the city has no police department;

(6) the firearm is discharged using blanks; or

(7) the firearm is discharged in lawful self-defense or defense of another person against an animal attack.

(c) A violation of subsection (a) shall be a class B nonperson misdemeanor.

New Sec. 2. (a) The carrying of a concealed handgun as authorized by the personal and family protection act shall not be prohibited in any state or municipal building unless such building has adequate security measures to ensure that no weapons are permitted to be carried into such building and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto.

(b) Any state or municipal building which contains both public access entrances and restricted access entrances shall provide adequate security measures at the public access entrances in order to prohibit the carrying of any weapons into such building.

(c) No state agency or municipality shall prohibit an employee who is licensed to carry a concealed handgun under the provisions of the personal and family protection act from carrying such concealed handgun at the employee's work place unless the building has adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto.

(d) It shall not be a violation of the personal and family protection

act for a person to carry a concealed handgun into a state or municipal building so long as that person is licensed to carry a concealed handgun under the provisions of the personal and family protection act and has authority to enter through a restricted access entrance into such building which provides adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto.

(e) A state agency or municipality which provides adequate security measures in a state or municipal building and which conspicuously posts signage in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto, prohibiting the carrying of a concealed handgun in such building, as authorized by the personal and family protection act, such state agency or municipality shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(f) A state agency or municipality which does not provide adequate security measures in a state or municipal building and which allows the carrying of a concealed handgun as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(g) Nothing in this act shall limit the ability of a corrections facility, a jail facility or a law enforcement agency to prohibit the carrying of a handgun or other firearm concealed or unconcealed by any person into any secure area of a building located on such premises, except those areas of such building outside of a secure area and readily accessible to the public shall be subject to the provisions of subsection (b).

(h) Nothing in this section shall limit the ability of the chief judge of each judicial district to prohibit the carrying of a concealed handgun by any person into courtrooms or ancillary courtrooms within the district provided that other means of security are employed such as armed law enforcement or armed security officers.

(i) The governing body or the chief administrative officer, if no governing body exists, of a state or municipal building, may exempt the building from this section until January 1, 2014, by notifying the Kansas attorney general and the law enforcement agency of the local jurisdiction by letter of such exemption. Thereafter, such governing body or chief administrative officer may exempt a state or municipal building for a period of only four years by adopting a resolution, or drafting a letter, listing the legal description of such building, listing the reasons for such exemption, and including the following statement: "A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun as authorized by the personal and family protection act." A copy of the security plan for the building shall be maintained

on file and shall be made available, upon request, to the Kansas attorney general and the law enforcement agency of local jurisdiction. Notice of this exemption, together with the resolution adopted or the letter drafted, shall be sent to the Kansas attorney general and to the law enforcement agency of local jurisdiction. The security plan shall not be subject to disclosure under the Kansas open records act.

(j) The governing body or the chief administrative officer, if no governing body exists, of any of the following institutions may exempt any building of such institution from this section for a period of four years only by stating the reasons for such exemption and sending notice of such exemption to the Kansas attorney general:

(1) A state or municipal-owned medical care facility, as defined in K.S.A. 65-425, and amendments thereto;

(2) a state or municipal-owned adult care home, as defined in K.S.A. 39-923, and amendments thereto;

(3) a community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto;

(4) an indigent health care clinic, as defined by K.S.A. 2012 Supp. 65-7402, and amendments thereto; or

(5) a postsecondary educational institution, as defined in K.S.A. 74-3201b, and amendments thereto, including any buildings located on the grounds of such institution and any buildings leased by such institution.

(k) The provisions of this section shall not apply to any building located on the grounds of the Kansas state school for the deaf or the Kansas state school for the blind.

(l) For purposes of this section:

(1) “Adequate security measures” means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public. Adequate security measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options may be provided at public entrances.

(2) The terms “municipality” and “municipal” are interchangeable and have the same meaning as the term “municipality” is defined in K.S.A. 75-6102, and amendments thereto, but does not include school districts.

(3) “Restricted access entrance” means an entrance that is restricted to the public and requires a key, keycard, code, or similar device to allow entry to authorized personnel.

(4) “State” means the same as the term is defined in K.S.A. 75-6102, and amendments thereto.

(5) (A) “State or municipal building” means a building owned or

leased by such public entity. It does not include a building owned by the state or a municipality which is leased by a private entity whether for profit or not-for-profit or a building held in title by the state or a municipality solely for reasons of revenue bond financing.

(B) On and after July 1, 2014, provided that the provisions of section 3, and amendments thereto, are in full force and effect, the term “state and municipal building” shall not include the state capitol.

(6) “Weapon” means a weapon described in K.S.A. 2012 Supp. 21-6301, and amendments thereto.

(m) This section shall be a part of and supplemental to the personal and family protection act.

New Sec. 3. (a) A license issued under K.S.A. 75-7c01 et seq., and amendments thereto, shall authorize the licensee to carry a concealed handgun in the state capitol in accordance with the provisions of K.S.A. 75-7c01 et seq., and amendments thereto.

(b) The provisions of this section shall take effect and be in force from and after July 1, 2014, unless the legislative coordinating council determines that on July 1, 2014, the state capitol does have adequate security measures, as that term is defined in section 2, and amendments thereto, to ensure that no weapons are permitted to be carried into the state capitol. Such determination shall be made on or after June 1, 2014, but no later than July 1, 2014.

(c) This section shall be a part of and supplemental to the personal and family protection act.

Sec. 4. K.S.A. 2012 Supp. 21-6302 is hereby amended to read as follows: 21-6302. (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 instruction 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) *law enforcement officers from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. §§ 926B and 926C; or*

~~(8)(9)~~ any person carrying a concealed handgun as authorized by K.S.A. 2012 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. 2012 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 K.S.A. 2012 Supp. 21-6301, and amendments thereto.

Sec. 5. K.S.A. 2012 Supp. 21-6309 is hereby amended to read as follows: 21-6309. (a) It shall be unlawful to possess, with no requirement of a culpable mental state, a firearm on the grounds 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; or

~~(5) a person with a license issued pursuant to or recognized under K.S.A. 2012 Supp. 75-7c01 et seq., and amendments thereto, except in buildings posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto, and in the areas specified in subsections (a)(2) and (a)(3).~~

(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. 2012 Supp. 75-7c19, and amendments thereto; or

(3) *law enforcement officers from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. §§ 926B and 926C, to possess a firearm.*

(e) *It is not a violation of this section for a person to possess a handgun as authorized under the personal and family protection act.*

(f) 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~~*Buildings* have adequate security measures to ensure that no weapons are permitted to be carried into such ~~facilities~~*buildings*;

~~(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)~~(2) 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)~~(3) ~~facilities~~*buildings* have a sign conspicuously posted at each entryway into such ~~facility~~*building* stating that the provisions of subsection (d)(2) do not apply to such ~~facility~~*building*.

~~(f)~~(g) 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 shall have the same meaning as the term is defined in section 2, and amendments thereto;~~

(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)~~(h) For the purposes of ~~subsection~~*subsections* (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. 6. K.S.A. 2012 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. 2012 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 com-

mittee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2012 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 Anno-

tated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition or *disposal* of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation com-

mission 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 kidnap-

ping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers, DD Form 214. Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safe-house or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.

(51) Records of a public agency which identify the home address or home ownership of a law enforcement officer as defined in K.S.A. 2012 Supp. 21-5111, and amendments thereto, parole officer, probation officer, court services officer or community correctional services officer. The agency head of such law enforcement office, parole office, probation office, court services office or community correctional services office or such individual officer shall file with the custodian of such record a request to have such officer's identifying information removed from public access. Within seven days of receipt of such requests, the public agency shall remove such officer's identifying information from such public access.

(52) Records of a public agency which identify the home address or home ownership of a federal judge, a justice of the supreme court, a judge of the court of appeals, a district judge, a district magistrate judge, the

United States attorney for the district of Kansas, an assistant United States attorney, the attorney general, an assistant attorney general, a district attorney or county attorney or an assistant district attorney or assistant county attorney. Such person or such person's employer shall file with the custodian of such record a request to have such person's identifying information removed from public access. Within seven days of receipt of such requests, the public agency shall remove such person's identifying information from such public access.

(53) *Records of a public agency that would disclose the name, home address, zip code, e-mail address, phone number or cell phone number or other contact information for any person licensed to carry concealed handguns or of any person who enrolled in or completed any weapons training in order to be licensed or has made application for such license under the personal and family protection act, K.S.A. 2012 Supp. 75-7c01 et seq., and amendments thereto.*

(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. 7. K.S.A. 2012 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. 2012 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. 2012 Supp. 21-5903, 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. 2012 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. 2012 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. 2012 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 criminal 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. 2012 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. 2012 Supp. 21-5111, 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, as provided in subsection (b)(2), to be forwarded by the sheriff to the attorney general; (B) exempt from the required completion of a ~~weapons~~ handgun 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.

(h) *A person who is a corrections officer, a parole officer or a corrections officer employed by the federal bureau of prisons, as defined by K.S.A. 75-5202, and amendments thereto, shall be: (1) Required to pay an original license fee as provided in subsection (b)(2); (2) exempt from the required completion of a handgun safety and training course if such person was issued a certificate of firearms training by the department of corrections or the federal bureau of prisons or similar body not more than one year prior to submission of the application; (3) required to pay the*

license renewal fee; (4) required to pay to the department of revenue the fees required by subsection (f); and (5) required to comply with the criminal history records check requirement of this section.

Sec. 8. K.S.A. 2012 Supp. 75-7c06 is hereby amended to read as follows: 75-7c06. (a) The attorney general shall be the official custodian of all records relating to licenses issued pursuant to the personal and family protection act.

(b) Except as provided by subsections (c) and (d), records relating to persons issued licenses pursuant to this act, persons applying for licenses pursuant to this act or persons who have had a license denied pursuant to this act shall be confidential and shall not be disclosed ~~in a manner which enables identification of any such person pursuant to the Kansas open records act.~~ Any disclosure of a record in violation of this subsection is a class A misdemeanor.

(c) Records of a person whose license has been suspended or revoked pursuant to this act shall be subject to public inspection in accordance with the open records act.

(d) The attorney general shall maintain an automated listing of license holders and pertinent information, and such information shall be available at all times to all law enforcement agencies in this state, other states and the District of Columbia when requested for a legitimate law enforcement purpose.

(e) Within 30 days after the changing of a permanent address, or within 30 days after the discovery that a license has been lost or destroyed, the licensee shall notify the attorney general of such change, loss or destruction. The attorney general, upon notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may order a licensee to pay a fine of not more than \$100, or may suspend the licensee's license for not more than 180 days, for failure to notify the attorney general pursuant to the provisions of this subsection.

(f) In the event that a concealed handgun license is lost or destroyed, the license shall be automatically invalid, and the person to whom the license was issued, upon payment of \$15 to the attorney general, may obtain a duplicate, or substitute thereof, upon furnishing a notarized statement to the attorney general that such license has been lost or destroyed.

Sec. 9. K.S.A. 2012 Supp. 75-7c10 is hereby amended to read as follows: 75-7c10. *Subject to the provisions of section 2, and amendments thereto:*

(a) Provided that the ~~premises are~~ *building is* conspicuously posted in accordance with rules and regulations adopted by the attorney general as ~~premises a building~~ where carrying a concealed handgun is prohibited, no license issued pursuant to or recognized by this act shall authorize the licensee to carry a concealed handgun into ~~the building of~~.

~~(1) Any place where an activity declared a common nuisance by K.S.A. 22-3901, and amendments thereto, is maintained;~~

~~(2) any police, sheriff or highway patrol station;~~

~~(3) any detention facility, prison or jail;~~

~~(4) any courthouse, except that nothing in this section would preclude a judge from carrying a concealed handgun or determining who may carry a concealed handgun in the judge's courtroom;~~

~~(5) any polling place on the day an election is held;~~

~~(6) any state office;~~

~~(7) any facility hosting an athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education;~~

~~(8) any facility hosting a professional athletic event not related to or involving firearms;~~

~~(9) any drinking establishment as defined by K.S.A. 41-2601, and amendments thereto;~~

~~(10) any elementary or secondary school, attendance center, administrative office, services center or other facility;~~

~~(11) any community college, college or university;~~

~~(12) any child exchange and visitation center provided for in K.S.A. 75-720, and amendments thereto;~~

~~(13) any community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto, any mental health clinic organized pursuant to K.S.A. 65-211 et seq., and amendments thereto; any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto; or a state psychiatric hospital, as follows: Larned state hospital, Osawatomic state hospital or Rainbow mental health facility;~~

~~(14) any public library operated by the state;~~

~~(15) any day care home or group day care home, as defined in Kansas administrative regulation 28-4-113, or any preschool or childcare center, as defined in Kansas administrative regulation 28-4-420, or~~

~~(16) any place of worship *any building*.~~

(b) Nothing in this act shall be construed to prevent:

(1) Any public or private employer from restricting or prohibiting by personnel policies persons licensed under this act from carrying a concealed handgun while on the premises of the employer's business or while engaged in the duties of the person's employment by the employer, except that no employer may prohibit possession of a handgun in a private means of conveyance, even if parked on the employer's premises; or

(2) any private business or city, county or political subdivision from restricting or prohibiting persons licensed or recognized under this act from carrying a concealed handgun within a building or buildings of such entity, provided that the ~~premises are~~ *building is* posted in accordance with rules and regulations adopted by the attorney general pursuant to

subsection (f) (h), as premises—a building where carrying a concealed handgun is prohibited.

(c) (1) ~~It shall be a violation of this section to carry a concealed handgun in violation of any restriction or prohibition allowed by subsection (a) or (b) if the premises are posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (f). Any person who violates this section shall be guilty of a misdemeanor punishable by a fine of: (A) Not more than \$50 for the first offense, or (B) not more than \$100 for the second offense. Any third or subsequent offense is a class B misdemeanor.~~

Any private entity which provides adequate security measures in a private building and which conspicuously posts signage in accordance with this section prohibiting the carrying of a concealed handgun in such building as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(2) *Any private entity which does not provide adequate security measures in a private building and which allows the carrying of a concealed handgun as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.*

(3) *Nothing in this act shall be deemed to increase the liability of any private entity where liability would have existed under the personal and family protection act prior to the effective date of this act.*

(d) *The governing body or the chief administrative officer, if no governing body exists, of any of the following institutions may permit any employee, who is licensed to carry a concealed handgun as authorized by the provisions of K.S.A. 75-7c01 et seq., and amendments thereto, to carry a concealed handgun in any building of such institution, if the employee meets such institution's own policy requirements regardless of whether such building is conspicuously posted in accordance with the provisions of this section:*

(1) *A unified school district;*

(2) *a postsecondary educational institution, as defined in K.S.A. 74-3201b, and amendments thereto;*

(3) *a state or municipal-owned medical care facility, as defined in K.S.A. 65-425, and amendments thereto;*

(4) *a state or municipal-owned adult care home, as defined in K.S.A. 39-923, and amendments thereto;*

(5) *a community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto; or*

(6) *an indigent health care clinic, as defined by K.S.A. 2012 Supp. 65-7402, and amendments thereto.*

(e)(1) *It shall be a violation of this section to carry a concealed handgun in violation of any restriction or prohibition allowed by subsection (a) or (b) if the building is posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (h). Any person who violates this section shall not be subject to a criminal penalty but may be subject to denial to such premises or removal from such premises.*

(2) Notwithstanding the provisions of subsection (a) or (b), it is not a violation of this section for 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, to possess a handgun within any of the buildings described in subsection (a) or (b), 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 who is not in compliance with K.S.A. 2012 Supp. 75-7c19, and amendments thereto.

(3) *Notwithstanding the provisions of subsection (a) or (b), it is not a violation of this section for a law enforcement officer from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. §§ 926B and 926C, to possess a handgun within any of the buildings described in subsection (a) or (b), subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district.*

(f) *On and after July 1, 2014, provided that the provisions of section 3, and amendments thereto, are in full force and effect, the provisions of this section shall not apply to the carrying of a concealed handgun in the state capitol.*

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

(1) “Adequate security measures” shall have the same meaning as the term is defined in section 2, and amendments thereto;

(2) “building” shall not include any structure, or any area of any structure, designated for the parking of motor vehicles.

~~(e)~~(h) Nothing in this act shall be construed to authorize the carrying or possession of a handgun where prohibited by federal law.

~~(f)~~(i) The attorney general shall adopt rules and regulations prescribing the location, content, size and other characteristics of signs to be posted on ~~premises~~ a building where carrying a concealed handgun is prohibited pursuant to subsections (a) and (b). Such regulations shall prescribe, at a minimum, that:

(1) The signs be posted at all exterior entrances to the prohibited buildings;

- (2) ~~they~~ *the signs* be posted at eye level of adults using the entrance and not more than 12 inches to the right or left of such entrance;
- (3) the signs not be obstructed or altered in any way; and
- (4) signs which become illegible for any reason be immediately replaced.

Sec. 10. K.S.A. 2012 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 *section 2, and amendments thereto*, and in subsection (b) of K.S.A. 2012 Supp. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, prior to its repeal, or subsection (e) of K.S.A. 2012 Supp. 21-6309, 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 *section 2, and amendments thereto*, and in subsection (b) of K.S.A. 2012 Supp. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, prior to its repeal, or subsection (e) of K.S.A. 2012 Supp. 21-6309, 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. 11. K.S.A. 2012 Supp. 21-6302, 21-6309, 45-221, 45-221j, 45-221k, 75-7c05, 75-7c06, 75-7c10 and 75-7c17 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 16, 2013.

CHAPTER 106

Substitute for HOUSE BILL No. 2105
(Amended by Chapter 133)

AN ACT concerning the employment security law; amending K.S.A. 44-702 and K.S.A. 2012 Supp. 44-703, 44-704, 44-705, 44-706, 44-709, 44-710, 44-710a, 44-710b, 44-714, 44-719, 74-5602 and 75-5702 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 44-704c.

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

Section 1. K.S.A. 44-702 is hereby amended to read as follows: 44-702. As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity, due to unemployment, is a serious menace to health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and ~~his~~ *such worker's* family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor-relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed. *All persons and employers are entitled to a neutral interpretation of the employment security law.*

Sec. 2. K.S.A. 2012 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 ~~manner~~ manner 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 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 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 subject to the provisions of subsection (i)(3)(D); 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 if the business for which activities of the individual are performed retains not only the right to control the end result 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) The employer is an individual who is a resident of this state;

(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;

(ii) a partnership if $\frac{2}{3}$ or more of the partners are residents of the United States;

(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, semi-trailer, 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, *in excess of \$8,000 for the calendar years 1984 to 2014, inclusive*, and in excess of ~~\$8,000~~ \$12,000 with respect to employment during ~~any calendar year following 1983~~ *calendar year 2015, and in excess of \$14,000 with respect to all calendar years thereafter*, 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~~ *in excess of \$8,000 for the calendar years 1984-2014, inclusive, and*

in excess of \$12,000 with respect to employment during calendar year 2015, and in excess of \$14,000 with respect to all calendar years thereafter, 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 author-

ized 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 agricul-

tural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing 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. 3. K.S.A. 2012 Supp. 44-704 is hereby amended to read as follows: 44-704. (a) *Payment of benefits*. All benefits provided herein shall be payable from the fund. All benefits shall be paid through the secretary of labor, in accordance with such rules and regulations as the secretary may adopt. Benefits based on service in employment defined in subsections (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703, and amendments thereto, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act except as provided in subsection (e) of K.S.A. 44-705 and subsection (e)(2) of K.S.A. 44-711, and amendments thereto.

(b) *Determined weekly benefit amount*. An individual’s determined weekly benefit amount shall be an amount equal to 4.25% of the individual’s total wages for insured work paid during that calendar quarter of the individual’s base period in which such total wages were highest, subject to the following limitations:

(1) If an individual’s determined weekly benefit amount is less than the minimum weekly benefit amount, it shall be raised to such minimum weekly benefit amount;

(2) if the individual’s determined weekly benefit amount is more than the maximum weekly benefit amount, it shall be reduced to the maximum weekly benefit amount; and

(3) if the individual’s determined weekly benefit amount is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

(c) *Maximum weekly benefit amount*. On July 1 of each year, the secretary shall determine the maximum weekly benefit amount by computing 60% of the average weekly wages paid to employees in insured work during the previous calendar year and shall prior to that date announce the maximum weekly benefit amount so determined, by publication in the Kansas register. Such computation shall be made by dividing the gross wages reported as paid for insured work during the previous calendar year by the product of the average of midmonth employment during such calendar year multiplied by 52. The maximum weekly benefit amount so determined and announced for the twelve-month period shall apply only to those claims filed in that period qualifying for maximum payment under the foregoing formula. All claims qualifying for payment

at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in the maximum benefit amount for a subsequent twelve-month period. If the computed maximum weekly benefit amount is not a multiple of \$1, then the computed maximum weekly benefit amount shall be reduced to the next lower multiple of \$1.

(d) *Minimum weekly benefit amount.* The minimum weekly benefit amount payable to any individual shall be 25% of the maximum weekly benefit calculated in accordance with subsection (c) and shall be announced by the secretary in conjunction with the published announcement of the maximum weekly benefit, also as provided in subsection (c). The minimum weekly benefit amount so determined and announced for the twelve-month period beginning July 1 of each year shall apply only to those claims which establish a benefit year filed within that twelve-month period and shall apply through the benefit year of such claims notwithstanding a change in such amount in a subsequent twelve-month period. If the minimum weekly benefit amount is not a multiple of \$1 it shall be reduced to the next lower multiple of \$1.

(e) *Weekly benefit payable.* Each eligible individual who is unemployed with respect to any week, except as to final payment, shall be paid with respect to such week a benefit in an amount equal to such individual's determined weekly benefit amount, less that part of the wage, if any, payable to such individual with respect to such week which is in excess of the amount which is equal to 25% of such individual's determined weekly benefit amount and if the resulting amount is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

(1) For the purposes of this section, remuneration received under the following circumstances shall be construed as wages:

(A) Vacation or holiday pay that was attributable to a week that the individual claimed benefits while work was temporarily interrupted; and

(B) holiday pay that was payable with no condition of attendance on other regularly scheduled day or days; and

~~(C)~~ severance pay, if paid as scheduled, and all other employment benefits within the employer's control, as defined in subsection (e)(3), if continued as though the severance had not occurred, except as set out in subsection ~~(e)(2)(D)~~ (e)(2)(C).

(2) For the purposes of this section, remuneration received under the following circumstances shall not be construed as wages:

(A) Remuneration received for services performed on a public assistance work project;

(B) vacation pay, except as set out in subsection (e)(1)(A) above;

~~(C)~~ holiday pay that was not payable unless the individual complied with a condition of attendance on another regularly scheduled day or days;

~~(D)~~ severance pay, in lieu of notice, under the provisions of public

law 100-379, the federal worker adjustment and retraining notification act (29 U.S.C.A. §§ 2101 through 2109);

~~(E)~~ (C) all other severance pay, separation pay, bonuses, wages in lieu of notice or remuneration of a similar nature that is payable after the severance of the employment relationship, except as set out in subsection ~~(e)(1)(C)~~ (e)(1)(B); and

~~(F)~~ (D) moneys received as federal social security payments.

(3) For the purposes of this subsection (e), “employment benefits within the employer’s control” means benefits offered by the employer to employees which are employee benefit plans as defined by section 3 of the federal employee retirement income security act of 1974, as amended, (29 U.S.C. § 1002) and which the employer has the option to continue to provide to the employee after the last day that the employee worked for that employer.

(f) *Duration of benefits.* Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of 26 times such individual’s weekly benefit amount, or $\frac{1}{3}$ of such individual’s wages for insured work paid during such individual’s base period. Such total amount of benefits, if not a multiple of \$1, shall be reduced to the next lower multiple of \$1.

(g) For the purposes of this section, wages shall be counted as “wages for insured work” for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of subsection (h) of K.S.A. 44-703, and amendments thereto, with respect to becoming an employer.

(h) *Notwithstanding any other provisions of this section to the contrary, any benefit otherwise payable for any week shall be reduced by the amount of any separation, termination, severance or other similar payment paid to a claimant at the time of or after the claimant’s separation from employment during the benefit year.*

(1) *If any payment pursuant to this subsection is paid with respect to a month, then the amount deemed to be received with respect to any week during such month shall be computed by multiplying such monthly amount by 12 and dividing the product by 52. If there is no designation of the period with respect to which payments to an individual are made under this section, then an amount equal to such individual’s normal weekly wage shall be attributed to and deemed paid with respect to the first and each succeeding week following the individual’s separation from the employment of the employer making the payment until such amount so paid is exhausted.*

(2) *If benefits for any week, when reduced as provided in this subsection, result in an amount not a multiple of one dollar, such benefits shall be rounded to the next lower multiple of one dollar.*

(i) *For weeks commencing on and after January 1, 2014, if at the*

beginning of the benefit year, the three month seasonally adjusted average unemployment rate for the state of Kansas is: (1) Less than 4.5%, a claimant shall be eligible for a maximum of 16 weeks of benefits; (2) at least 4.5% but less than 6%, a claimant shall be eligible for a maximum of 20 weeks of benefits; or (3) at least 6%, a claimant shall be eligible for a maximum of 26 weeks of benefits.

Sec. 4. K.S.A. 2012 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)~~ *subparagraph* 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.

(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; *and*

(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. 5. K.S.A. 2012 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. *For purposes of this subsection, "good cause" is cause of such gravity that would impel a reasonable, not supersensitive, individual exercising ordinary common sense to leave employment. Good cause requires a showing of good faith of the individual leaving work, including the presence of a genuine desire to work.* 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 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 "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 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, “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 *and that would impel the average worker to give up such worker’s employment*;

(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 *substantial* 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. *For the purposes of this paragraph, a demotion based on performance does not constitute a violation of the work agreement;*

(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 articles 54 or 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2012 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, 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 *or suspended* 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 *in cases where the disqualification is due to discharge for misconduct* 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, "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 shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection including, but not limited to, a violation of a company rule, including a safety rule, if: (A) The individual knew or should have known about the rule; (B) the rule was lawful and reasonably related to the job; and (C) the rule was fairly and consistently enforced.~~

(2) (A) Failure of the employee to notify the employer of an absence and an individual's leaving work prior to the end of such individual's assigned work period without permission 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, 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. 2012 Supp. 21-5701, and amendments thereto. As used in this 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)(B) For the purposes of this subsection, 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 violation of the employer's reasonable attendance expectations if the facts show:~~

~~(i) The individual was absent or tardy without good cause;~~

~~(ii) the absence was in violation of the employer's written absenteeism policy; the individual had knowledge of the employer's attendance expectation; and~~

~~(iii) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence or tardiness may or will result in discharge; and~~

~~(iv) the employee had knowledge of the employer's written absenteeism policy.~~

~~(B)(C) For the purposes of this subsection, if an employee disputes being absent or tardy without good cause, the employee shall present evidence that a majority of the employee's absences or tardiness were for good cause. If the employee alleges that the employee's repeated absences or tardiness 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).~~

~~(3) (A) The term "gross misconduct" as used in this subsection shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection. Gross misconduct shall include, but not be limited to: (i) Theft; (ii) fraud; (iii) intentional damage to property;~~

(iv) intentional infliction of personal injury; or (v) any conduct that constitutes a felony.

(B) For the purposes of this subsection, the following shall be conclusive evidence of gross misconduct:

(i) The use of alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;

(ii) the impairment caused by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;

(iii) a positive breath alcohol test or a positive chemical test, provided:

(a) The test was either:

(1) Required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq.;

(2) 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;

(3) requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment;

(4) required by law and the test constituted a required condition of employment for the individual's job; or

(5) there was reasonable suspicion to believe that the individual used, had possession of, or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(b) the test sample was collected either:

(1) As prescribed by the drug free workplace act, 41 U.S.C. § 701 et seq.;

(2) 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;

(3) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment;

(4) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job; or

(5) 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)(3)(A)(iii)(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 a description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(g) the foundation evidence establishes, beyond a reasonable doubt, that the test results were from the sample taken from the individual;

(iv) an individual's refusal to submit to a chemical test or breath alcohol test, provided:

(a) The test meets the standards of the drug free workplace act, 41 U.S.C. § 701 et seq.;

(b) 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;

(c) the test was otherwise required by law and the test constituted a required condition of employment for the individual's job;

(d) 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

(e) there was reasonable suspicion to believe that the individual used, possessed or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(v) an individual's dilution or other tampering of a chemical test.

(B) For purposes of this subsection:

(i) "Alcohol concentration" means the number of grams of alcohol per 210 liters of breath;

(ii) "alcoholic liquor" shall be defined as provided in K.S.A. 41-102, and amendments thereto;

(iii) "cereal malt beverage" shall be defined as provided in K.S.A. 41-2701, and amendments thereto;

(iv) "chemical test" shall include, but is not limited to, tests of urine, blood or saliva;

(v) "controlled substance" shall be defined as provided in K.S.A. 2012 Supp. 21-5701, and amendments thereto;

(vi) "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 an open meeting by the governing body of any special district or other local governmental entity;

(vii) “positive breath test” shall mean a test result showing an alcohol concentration of .04 or greater, or the levels listed in 49 C.F.R. Part 40, if applicable, unless 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, in which case “positive chemical test” shall mean a test result showing an alcohol concentration at or above the levels provided for in the assistance or treatment program;

(viii) “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, or 49 C.F.R. Part 40, as applicable, for the drugs or abuse listed therein, unless 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, in which case “positive chemical test” shall mean a chemical result showing a concentration at or above the levels provided for in the assistance or treatment program.

(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, *except that the individual shall be disqualified after the time at which such individual intended to quit and any individual who commits misconduct after such individual gives notice to such individual's intent to quit shall be disqualified;*

(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; and (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~~ 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 be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection, 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~~ *five years* beginning with the first day following the last week of unemployment for which the individual received benefits, or for ~~one year~~ *five years* 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. *In addition to the penalties set forth in K.S.A. 44-719, and amendments thereto, an individual who has knowingly made a false statement or representation or who 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 shall be liable for a penalty in the amount equal to 25% of the amount of benefits unlawfully received.*

(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 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.

(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 pe-

riodic 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~~ed~~, but not below zero~~ed~~, 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 ~~ed~~, but not below zero~~ed~~, 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~~ed~~, or any person or organization~~ed~~, 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; 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. 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, 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 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 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. 6. K.S.A. 2012 Supp. 44-709 is hereby amended to read as follows: 44-709. (a) *Filing*. Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer.

(b) *Determination*. (1) Except as otherwise provided in this ~~subsection~~ ~~(b)(1)~~ *paragraph*, a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706, and amendments thereto. The information may be submitted by the employing unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit 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 employing unit's response time limit may be

waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of subsection (d) of K.S.A. 44-706, and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c), *except that the time limit for appeal may be waived or extended by the referee or board of review if a timely response was impossible due to excusable neglect.* The appeal must be filed within 16 calendar days after the mailing of notice to the last known addresses of the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the board of review is filed within 16 calendar days after the mailing of the decision to the parties' last known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision, *except that the time limit for appeal may be waived or extended by the referee or board of review if a timely response was impossible due to excusable neglect.*

(d) *Referees.* The secretary shall appoint, in accordance with subsection (c) of K.S.A. 44-714, and amendments thereto, one or more referees to hear and decide disputed claims.

(e) *Time, computation and extension.* In computing the period of time for an employing unit response or for 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.

(f) *Board of review.* (1) There is hereby created a board of review, hereinafter referred to as the board, consisting of three members. Except as provided by paragraph (2) of this subsection, each member of the board shall be appointed for a term of four years as provided in this subsection. Two members shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate. One member shall be representative of employees, one member shall be representative of employers, and one member shall be representative of the public in general. The appointment of the employee representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas chamber of commerce and industry. The appointment of the public representative member of the board, who, because of vocation, occupation or affiliation may be deemed not to be representative of either management or labor, shall be made by the members appointed by the governor as employee representative and employer representative. If the two members do not agree and fail to make the appointment of the public member within 30 days after the expiration of the public member's term of office, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

(2) The terms of members who are serving on the board on the effective date of this act shall expire on March 15 of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed.

(3) Each member of the board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member. Each member shall be appointed as representative of the same special interest group represented by the predecessor of the member.

(4) Each member of the board shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance

with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

(5) The board shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. The board shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of labor shall appoint an executive secretary of the board and the executive secretary shall attend the meetings of the board.

(6) The board, on its own motion, may affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board shall permit such further appeal by any of the parties interested in a decision of a referee which overrules or modifies the decision of an examiner. The board may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board shall be heard in accordance with the requirements of subsection (c). The board shall promptly notify the interested parties of its findings and decision.

(7) Two members of the board shall constitute a quorum and no action of the board shall be valid unless it has the concurrence of at least two members. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(g) *Procedure.* The manner in which disputed claims are presented, the reports on claims required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the board for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings and decisions in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. In the performance of its official duties, the board shall have access to all of the records which pertain to the disputed claim and are in the custody of the secretary of labor and shall receive the assistance of the secretary upon request.

(h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary travel expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) *Court review.* Any action of the board is subject to review in accordance with the Kansas judicial review act. No bond shall be required for commencing an action for such review. In the absence of an action for such review, the action of the board shall become final 16 calendar

days after the date of the mailing of the decision. In addition to those persons having standing pursuant to K.S.A. 77-611, and amendments thereto, the examiner shall have standing to obtain judicial review of an action of the board. The review proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the board of review or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the board either personally or by means of a designated representative to present evidence and to state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

Sec. 7. K.S.A. 2012 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, 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 reimbursing 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) *An employer’s account shall not be relieved of charges relating to a payment that was made erroneously if the secretary determines that:*

(A) *The erroneous payment was made because the employer, or the agent of the employer, was at fault for failing to respond timely or adequately to a written request from the secretary for information relating to the claim for unemployment compensation; and*

(B) *the employer or agent has established a pattern of failing to respond timely or adequately to requests for information.*

(C) *For purposes of this paragraph:*

(i) *“Erroneous payment” means a payment that but for the failure by the employer or the employer’s agent with respect to the claim for unemployment compensation, would not have been made; and*

(ii) *“pattern of failure” means repeated documented failure on the part of the employer or the agent of the employer to respond, taking into consideration the number of instances of failure in relation to the total volume of requests. An employer or employer’s agent failing to respond as described in (c)(3)(A) shall not be determined to have engaged in a “pattern of failure” if the number of such failures during the year prior to such request is fewer than two, or less than 2%, of such requests, whichever is greater.*

(C) *Determinations of the secretary prohibiting the relief of charges pursuant to this section shall be subject to appeal or protest as other determinations of the agency with respect to the charging of employer accounts.*

(D) *This paragraph shall apply to erroneous payments established on and after the effective date of this act.*

(4) 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)~~ (5) *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, (sub-

divisions, 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 become 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 non-payment, 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 ½ 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 attrib-

utable 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. 8. K.S.A. 2012 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 corrected 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) (a) ~~For the rate year 2007 and each rate year thereafter~~ *years 2007 through 2013*, 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%.

(b) *For the rate year 2014 and each rate year thereafter, except as provided in subclause (c), 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%.

(c) *For the rate year 2014 and each rate year thereafter, except for the construction industry, each employer who starts a new business and who is not eligible for a rate contribution shall pay contributions equal to 2.7% of wages paid during each calendar year with regard to employment.*

(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 sur-

charge 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 B2 of schedule II of this section for calendar years 2012, 2013, 2014 and from column ~~B1~~ B4 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 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~~ B4 of schedule II of this section. 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~~ B4.

(ii) ~~For the calendar year 2012, and each calendar year thereafter~~ *years 2012, 2013 and 2014*, 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 in-

terest 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 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	Column B4 Surcharge as a percent of taxable wages
Less than 2.0%	0.20%	0.30%		0.10%
2.0% but less than 4.0	0.40	0.50		0.20
4.0 but less than 6.0	0.60	0.70		0.30
6.0 but less than 8.0	0.80	0.90		0.40
8.0 but less than 10.0	1.00	1.10		0.50
10.0 but less than 12.0	1.20	1.30		0.60
12.0 but less than 14.0	1.40	1.50		0.70
14.0 but less than 16.0	1.60	1.70		0.80
16.0 but less than 18.0	1.80	1.90		0.90
18.0 but less than 20.0	2.00	2.10		1.00
20.0 but less than 22.0	2.00		2.20	1.10
22.0 but less than 24.0	2.00		2.40	1.20
24.0 but less than 26.0	2.00		2.60	1.30
26.0 but less than 28.0	2.00		2.80	1.40
28.0 but less than 30.0	2.00		3.00	1.50
30.0 but less than 32.0	2.00		3.20	1.60
32.0 but less than 34.0	2.00		3.40	1.70
34.0 but less than 36.0	2.00		3.60	1.80
36.0 but less than 38.0	2.00		3.80	1.90
38.0 and over	2.00		4.00	2.00

(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 2008 through 2013,~~ 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. *In order to be eligible for the reduced rates for rate year 2014 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 1.0 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.

(v) *For rate year 2015 and rate years thereafter, an eligible employer other than a negative account balance employer, who has filed all reports due and paid all contributions due and owing on or before January 31 of the applicable year is entitled to a rate discount of 25% except as provided in this subsection. This discount shall not be in effect if other reduced rates pursuant to subsections (a)(3)(C)(i) through (iv) are in effect. This discount shall not be available for a rate year if the average high cost multiple of the employment security trust fund balance falls below 1.0 as of the computation date of that year's rates, and this discount shall thereafter cease to be in effect for all subsequent rate years. For the purposes*

of this provision, the average high cost multiple is as defined by subsection (a)(3)(C)(iv).

(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.

(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~~ *legislative coordinating* 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. 9. K.S.A. 2012 Supp. 44-710b is hereby amended to read as follows: 44-710b. (a) *By the secretary of labor.* The secretary of labor shall promptly notify each contributing employer of its rate of contributions, each rated governmental employer of its benefit cost rate and each reimbursing employer of its benefit liability as determined for any calendar year pursuant to K.S.A. 44-710 and 44-710a, and amendments thereto, *on or before November 30 of the calendar year immediately preceding the calendar year in which such rate takes effect.* Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to the employer's last known address

or in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the reasons therefor. If the secretary of labor grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving the employer's rate of contributions or benefit liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to subsection (c) of K.S.A. 44-710, and amendments thereto, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision or to any other proceedings under this act in which the character of such services was determined. Any such hearing conducted pursuant to this section shall be heard in the county where the contributing employer maintains its principle place of business. The hearing officer shall render a decision concerning all matters at issue in the hearing within 90 days.

(b) *Judicial review.* Any action of the secretary upon an employer's timely request for a review and redetermination of its rate of contributions or benefit liability, in accordance with subsection (a), is subject to review in accordance with the Kansas judicial review act. Any action for such review shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under subsection (i) of K.S.A. 44-709, and amendments thereto, and the workmen's compensation act.

(c) *Periodic notification of benefits charged.* The secretary of labor may provide by rules and regulations for periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts, and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the secretary of labor may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redeterminations, made after notice and opportunity for hearing, and the secretary's findings of facts in connection therewith may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any calendar year and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact made by the secretary of labor in proceedings to redetermine the contribution rate of an employer. The review or any other proceedings relating thereto as provided for in this section may be heard by any duly authorized employee of the secretary of labor and such action shall have the same effect as if heard by the secretary.

Sec. 10. K.S.A. 2012 Supp. 44-714 is hereby amended to read as follows: 44-714. (a) *Duties and powers of secretary.* It shall be the duty of the secretary to administer this act and the secretary shall have power and authority to adopt, amend or revoke such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the secretary deems necessary or suitable to that end. Such rules and regulations may be adopted, amended, or revoked by the secretary only after public hearing or opportunity to be heard thereon. The secretary shall determine the organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. The secretary shall make and submit reports for the administration of the employment security law in the manner prescribed by K.S.A. 75-3044 to 75-3046, inclusive, and 75-3048, and amendments thereto. Whenever the secretary believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the secretary shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

(b) *Publication.* The secretary shall cause to be printed for distribution to the public the text of this act, the secretary's rules and regulations and any other material the secretary deems relevant and suitable and shall furnish the same to any person upon application therefor.

(c) *Personnel.* (1) Subject to other provisions of this act, the secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, deputies, attorneys, experts and other persons as may be necessary in carrying out the provisions of this act. The secretary shall classify all positions and shall establish salary schedules and minimum personnel standards for the positions so classified. The secretary shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and, except to temporary appointments not to exceed six months in duration, shall appoint all personnel on the basis of efficiency and fitness as determined in such examinations. The secretary shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for a partisan elective public office. The secretary shall adopt and enforce fair and reasonable rules and regulations for appointment, promotions and demotions, based upon ratings of efficiency and fitness and for terminations for cause. The secretary may delegate to any such person so appointed such power and authority as the secretary deems reasonable and proper for the effective administration of this act, and may in the secretary's discretion bond any person handling moneys or signing checks under the employment security law.

(2) No employee engaged in the administration of the employment security law shall directly or indirectly solicit or receive or be in any man-

ner concerned with soliciting or receiving any assistance, subscription or contribution for any political party or political purpose, other than soliciting and receiving contributions for such person's personal campaign as a candidate for a nonpartisan elective public office, nor shall any employee engaged in the administration of the employment security law participate in any form of political activity except as a candidate for a nonpartisan elective public office, nor shall any employee champion the cause of any political party or the candidacy of any person other than such person's own personal candidacy for a nonpartisan elective public office. Any employee engaged in the administration of the employment security law who violates these provisions shall be immediately discharged. No person shall solicit or receive any contribution for any political purpose from any employee engaged in the administration of the employment security law and any such action shall be a misdemeanor and shall be punishable by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for not less than 30 days nor more than six months, or both.

(d) ~~Advisory councils. The secretary shall appoint a state employment security advisory council and may appoint local advisory councils, composed in each case of men and women which shall include an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the secretary may designate. Each such member shall serve a four-year term. On July 1, 1996, the secretary shall designate term lengths for seated members of the council. One-half of the seated members representing employers, 1/2 of the seated members representing employees and 1/2 of the members representing the general public shall be designated by the secretary to serve two-year terms. The remaining seated members of the council shall be designated to serve four-year terms. When the term of any member expires, the secretary shall appoint the member's successor to a four-year term. If a position on the council becomes vacant prior to the expiration of the vacating member's term, the secretary may appoint an otherwise qualified individual to fulfill the remainder of such unexpired term. Such councils shall aid the secretary in formulating policies and discussing problems related to the administration of this act and in securing impartiality and freedom from political influence in the solution of such problems. Members of the state employment security advisory council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid amounts provided in subsection (c) of K.S.A. 75-3223, and amendments thereto. Service on the state employment security advisory council shall not in and of itself be sufficient to cause any member of the state employment security advisory council to be classified as a state officer or employee.~~

(e) *Employment stabilization.* The secretary, with the advice and aid

of the secretary's advisory councils and through the appropriate divisions of the department of labor, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in time of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

~~(f)~~ (e) *Records and reports.* Each employing unit shall keep true and accurate work records, containing such information as the secretary may prescribe. Such records shall be open to inspection and subject to being copied by the secretary or the secretary's authorized representatives at any reasonable time and shall be preserved for a period of five years from the due date of the contributions or payments in lieu of contributions for the period to which they relate. Only one audit shall be made of any employer's records for any given period of time. Upon request the employing unit shall be furnished a copy of all findings by the secretary or the secretary's authorized representatives, resulting from such audit. A special inquiry or special examination made for a specific and limited purpose shall not be considered to be an audit for the purpose of this subsection. The secretary may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the secretary deems necessary for the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall be held confidential, except to the extent necessary for the proper presentation of a claim by an employer or employee under the employment security law, and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity. Any claimant or employing unit or their representatives at a hearing before an appeal tribunal or the secretary shall be supplied with information from such records to the extent necessary for the proper presentation of the claim. The transcript made at any such benefits hearing shall not be discoverable or admissible in evidence in any other proceeding, hearing or determination of any kind or nature. In the event of any appeal of a benefits matter, the transcript shall be sealed by the hearing officer and shall be available only to any reviewing authority who shall reseal the transcript after making a review of it. In no event shall such transcript be deemed a public record. Nothing in this subsection ~~(f)~~ (e) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, upon request of either of the parties, for the purpose of

administering or adjudicating a claim for benefits under the provisions of any other state program, except that any party receiving such information shall be prohibited from further disclosure and shall be subject to the same duty of confidentiality otherwise imposed by this subsection ~~(f)~~ (e) and shall be subject to the penalties imposed by this subsection ~~(f)~~ (e) for violations of such duty of confidentiality. Nothing in this subsection ~~(f)~~ (e) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, for use as evidence in open court in a criminal prosecution for perjury at an appeal hearing under the employment security law or for any criminal violation of the employment security law. If the secretary or any officer or employee of the secretary violates any provisions of this subsection ~~(f)~~ (e), the secretary or such officer or employee shall be fined not less than \$20 nor more than \$200 or imprisoned for not longer than 90 days, or both. Original records of the agency and original paid benefit warrants of the state treasurer may be made available to the employment security agency of any other state or the federal government to be used as evidence in prosecution of violations of the employment security law of such state or federal government. Photostatic copies of such records shall be made and where possible shall be substituted for original records introduced in evidence and the originals returned to the agency.

~~(g)~~ (f) *Oaths and witnesses.* In the discharge of the duties imposed by the employment security law, the chairperson of an appeal tribunal, an appeals referee, the secretary or any duly authorized representative of the secretary shall have power to administer oaths and affirmations, take depositions, issue interrogatories, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of the employment security law.

~~(h)~~ (g) *Subpoenas, service.* Upon request, service of subpoenas shall be made by the sheriff of a county within that county, by the sheriff's deputy, by any other person who is not a party and is not less than 18 years of age or by some person specially appointed for that purpose by the secretary of labor or the secretary's designee. A person not a party as described above or a person specially appointed by the secretary or the secretary's designee to serve subpoenas may make service any place in the state. The subpoena shall be served as follows:

(1) *Individual.* Service upon an individual, other than a minor or incapacitated person, shall be made: (A) By delivering a copy of the subpoena to the individual personally; (B) 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; (C) by leaving a copy at the business establishment of the employer with an officer or employee of the establishment; (D) 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; or (E) if service as prescribed above in ~~clauses~~ *subparagraphs* (A), (B), (C) or (D) cannot be made with due diligence, by leaving a copy of the subpoena at the individual's dwelling house, usual place of abode or usual business establishment, and by mailing a notice by first-class mail to the place that the copy has been left.

(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 subpoena to an officer, partner or resident managing or general agent thereof, or by leaving the 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 subpoena, the offer of the duly authorized process server to deliver copies thereof and such refusal shall be sufficient service of such subpoena.

(4) *Proof of service.* (A) Every officer to whom a subpoena 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 subpoena is made by a person appointed by the secretary or the secretary's designee to make service, or any other person described in subsection ~~(4)~~ (g) of this section, 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 subpoena 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 subpoena 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.

~~(4)~~ (h) *Subpoenas, enforcement.* In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found, resides or transacts business, upon application by the secretary or the secretary's duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before the secretary, or the secretary's duly authorized representative, to produce evidence, if so ordered, or to give testimony relating to the matter under

investigation or in question. Failure to obey such order of the court may be punished by the court as a contempt thereof. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda or other records in obedience to the subpoena of the secretary or the secretary's duly authorized representative shall be punished by a fine of not less than \$200 or by imprisonment of not longer than 60 days, or both, and each day such violation continued shall be deemed to be a separate offense.

(i) *State-federal cooperation.* In the administration of this act, the secretary shall cooperate to the fullest extent consistent with the provisions of this act, with the federal security agency, shall make such reports, in such form and containing such information as the federal security administrator may from time to time require, and shall comply with such provisions as the federal security administrator may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the federal security agency governing the expenditures of such sums as may be allotted and paid to this state under title III of the social security act for the purpose of assisting in the administration of this act. Upon request therefor the secretary shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

(j) *Reciprocal arrangements.* The secretary shall participate in making reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

(1) Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states: (A) In which any part of such individual's service is performed;; (B) in which such individual maintains residence;; or (C) in which the employing unit maintains a place of business, provided there is in effect as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing units are deemed to be performed entirely within such state;

(2) service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employing unit which customarily operates in more than one state shall be deemed to be service performed entirely within the state in which such employing unit maintains the headquarters of its business; provided that there is in effect, as to such service, an approved election by an employing unit with the affirmative consent of each such individual, pursuant to which service

performed by such individual for such employing unit is deemed to be performed entirely within such state;

(3) potential rights to benefits accumulated under the employment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payments of benefits through a single appropriate agency under terms which the secretary finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(4) wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining such individual's rights to benefits under this act, and wages for insured work, on the basis of which an individual may become entitled to benefits under this act, shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this act upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the secretary finds will be fair and reasonable as to all affected interests; and

(5) (A) contributions due under this act with respect to wages for insured work shall be deemed for the purposes of K.S.A. 44-717, and amendments thereto, to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursements to the fund of such contributions and the actual earnings thereon as the secretary finds will be fair and reasonable as to all affected interests;

(B) reimbursements paid from the fund pursuant to subsection ~~(k)(4)~~ (j)(4) of this section shall be deemed to be benefits for the purpose of K.S.A. 44-704 and 44-712, and amendments thereto; the secretary is authorized to make to other state or federal agencies, and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to the provisions of this section or any other section of the employment security law;

(C) the administration of this act and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services and in making available facilities and information; the secretary is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers

provided herein with respect to the administration of this act as the secretary deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law and, in like manner, to accept and utilize information, service and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law; and

(D) to the extent permissible under the laws and constitution of the United States, the secretary is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this act and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

~~(k)~~ (k) *Records available.* The secretary may furnish the railroad retirement board, at the expense of such board, such copies of the records as the railroad retirement board deems necessary for its purposes.

~~(l)~~ (l) *Destruction of records, reproduction and disposition.* The secretary may provide for the destruction, reproduction, temporary or permanent retention, and disposition of records, reports and claims in the secretary's possession pursuant to the administration of the employment security law provided that prior to any destruction of such records, reports or claims the secretary shall comply with K.S.A. 75-3501 to 75-3514, inclusive, and amendments thereto.

~~(m)~~ (m) *Federal cooperation.* The secretary may afford reasonable cooperation with every agency of the United States charged with administration of any unemployment insurance law.

~~(n)~~ (n) The secretary is hereby authorized to fix, charge and collect fees for copies made of public documents, as defined by subsection (c) of K.S.A. ~~45-204~~ 45-217, and amendments thereto, by xerographic, thermographic or other photocopying or reproduction process, in order to recover all or part of the actual costs incurred, including any costs incurred in certifying such copies. All moneys received from fees charged for copies of such documents 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 employment security administration fund. No such fees shall be charged or collected for copies of documents that are made pursuant to a statute which requires such copies to be furnished without expense.

Sec. 11. K.S.A. 2012 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. 2012 Supp. 21-5801, 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 non-disclosure 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 inter-

est 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.

(4) *In cases involving the collection of debts arising from the employment security law, the actual amount received from the United States department of treasury under the treasury offset program or its successor shall be credited to the overpayment and any fee charged by the department of treasury shall be borne by the debtor.*

(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. 2012 Supp. 21-5211 and 21-5212, 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. 12. K.S.A. 2012 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 university of Kansas, created by K.S.A. 74-5603, and amendments thereto.

(b) “Commission” means the Kansas commission on peace officers’ standards and training, created by K.S.A. 74-5606, and amendments thereto, or the commission’s designee.

(c) “Chancellor” means the chancellor of the university of Kansas, or the chancellor’s designee.

(d) “Director of police training” means the director of police training at the law enforcement training center.

(e) “Director” means the executive director of the Kansas commission on peace officers’ standards and training.

(f) “Law enforcement” means the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof.

(g) “Police officer” or “law enforcement officer” means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to: The sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff’s office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858, and amendments thereto; conservation officers of the Kansas department of wildlife, parks and tourism; university police officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus police officers, as defined in K.S.A. 22-2401a, and amendments thereto; law enforcement agents of the director of alcoholic beverage control; law enforcement agents designated by the secretary of revenue pursuant to K.S.A. 2012 Supp. 75-5157, and amendments thereto; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission;

deputies and assistants of the state fire marshal having law enforcement authority; capitol police, existing under the authority of K.S.A. 75-4503, and amendments thereto; special investigators of the juvenile justice authority; *special investigators designated by the secretary of labor* 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. 2012 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 who is employed solely to perform correctional, administrative or operational duties related to juvenile correctional facilities; any employee of the secretary of corrections, any employee of the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife, parks and tourism; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(h) "Full-time" means employment requiring at least 1,000 hours of law enforcement related work per year.

(i) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of law enforcement related work per year.

(j) "Misdemeanor crime of domestic violence" means a violation of domestic battery as provided by K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2012 Supp. 21-5414, and amendments thereto, or any other misdemeanor under federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or

guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.

(k) “Auxiliary personnel” means members of organized nonsalaried groups who operate as an adjunct to a police or sheriff’s department, including reserve officers, posses and search and rescue groups.

(l) “Active law enforcement certificate” means a certificate which attests to the qualification of a person to perform the duties of a law enforcement officer and which has not been suspended or revoked by action of the Kansas commission on peace officers’ standards and training and has not lapsed by operation of law as provided in K.S.A. 74-5622, and amendments thereto.

Sec. 13. K.S.A. 2012 Supp. 75-5702 is hereby amended to read as follows: 75-5702. (a) The secretary of labor may appoint, with the consent of the governor, one public information officer, one or more division directors, one personal secretary and one special assistant, all of whom shall serve at the pleasure of the secretary of labor, shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of labor with the approval of the governor.

(b) (1) *The secretary may:*

(A) *Conduct public or private investigations within or outside of this state which the secretary or the secretary’s designee considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate the employment security law act or a rule and regulation adopted or order issued under the employment security law, or to aid in the enforcement of the employment security law;*

(B) *require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the secretary or the secretary’s designee determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and*

(C) *appoint one or more special investigators to aid in investigations conducted pursuant to this act.*

(2) *Such special investigators shall have authority to make arrests, serve subpoenas and all other process, conduct searches and seizures, store evidence, and carry firearms, concealed or otherwise while investigating violations of the employment security law act and to generally enforce all the criminal laws of the state as violations of those laws are encountered by such special investigators, except that no special investigator may carry firearms while performing such duties without having first successfully completed the training course prescribed for law enforce-*

ment officers under the Kansas law enforcement training act, K.S.A. 74-5601 et seq., and amendments thereto.

(c) The secretary of labor also may appoint such other officers and employees as are necessary to enable the secretary to carry out the duties of the office of the secretary and the department of labor.

(d) Except as otherwise specifically provided by law, such officers and employees shall be within the classified service under the Kansas civil service act. All personnel of the department of labor shall perform the duties and functions assigned to ~~them~~ *such personnel* by the secretary or prescribed for ~~them~~ *such personnel* by law and shall act for and exercise the powers of the secretary of labor to the extent authority to do so is delegated by the secretary.

Sec. 14. K.S.A. 44-702 and K.S.A. 2012 Supp. 44-703, 44-704, 44-704c, 44-705, 44-706, 44-709, 44-710, 44-710a, 44-710b, 44-714, 44-719, 74-5602 and 75-5702 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 16, 2013.

CHAPTER 107

HOUSE BILL No. 2009

AN ACT concerning the uniform act regulating traffic; relating to failure to comply with traffic citation; restricted driving privileges; amending K.S.A. 2012 Supp. 8-2110 and repealing the existing section.

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

Section 1. K.S.A. 2012 Supp. 8-2110 is hereby amended to read as follows: 8-2110. (a) Failure to comply with a traffic citation means failure either to: (1) Appear before any district or municipal court in response to a traffic citation and pay in full any fine and court costs imposed; or (2) otherwise comply with a traffic citation as provided in K.S.A. 8-2118, and amendments thereto. Failure to comply with a traffic citation is a misdemeanor, regardless of the disposition of the charge for which such citation was originally issued.

(b) (1) In addition to penalties of law applicable under subsection (a), when a person fails to comply with a traffic citation, except for illegal parking, standing or stopping, the district or municipal court in which the person should have complied with the citation shall mail notice to the person that if the person does not appear in district or municipal court or pay all fines, court costs and any penalties within 30 days from the date of mailing notice, the division of vehicles will be notified to suspend the

person's driving privileges. The district or municipal court may charge an additional fee of \$5 for mailing such notice. Upon the person's failure to comply within such 30 days of mailing notice, the district or municipal court shall electronically notify the division of vehicles. Upon receipt of a report of a failure to comply with a traffic citation under this subsection, pursuant to K.S.A. 8-255, and amendments thereto, the division of vehicles shall notify the violator and suspend the license of the violator until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the informing court. When the court determines the person has complied with the terms of the traffic citation, the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension or suspension action.

~~(2) (A) In lieu of suspension under paragraph (1), the driver may submit to the division of vehicles a written request for restricted driving privileges, with a non-refundable \$25 application fee, to be applied by the division of vehicles for additional administrative costs to implement restricted driving privileges. The division shall remit all restricted driving privilege application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund.~~

~~(B) Upon review and approval of the driver's eligibility, the driving privileges will be restricted by the division of vehicles for a period up to one year or until the terms of the traffic citation have been complied with and the court shall immediately electronically notify the division of vehicles of such compliance. If the driver fails to comply with the traffic citation within the one year restricted period, the driving privileges will be suspended by the division of vehicles until the court determines the person has complied with the terms of the traffic citation and the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension action. When restricted driving privileges are approved pursuant to this section, the person's driving privileges shall be restricted to driving only under the following circumstances: (i) In going to or returning from the person's place of employment or schooling, (ii) in the course of the person's employment, (iii) during a medical emergency, and (iv) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go by a court. The provisions of this paragraph shall expire on January 1, 2012.~~

(A) In lieu of suspension under paragraph (1), the driver may submit to the division of vehicles a written request for restricted driving privi-

leges, with a non-refundable \$25 application fee, to be applied by the division of vehicles for additional administrative costs to implement restricted driving privileges. The division shall remit all restricted driving privilege application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund.

(B) Upon review and approval of the driver's eligibility, the driving privileges will be restricted by the division of vehicles for a period up to one year or until the terms of the traffic citation have been complied with and the court shall immediately electronically notify the division of vehicles of such compliance. If the driver fails to comply with the traffic citation within the one year restricted period, the driving privileges will be suspended by the division of vehicles until the court determines the person has complied with the terms of the traffic citation and the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension action. When restricted driving privileges are approved pursuant to this section, the person's driving privileges shall be restricted to driving only under the following circumstances: (i) In going to or returning from the person's place of employment or schooling; (ii) in the course of the person's employment; (iii) in going to or returning from an appointment with a health care provider or 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.

(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 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. 2012 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, 2013, the supreme court may impose an additional charge, not to exceed \$22 per reinstatement fee, to fund the costs of non-judicial personnel.

Sec. 2. K.S.A. 2012 Supp. 8-2110 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 17, 2013.

CHAPTER 108

Senate Substitute for HOUSE BILL No. 2167

AN ACT concerning fireworks; amending K.S.A. 2012 Supp. 31-505 and repealing the existing section; also repealing K.S.A. 31-155 and 31-156.

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

New Section 1. (a) If fireworks are found to be stored, possessed or transported in violation of the Kansas fireworks act or any state fire marshal regulation, such fireworks may be seized by the state fire marshal or other state or local law enforcement agency. The seizing authority shall inventory all seized items and provide a copy of the inventory to the person from whom the fireworks were seized upon completion of the seizure. Reasonable costs for the storage and destruction of such fireworks shall be assessed against the party found to be in violation of the state fireworks act or regulations, except that if a hearing is requested pursuant to subsection (b), no person shall be assessed for storage costs incurred for more than 60 days after the completion of judicial review or the expiration of the time for seeking judicial review.

(b) The owner of any fireworks seized under subsection (a) may make written demand upon the state fire marshal for a hearing pursuant to the Kansas administrative procedure act. Where, after hearing, the state fire marshal finds that there has been a violation of the provisions of the Kansas fireworks act or state fire marshal regulations, the state fire marshal may destroy or order the destruction of such fireworks or direct such other disposition of the fireworks as is deemed proper. Unless necessary to protect against a substantial threat to the public health, safety or welfare, the fireworks shall not be destroyed until the completion of judicial review or expiration of the time for seeking judicial review. If the state fire marshal finds there has been no violation, the fireworks shall be returned to their owner.

(c) Where no claimant has appeared within 60 days of the seizure, demanded the return of the fireworks and proved, to the satisfaction of the state fire marshal, the claimant's title to and right of possession of such fireworks, the state fire marshal may, without process and without liability, destroy or order the destruction of the fireworks or direct such other disposition thereof as is deemed proper.

(d) Any provision herein to the contrary notwithstanding, where the manufacture, condition, storage, packing or location of fireworks is such that their continued existence or transportation is an immediate danger to public safety, health or welfare, the state fire marshal or authorized representative thereof may apply to the court which has jurisdiction over such fireworks for an emergency ex parte order authorizing the state fire marshal or authorized representative to destroy or dispose of the fireworks without liability to the owner thereof.

New Sec. 2. (a) In addition to any other penalty provided by law, the state fire marshal, upon finding that any person has violated the provisions of the Kansas fireworks act or any rules and regulations adopted thereunder, may impose a civil penalty as follows:

(1) For failure to obtain a license as required by K.S.A. 31-503, and amendments thereto, the civil penalty shall not exceed \$1,000 per violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(2) For all other violations, the civil penalty shall not exceed \$1,000 per violation, and in the case of a continuing violation, every day such violation continues after the state fire marshal has provided the person with written notice of the violation shall be deemed a separate violation.

(b) All moneys received from penalties imposed pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

New Sec. 3. There is hereby established in the state treasury a separate, nonlapsing fund to be known as the explosives regulatory and training fund which shall be administered by the state fire marshal. Money deposited to the credit of the fund as provided in K.S.A. 2012 Supp. 31-505, and amendments thereto, in addition to any other money made available for such purposes, shall be made available to the state fire marshal to support fireworks and explosives regulatory and training programs.

New Sec. 4. Except as otherwise provided in section 2, and amendments thereto, proceedings under the Kansas fireworks act shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under the Kansas fireworks act shall be in accordance with the Kansas judicial review act.

New Sec. 5. (a) Except as provided in subsection (c):

(1) It shall be unlawful to sell, offer to sell, or to possess with intent to sell or offer for sale a bottle rocket; and

(2) it shall be unlawful to ignite, fire, set off or otherwise use a bottle rocket.

(b) Any person violating the provisions of subsection (a) shall be guilty of an unclassified misdemeanor punishable by a fine of not more than \$100.

(c) The provisions of this section shall not prohibit the possession, transportation or sale of bottle rockets within Kansas by a person that is currently registered with the state fire marshal pursuant to section 6, and amendments thereto, to another currently registered person or to a non-registered person provided the non-registered purchaser submits a certification for resale outside the state of Kansas to the registered seller on a form prescribed by the state fire marshal. The registered seller shall

send the certification to the office of the state fire marshal and maintain a copy of the certification for one year from the date of sale.

(d) “Bottle rocket” means any pyrotechnic device which:

(1) Is classified as a class C explosive by the United States department of transportation under 49 C.F.R. § 173.53 (1990);

(2) is mounted on a stick or wire; and

(3) projects into the air when ignited, with or without reports, and includes any device with the same configuration, with or without reports, which may be classified as a pipe or trough rocket. “Bottle rocket” does not include helicopter-type rockets.

New Sec. 6. (a) Any person who manufactures bottle rockets or sells bottle rockets at wholesale and who desires to possess, sell or transport any bottle rockets in this state pursuant to section 5, and amendments thereto, shall register annually with the state fire marshal. Such registration shall entitle the manufacturer or wholesaler to possess, sell and transport bottle rockets in this state for the purpose of selling to another registered wholesaler or to a non-registered person provided the purchaser submits a certificate for resale outside the state of Kansas to the registered seller in accordance with section 5, and amendments thereto. Registration shall be effective for one year from the date of registration.

(b) The provisions of this section shall not require registration by a purchaser when the sale occurs in Kansas and the purchaser will transport the bottle rockets out of the state of Kansas for resale and provides the registered seller with a certificate for sale outside the state in accordance with section 5, and amendments thereto.

(c) The state fire marshal shall adopt rules and regulations necessary to enforce the provisions of section 5, and amendments thereto, and this section.

New Sec. 7. Sections 1 through 6, and amendments thereto, shall be part of and supplemental to the Kansas fireworks act, K.S.A. 31-501 et seq., and amendments thereto.

Sec. 8. K.S.A. 2012 Supp. 31-505 is hereby amended to read as follows: 31-505. (a) All fees collected pursuant to this act shall be transmitted 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 fire marshal~~ fee explosives regulatory and training fund.

Sec. 9. K.S.A. 31-155 and 31-156 and K.S.A. 2012 Supp. 31-505 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 17, 2013.

Published in the *Kansas Register* April 25, 2013.

CHAPTER 109

HOUSE BILL No. 2339

AN ACT concerning insurance; providing for certain additional riders on life insurance policies; pertaining to continuation of health insurance for spouse and dependent children of firefighters and law enforcement officers; relating to line of insurance and reporting requirements; amending K.S.A. 2012 Supp. 40-401, 40-1709 and 40-4903 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 40-401 is hereby amended to read as follows: 40-401. Any 10 or more persons, a majority of whom are citizens of this state, may associate in accordance with the provisions of this code and form an incorporated company, upon either the stock or mutual plan, to make insurance upon the lives of persons and every insurance appertaining thereto or connected therewith and to grant, purchase or dispose of annuities, and to issue funding agreements, guaranteed investment contracts and synthetic guaranteed investment contracts. Such companies may incorporate: (a) In their policies provisions or conditions for the waiver of premiums or for the granting of an annuity to the insured, or for special surrender values or other benefits in the event the insured shall from any cause become unemployed or totally and permanently disabled; (b) in their policies provisions for acceleration of life or annuity benefits in advance of the time they would otherwise be payable subject to such reserve and other regulatory standards as the commissioner may prescribe by rules and regulations, except that any provision providing for acceleration of life or annuity benefits for persons diagnosed as having a medical condition usually requiring continuous confinement for the rest of the person's life in a nursing home or other eligible facility as defined in the policy, may also provide for acceleration of benefits upon diagnosis of such condition even if the person is not confined in a nursing home or similar facility; (c) in their policies and annuity contracts provisions or conditions for waiver of surrender charges upon terms and conditions as specified in the policy or contract, subject to rules and regulations adopted by the commissioner of insurance; or (d) in their policies provisions for the payment of a larger sum if death is caused by accident than if it results from any other causes.

Prior to the payment of any accelerated benefit, the insurer shall receive from any assignee or irrevocable beneficiary of the policy a signed acknowledgment of concurrence for the payment. For the purposes of this section, "totally and permanently disabled" means disabled continuously for a period, such period to be specified in any such provision, of not less than 60 days nor more than one year, except this provision shall not apply to and specifically excludes group life insurance. Such company may make insurance on the health of individuals, against accidental personal injury, disablement or death and against loss, liability or expense on

account thereof. Such company so transacting such health and accident insurance business, or either kind, shall maintain statutory and separate reserves for such business, shall issue such contracts only in separate policies except as otherwise permitted herein and shall make separate reports to the commissioner of insurance of the premiums received and expenses and losses incurred in connection with such business, except that such reports will not be required for accelerated benefits incorporated in a life or annuity policy. Long-term care insurance meeting the applicable requirements of K.S.A. 40-2227 and 40-2228, and amendments thereto, may be incorporated in life insurance policies and annuities if approved by the commissioner.

The business of life insurance in this state shall not be in any way conducted or transacted by any company which in this state makes insurance on marine, fire, inland or any other like risks, except that: (a) Life, health and accident insurance on the group or industrial plan may be combined in one policy, which shall show the premium charged for life insurance and the premium charged for health and accident insurance, and the insured, at the insured's option, may discontinue either and by payment of the stated premium continue the other; and (b) (1) *specified disease or critical illness riders, or both, meeting the applicable requirements of K.S.A. 40-2201 et seq., and amendments thereto, and article 4 of the Kansas administrative regulations, may be incorporated in life insurance policies which shall show the premium charged for specified disease or critical illness, or both, insurance and the premium charged for life insurance; and (2) the insured, at the insured's option, may discontinue the disease or critical illness rider, or both, and continue the life insurance policy by payment of the stated premium.* The amount of capital stock of a company organized on the stock plan shall be not less than \$600,000.

Companies organized on the mutual plan shall be required to have applications from at least 200 persons for insurance upon their lives, aggregating not less than \$400,000, upon which one full annual premium in cash shall have been paid. No such company shall transact any business of insurance until, if a stock company, all the capital stock named in its charter has been paid in cash including all contributions to surplus to be made by the original purchasers of such stock. The surplus shall be at least \$600,000, and at least \$400,000 in securities authorized by this code shall have been deposited with the commissioner of insurance pursuant to K.S.A. 40-229a, and amendments thereto, and if a mutual company, a guaranty fund of at least \$1,200,000, and at least \$400,000 of which shall be in securities as authorized in this code and deposited with the commissioner of insurance pursuant to K.S.A. 40-229a, and amendments thereto. The guaranty fund may be returned to the contributors with interest at 6% per annum whenever the surplus shall equal the amount of such guaranty fund and interest, and no company shall transact any

business of insurance unless it shall maintain the capital or surplus or both required of a company commencing to transact business, or, if a mutual company, the required number and amount of applications for insurance have been received and the annual premiums collected in cash. The securities deposited pursuant to this section shall be held by the commissioner of insurance in trust for the benefit and protection of the policyholders or creditors, or both, of the company depositing the same and may be withdrawn only upon order of the commissioner of insurance.

The commissioner of insurance may adopt rules and regulations to implement the provisions of this section.

New Sec. 2. (a) (1) Except as provided in paragraph (2), whenever a state agency or municipality provides for the payment of premiums for any health benefit plan for law enforcement officers employed by such state agency or such municipality, the state agency or municipality shall pay premiums for the continuation of coverage under COBRA for the surviving spouse and eligible dependent children under the age of 26 years of a law enforcement officer who dies in the line of duty. Premiums for continuation of coverage under COBRA shall be paid for 18 months.

(2) Neither the state agency nor the municipality may be required to pay the premiums described in paragraph (1) for a surviving spouse:

(A) On or after the end of the 18th calendar month after the date of death of the deceased law enforcement officer;

(B) upon the remarriage of the deceased law enforcement officer's surviving spouse; or

(C) upon the deceased law enforcement officer's surviving spouse reaching the age of 65.

(b) For the purposes of this section:

(1) "Health benefit plan" shall have the meaning ascribed to such term in K.S.A. 40-4602, and amendments thereto.

(2) "Law enforcement officer" means an employee employed by a law enforcement agency and:

(A) Whose principal duties are engagement in the enforcement of law and maintenance of order within this state and its political subdivisions; and

(B) who is certified pursuant to the provisions of the Kansas law enforcement training act, K.S.A. 74-5601 et seq., and amendments thereto.

(3) "Municipality" means city, county or township.

(4) "State agency" shall have the meaning ascribed to such term in K.S.A. 75-3701, and amendments thereto.

Sec. 3. K.S.A. 2012 Supp. 40-1709 is hereby amended to read as follows: 40-1709. (a) (1) Except as provided in ~~paragraphs (2) and (3)~~ *paragraph (2)*, whenever a municipality provides for the payment of premiums for any health benefit plan for its firefighters, it shall pay premiums for the continuation of coverage under COBRA for the surviving spouse

and *eligible* dependent children *under the age of 26 years* of a firefighter who dies in the line of duty. Premiums for continuation of coverage under COBRA shall be paid for 18 months.

(2) A municipality may not be required to pay the premiums described in paragraph (1) for a surviving spouse:

(A) On or after the end of the 18th calendar month after the date of death of the deceased firefighter;

(B) upon the remarriage of the deceased firefighter's surviving spouse; or

(C) upon the deceased firefighter's surviving spouse reaching the age of 65.

~~(3) An individual is not a dependent child of a deceased firefighter for the purposes of paragraph (1) after such individual reaches the age of 18 years unless such individual is a:~~

~~(A) Full-time student in an accredited high school, or~~

~~(B) full-time student in a postsecondary educational institution, except that this subparagraph shall not apply to such an individual after the close of the calendar year in which the individual reaches the age of 24 as long as such individual continues to maintain such status as a full-time student.~~

(b) For the purposes of this section:

(1) "Firefighter" means an actual member of an organized fire department, of a municipality, whether regular or volunteer.

(2) "Health benefit plan" shall have the meaning ascribed to it in K.S.A. 40-4602, and amendments thereto.

(3) "Municipality" means city, county or township.

(4) "Postsecondary educational institution" shall have the meaning ascribed to it in K.S.A. 74-3201b, and amendments thereto.

Sec. 4. K.S.A. 2012 Supp. 40-4903 is hereby amended to read as follows: 40-4903. (a) Unless denied licensure pursuant to K.S.A. 2012 Supp. 40-4909, and amendments thereto, any person who meets the requirements of K.S.A. 2012 Supp. 40-4905, and amendments thereto, shall be issued an insurance agent license. An insurance agent may receive qualifications for a license in one or more of the following lines of authority:

(1) Life – insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

(2) Accident and health or sickness – insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income.

(3) Property – insurance coverage for the direct or consequential loss or damage to property of every kind.

(4) Casualty – insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property.

(5) Variable life and variable annuity products – insurance coverage provided under variable life insurance contracts, variable annuities or any other life insurance or annuity product that reflects the investment experience of a separate account.

(6) Personal lines – property and casualty insurance coverage sold primarily to an individual or family for noncommercial purposes.

(7) Credit – limited line credit insurance.

(8) *Crop insurance – limited line insurance for damage to crops from unfavorable weather conditions, fire, lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or any other peril subsidized by the federal crop insurance corporation, including multi-peril crop insurance.*

(9) *Title insurance – limited line insurance that insures titles to property against loss by reason of defective titles or encumbrances.*

(10) *Travel insurance – limited line insurance for personal risks incidental to planned travel, including, but not limited to:*

(A) *Interruption or cancellation of trip or event;*

(B) *loss of baggage or personal effects;*

(C) *damages to accommodations or rental vehicles; or*

(D) *sickness, accident, disability or death occurring during travel.*

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, for example, persons working overseas including military personnel deployed overseas.

(11) *Pre-need funeral insurance – limited line insurance that allows for the purchase of a life insurance or annuity contract by or on behalf of the insured solely to fund a pre-need contract or arrangement with a funeral home for specific services.*

(12) *Bail bond insurance – limited line insurance that provides surety for a monetary guarantee that an individual released from jail will be present in court at an appointed time.*

~~(8)~~(13) Any other line of insurance permitted under the provisions of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations promulgated thereunder.

(b) Unless suspended, revoked or refused renewal pursuant to K.S.A. 2012 Supp. 40-4909, and amendments thereto, an insurance agent license shall remain in effect as long as education requirements for resident individual agents are met by such insurance agent's biennial due date.

(c) On and after the effective date of this act: (1) Each licensed insurance agent who is an individual and holds a property or casualty qualification, or both, or a personal lines qualification shall biennially obtain a minimum of 12 C.E.C.'s in courses certified as property and casualty which shall include at least one hour of instruction in insurance ethics

which also may include regulatory compliance. No more than three of the required C.E.C.'s shall be in insurance agency management.

(2) Each licensed insurance agent who is an individual and holds a life, accident and health, or variable contracts qualification, or any combination thereof, shall biennially complete 12 C.E.C.'s in courses certified as life, accident and health, or variable contracts which shall include at least one hour of instruction in insurance ethics *which also may include regulatory compliance.* No more than three of the required C.E.C.'s shall be in insurance agency management.

(3) Each licensed insurance agent who is an individual and holds *only* a crop ~~only~~ qualification shall biennially obtain a minimum of two C.E.C.'s in courses certified as crop *C.E.C.s* under the property and casualty category.

(4) Each licensed insurance agent who is an individual and is licensed only for title insurance shall biennially obtain a minimum of four C.E.C.'s in courses certified by the board of abstract examiners as title under the property and casualty category.

(5) Each licensed insurance agent who is an individual and holds a life insurance license solely for the purpose of selling ~~life pre-need funeral insurance or annuity products used to fund a prearranged funeral program and whose report of compliance required by subsection (g) is accompanied by a certification from an officer of each insurance company represented by such agent certifying that such agent transacted no other insurance business during the period covered by the report shall biennially obtain a minimum of two C.E.C.'s in courses certified as life or variable contracts under the life, accident and health or variable contracts category shall file a report on or before such agent's biennial due date affirming that such agent transacted no other insurance business during the period covered by the report. Upon request of the commissioner, an agent shall provide certification from an officer of each insurance company which has appointed such agent that the agent transacted no other insurance business during the period covered by the report. Agents who have offered to sell or sold only pre-need funeral insurance are exempt from the requirement to obtain C.E.C.s.~~

(6) *Each licensed insurance agent who is an individual and holds only a bail bond qualification is exempt from the requirement to obtain C.E.C.s.*

(d) On and after the effective date of this act, each individual insurance agent who holds a license with both a property or casualty qualification, or both, and a life, accident and health or variable contracts qualification, or any combination thereof, and who ~~can~~ *earns* C.E.C.'s from courses certified by the commissioner as qualifying for credit in any class, may apply, at such insurance agent's option, such C.E.C.'s toward either the property or casualty continuing education requirement or to the life, accident and health or variable contracts continuing education require-

ment. However, no C.E.C. shall be applied to satisfy both the biennial property or casualty requirement, or both, and the biennial requirement for life, accident and health or variable contracts, or any combination thereof.

(e) An instructor of an approved subject shall be entitled to the same C.E.C. as a student completing the study.

(f) (1) An individual insurance agent who has been licensed for more than one year, on or before such insurance agent's biennial due date, shall file a report with the commissioner certifying that such insurance agent has met the continuing education requirements for the previous biennium ending on such insurance agent's biennial due date. Each individual insurance agent shall maintain a record of all courses attended together with a certificate of attendance for the remainder of the biennium in which the courses were attended and the entire next succeeding biennium.

(2) If the required report showing proof of continuing education completion is not received by the commissioner by the individual insurance agent's biennial due date, such individual insurance agent's qualification and each and every corresponding license shall be suspended automatically for a period of 90 calendar days or until such time as the producer satisfactorily demonstrates completion of the continuing education requirement whichever is sooner. In addition the commissioner shall assess a penalty of \$100 for each license suspended. If such insurance agent fails to furnish to the commissioner the required proof of continuing education completion and the monetary penalty within 90 calendar days of such insurance agent's biennial due date, such individual insurance agent's qualification and each and every corresponding license shall expire on such insurance agent's biennial due date. If after more than three but less than 12 months from the date the license expired, the insurance agent wants to reinstate such insurance agent's license, such individual shall provide the required proof of continuing education completion and pay a reinstatement fee in the amount of \$100 for each license suspended. If after more than 12 months from the date an insurance agent's license has expired, such insurance agent wants to reinstate such insurance agent's license, such individual shall apply for an insurance agent's license, provide the required proof of continuing education completion and pay a reinstatement fee in the amount of \$100 for each license suspended. Upon receipt of a written application from such insurance agent claiming extreme hardship, the commissioner may waive any penalty imposed under this subsection.

(3) On and after the effective date of this act, any applicant for an individual insurance agent's license who previously held a license which expires on or after June 30, 2001, because of failure to meet continuing education requirements and who seeks to be relicensed shall provide

evidence that appropriate C.E.C.'s have been completed for the prior biennium.

(4) Upon receipt of a written application from an individual insurance agent, the commissioner, in cases involving medical hardship or military service, may extend the time within which to fulfill the minimum continuing educational requirements for a period of not to exceed 180 days.

(5) This section shall not apply to any inactive insurance agent during the period of such inactivity. For the purposes of this paragraph, "inactive period" or "period of inactivity" shall mean a continuous period of time of not less than two years and not more than four years starting from the date inactive status is granted by the commissioner. Before returning to active status, such inactive insurance agent shall:

(A) File a report with the commissioner certifying that such agent has met the continuing education requirement; and

(B) pay the renewal fee. If the required proof of continuing education completion and the renewal fee is not furnished at the end of the inactive period, such individual insurance agent's qualification and each and every corresponding license shall expire at the end of the period of inactivity. For issuance of a new license, the individual shall apply for a license and pass the required examination.

(6) Any individual who allows such individual's insurance agent license in this state and all other states in which such individual is licensed as an insurance agent to expire for a period of four or more consecutive years, shall apply for a new insurance agent license and pass the required examination.

(g) (1) Each course, program of study, or subject shall be submitted to and certified by the commissioner in order to qualify for purposes of continuing education.

(2) Each request for certification of any course, program of study or subject shall contain the following information:

(A) The name of provider or provider organization;

(B) the title of such course, program of study or subject;

(C) the date the course, program of study or subject will be offered;

(D) the location where the course, program of study or subject will be offered;

(E) an outline of each course, program of study or subject including a schedule of times when such material will be presented;

(F) the names and qualifications of instructors;

(G) the number of C.E.C.'s requested; ~~and~~

(H) a nonrefundable C.E.C. qualification fee in the amount of \$50 per course, program of study or subject or \$250 per year for all courses, programs of study or subjects submitted by a specific provider or provider organization; and

(I) a nonrefundable annual provider fee of \$100.

(3) Upon receipt of such information, the commissioner shall grant

or deny certification of any submitted course, program of study or subject as an approved subject, program of study or course and indicate the number of C.E.C.'s that will be recognized for each approved course, program of study or subject. Each approved course, program of study or subject shall be assigned by the commissioner to one or both of the following classes:

(A) Property and casualty; or
(B) life insurance—(, including annuity and variable contracts), and accident and health insurance.

(4) Each course, program of study or subject shall have a value of at least one C.E.C.

(5) Each provider seeking approval of a course, program of study or subject for continuing education credit shall issue or cause to be issued to each person who attends a course, program of study or subject offered by such provider a certificate of attendance. The certificate shall be signed by either the instructor who presents the course, program of study or course or such provider's authorized representative. Each provider shall maintain a list of all individuals who attend courses offered by such provider for continuing education credit for the remainder of the biennium in which the courses are offered and the entire next succeeding biennium.

The commissioner shall accept, without substantive review, any course, program of study or subject submitted by a provider which has been approved by the insurance supervisory authority of any other state or territory accredited by the NAIC. The commissioner may disapprove any individual instructor or provider who has been the subject of disciplinary proceedings or who has otherwise failed to comply with any other state's or territory's laws or regulations.

(6) The commissioner may grant or approve any specific course, program of study or course that has appropriate merit, such as any course, programs of study or course with broad national or regional recognition, without receiving any request for certification. The fee prescribed by paragraph (2) of subsection (g) shall not apply to any approval granted pursuant to this provision.

(7) The C.E.C. value assigned to any course, program of study or subject, other than a correspondence course, computer based training, interactive internet study training or other course pursued by independent study, shall in no way be contingent upon passage or satisfactory completion of any examination given in connection with such course, program of study or subject. The commissioner shall establish, by rules and regulations criteria for determining acceptability of any method used for verification of the completion of each stage of any computer based or interactive internet study training. Completion of any computer based training or interactive internet study training shall be verified in accordance with a method approved by the commissioner.

(h) Upon request, the commissioner shall provide a list of all approved continuing education courses currently available to the public.

(i) An individual insurance agent who independently studies an insurance course, program of study or subject which is not an agent's examination approved by the commissioner and who passes an independently monitored examination, shall receive credit for the C.E.C.'s assigned by the commissioner as recognition for the approved subject. No other credit shall be given for independent study.

(j) Any licensed individual insurance agent who is unable to comply with license renewal procedures due to military service or some other extenuating circumstances may request a waiver of those procedures from the commissioner. Such agent may also request from the commissioner a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

Sec. 5. K.S.A. 2012 Supp. 40-401, 40-1709 and 40-4903 are hereby repealed.

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

Approved April 17, 2013.

CHAPTER 110
HOUSE BILL No. 2201

AN ACT concerning telecommunications; relating to the state corporation commission, regulation; concerning the Kansas universal service fund, eligibility and disbursements; establishing the telecommunications study committee; concerning KAN-ED; amending K.S.A. 66-1,188, 66-1,191, 66-1,195, 66-2002, 66-2003 and 66-2007 and K.S.A. 2012 Supp. 66-1,187, 66-2005, 66-2006, 66-2008, 66-2009 and 75-7224 and repealing the existing sections.

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

New Section 1. (a) There is hereby established the telecommunications study committee. The committee shall study telecommunications issues, the Kansas universal service fund, the federal universal service fund, the creation of a state broadband fund to support the deployment of advanced telecommunications capability to all areas of the state, the statement of the public policy of Kansas, as expressed in K.S.A. 66-2001, and amendments thereto, and other telecommunications issues determined by the legislative coordinating council.

(b) (1) The study committee shall be composed of 20 voting members.

(2) Nine members shall be from the senate committee on utilities as follows:

(A) The chairperson, vice-chairperson and ranking minority member;
(B) five members appointed by the president of the senate; and
(C) one member appointed by the minority leader of the senate.
(3) Eleven members shall be from the house committee on utilities and telecommunications as follows:

(A) The chairperson, vice-chairperson and ranking minority member;
(B) seven members appointed by the speaker of the house of representatives; and

(C) one member appointed by the minority leader of the house of representatives.

(c) Members shall be appointed to the study committee on or before August 1, 2013 for a term ending on June 30, 2015. The chairperson of the senate committee on utilities and the chairperson of the house committee on utilities and telecommunications shall serve as co-chairpersons of the committee. The co-chairpersons shall determine the procedures for calling a meeting to order and conducting committee business. The first meeting of the study committee shall be called by the co-chairpersons of the committee following the conclusion of the 2013 regular session of the Kansas legislature. The committee shall have the authority to meet at any time and at any place within the state on the call of the co-chairpersons.

(d) The provisions of the acts contained in article 12 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto, applicable to special committees shall apply to the telecommunications study committee to the extent that the same do not conflict with the specific provisions of this act applicable to the study committee.

(e) A quorum of the telecommunications study committee shall be 11 members. All actions of the committee shall be taken by a majority of all of the members of the committee.

(f) Any vacancy in the membership of the committee shall be filled by appointment in the same manner prescribed by this section for the original appointment.

(g) (1) The department of revenue shall administer an audit of the Kansas universal service fund. The audit shall examine the overall efficiency and effectiveness of the KUSF. The department shall submit a final audit report to the telecommunications study committee on or before November 1, 2014.

(2) The telecommunications study committee shall determine the scope of the audit. The audit may include an analysis of the following:

(A) The total amount of KUSF support received expressed on a per-line basis;

(B) the total amount of rural utilities service debt or other debt, by recipient or related entity, and the maturity date, amortization and security for such debt;

(C) the capital expenditures on technology by type;

(D) affiliate transactions and transfers; and
(E) the compensation received by the recipient's executives, partners, members and board.

(3) The department may review or request any document filed with the commission, including confidential data, so long as a non-disclosure agreement is signed by the auditors.

(4) The cost of the audit shall be paid from the KUSF.

(h) The telecommunications study committee shall provide an annual report to the senate committee on utilities and the house committee on utilities and telecommunications. The committee shall make recommendations and may introduce such legislation as it deems necessary in performing the committee's duties. The committee shall issue a report and policy recommendations for telecommunications to the senate committee on utilities, the senate committee on ways and means, the house committee on utilities and telecommunications and the house committee on appropriations prior to December 31, 2014.

(i) Members of the telecommunications study committee shall receive compensation, travel expenses and subsistence expenses as provided in K.S.A. 75-3212, and amendments thereto, when attending meetings of the committee.

(j) The staff of the office of the revisor of statutes, the legislative research department and the division of legislative administrative services shall provide such assistance as may be requested by the study committee.

(k) The provisions of this section shall expire on June 30, 2015.

Sec. 2. K.S.A. 2012 Supp. 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 net-

work 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, *not to include an electing carrier*, 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; E-911 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. 66-1,188 is hereby amended to read as follows: 66-1,188. The commission is given full power, authority and jurisdiction to supervise and control the ~~telecommunications—public utilities~~ *local exchange carriers*, as defined in K.S.A. 66-1,187, *and amendments thereto*, doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. *Notwithstanding the provisions of any other section, the commission shall have no jurisdiction to supervise or control telecommunications carriers or electing carriers except as provided for in subsections (y) and (z) of K.S.A. 66-2005, and amendments thereto.*

Sec. 4. K.S.A. 66-1,191 is hereby amended to read as follows: 66-1,191. The commission, upon its own initiative, may investigate all rates, joint rates, tolls, charges and exactions, classifications or schedules of rates or joint rates and rules and regulations of telecommunications public utilities *over which the commission has control*. If after full hearing and investigation the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of rates or joint rates or rules and regulations are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, tolls, charges, exactions, classifications or schedules of rates or joint rates and such rules and regulations as are just and reasonable.

If upon any investigation it is found that any regulation, measurement, practice, act or service complained of is unjust, unreasonable, unreasonably inefficient or insufficient, unduly preferential, unjustly discriminatory, or otherwise in violation of this act or of the orders of the commission, or if it is found that any service is inadequate or that any reasonable service cannot be obtained, the commission may substitute therefor such other regulations, measurements, practices, service or acts, and make such order respecting any such changes in such regulations, measurements, practices, service or acts as are just and reasonable. When, in the judgment of the commission, public necessity and convenience require,

the commission may establish just and reasonable concentration or other special rates, charges or privileges, but all such rates, charges and privileges shall be open to all users of a like kind of service under similar circumstances and conditions. Hearings shall be conducted in accordance with the provisions of the Kansas administrative procedure act, unless, in the case of a general investigation, for good cause, the commission orders otherwise.

Sec. 5. K.S.A. 66-1,195 is hereby amended to read as follows: 66-1,195. The commission shall have general supervision of all telecommunications public utilities ~~doing business in this state~~ *over which the commission has control* and shall inquire into any neglect or violations of the laws of this state by any *such* telecommunications public utility or by the officers, agents or employees thereof. From time to time, the commission shall carefully examine and inspect the condition of each *such* telecommunications public utility, its equipment, the manner of its conduct and its management with reference to the public safety and convenience. Nothing in this section shall be construed as relieving any telecommunications public utility from its responsibility or liability for damage to person or property.

Sec. 6. K.S.A. 66-2002 is hereby amended to read as follows: 66-2002. The commission shall:

(a) Adopt a definition of “universal service” and “enhanced universal service,” pursuant to subsections (p) and (q) of K.S.A. 66-1,187, *and amendments thereto*;

(b) authorize any requesting telecommunications carrier to provide local exchange or exchange access service pursuant to subsection (a) of K.S.A. 66-2003, *and amendments thereto*;

(c) on or before July 1, 1996, the commission shall initiate a proceeding to adopt guidelines to ensure that all telecommunications carriers and local exchange carriers preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers;

(d) review, approve and ensure compliance with network infrastructure plans submitted by local exchange carriers pursuant to K.S.A. 66-2005, *and amendments thereto*;

(e) review, approve and ensure compliance with regulatory plans submitted by local exchange carriers pursuant to K.S.A. 66-2005, *and amendments thereto*;

(f) on or before January 1, 1997, establish, pursuant to K.S.A. 66-2006, *and amendments thereto*, the Kansas lifeline service program, hereinafter referred to as the KLSP;

(g) initiate and complete a proceeding by January 1, 1997, to establish a competitively neutral mechanism or mechanisms to fund: Dual party relay services for Kansans who are speech or hearing impaired; telecom-

munications equipment for persons with visual impediments; and telecommunications equipment for persons with other special needs. This funding mechanism or mechanisms shall be implemented by March 1, 1997;

(h) on or before January 1, 1997, establish the Kansas universal service fund pursuant to K.S.A. 66-2008, *and amendments thereto*, hereinafter referred to as the KUSF, and make various determinations relating to the implementation of such fund;

(i) authorize all local exchange carriers to provide internet access as outlined in K.S.A. 66-2011, *and amendments thereto*, and report on the status of the implementation provisions to specified legislative committees;

(j) review the federal act and adopt additional standards and guidelines as necessary for enforcing slamming restrictions;

(k) commencing on June 1, 1997 and periodically thereafter, review and, to the extent necessary, modify the definition of universal service and enhanced universal service, and KUSF, taking into account advances in telecommunications and information technology and services;

(l) on or before January 1, 1997, initiate and complete a proceeding to establish minimum quality of service standards which will be equally applicable to all local exchange carriers ~~and telecommunications carriers~~ in the state; any local exchange carrier ~~or telecommunications carrier~~ violating such standards, for each occurrence, shall forfeit and pay a penalty of not less than \$100, nor more than \$5,000; violations of such standards shall be enforced in accordance with provisions of K.S.A. 66-138 and 66-177, and amendments thereto; ~~and~~

(m) on January 1, 2000, prepare and submit a report to the legislature. The report shall include an analysis of the manner in which the regulatory framework has served to: Protect consumers; safeguard universal service; ensure that consumers have reaped the benefits of competition; maximize the use of market forces; and promote development of the telecommunications infrastructure throughout the state. The commission also shall recommend if and how the KUSF should be modified; *and*

(n) *report to the senate committee on utilities and the house committee on utilities and telecommunications by January 15, 2014 concerning the status of the federal communications commission's further notice of proposed rulemaking regarding Internet Protocol to Internet Protocol interconnection in WC docket nos. 10-90 et al., including, but not limited to, any final, non-appealable order issued in that proceeding regarding obligations to interconnect for the exchange of voice traffic regardless of the technology used to transmit that traffic that requires implementation by the commission.*

Sec. 7. K.S.A. 66-2003 is hereby amended to read as follows: 66-2003.

(a) On or before September 1, 1996, the commission shall begin to authorize applications for certificates of public convenience and necessity to provide local exchange or exchange access service.

(b) A local exchange carrier *and an electing carrier* shall be required to offer to allow reasonable resale of its retail telecommunications services and to sell unbundled local loop, switch and trunk facilities to telecommunications carriers, as required by the federal act and pursuant to negotiated agreements or a statement of terms and conditions generally available to telecommunications carriers.

(c) To encourage telecommunications carriers to build or install telecommunications facilities, including, but not limited to, local loop and switching facilities in the state, and except as otherwise negotiated by a local exchange carrier *or electing carrier* and a telecommunications carrier, the prices for such unbundled facilities shall be determined by the commission, on a nondiscriminatory basis, to permit the recovery of costs and a reasonable profit. The commission shall determine wholesale rates on the basis of retail rates charged subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs, that will be avoided by the local exchange carrier. The commission shall approve resale restrictions proposed by any local exchange carrier *or electing carrier* which prohibit resellers from purchasing retail telecommunications services offered by that local exchange carrier *or electing carrier* to one category of customers and reselling those retail services to a different category of customers. Upon a finding that such practice would be anticompetitive, anticonsumer or detrimental to the quality of the network infrastructure, the commission may prohibit the resale of retail services at a rate lower than the wholesale rate. The commission shall approve any other reasonable limitation on resale to the extent permitted by the federal act.

(d) As provided in the federal act, in order for telecommunications carriers to provide local exchange service and exchange access service, local exchange carriers *and electing carriers* shall provide the means to interconnect their respective customers, including, but not limited to, toll access, access to operator services, access to directory listings and assistance, and access to E-911 service.

(e) Customers shall be accorded number portability and local dialing parity in conformance with national standards to the extent economically and technically feasible. Terms and prices for interconnection, unbundled facilities and resale of existing retail telecommunications services shall be negotiated in good faith between the parties. During the period from the 135th through the 160th day after the date on which an incumbent local exchange carrier *or electing carrier* receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition the commission to arbitrate any open issues. Arbitration shall

occur in conformance with the provisions of section 252 of the federal act.

(f) The commission shall require, consistent with the terms of the federal act, that 1+ intraLATA dialing parity be provided by all local exchange carriers, *electing carriers* and telecommunications carriers coincidentally with the provision of in-region interLATA toll services in the state by local exchange carriers or *electing carriers* with more than 150,000 access lines or their affiliates.

Sec. 8. K.S.A. 2012 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~~-intrastate access revenue, *except such revenue recovered from another support mechanism*, 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 excluded 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 commission 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 a la 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 information 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, 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 number of competitors in price deregulated exchanges including, but not limited to, facilities based carriers, commercial mobile radio service or broadband based service providers.

(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 non-affiliated 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 pricing. 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. 66-2000, and amendments thereto, or high cost support in those specific exchanges, but would remain eligible for KUSF support for Kansas life-line 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, *and subject to any applicable exemption from interconnection generally*, a telecommunications carrier is entitled to interconnection with a *local exchange carrier* or an electing carrier to transmit and route voice traffic between both the telecommunications carrier and the *local exchange carrier* or 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. *Nothing in this subsection shall be construed to confer jurisdiction upon the commission for services that are exempt from or otherwise not subject to commission jurisdiction.*

(z) (1) *Telecommunications carriers and electing carriers shall not be subject to regulation by the commission for the provision of telecommunications services, except that the commission shall retain the authority and jurisdiction to authorize applications, suspension or cancellation of certificates of public convenience and necessity to provide local exchange or exchange access service in the state of Kansas, but the commission may*

not use this certification authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection.

(2) Nothing in this section shall be construed to restrict the commission's authority and jurisdiction to:

(A) Carry out the commission's obligations established in 47 U.S.C. §§ 251 and 252;

(B) implement rules delegated to the state by the federal communications commission or federal law; or

(C) regulate intrastate switched access rates, terms and conditions, including the implementation of federal law concerning intercarrier compensation.

(3) The commission shall retain the authority and jurisdiction to:

(A) Carry out the commission's obligations pursuant to the underground utilities damage prevention act, K.S.A. 66-1801 et seq., and amendments thereto, and the overhead power line accident prevention act, K.S.A. 66-1709 et seq., and amendments thereto;

(B) require 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;

(C) administer the Kansas lifeline service program pursuant to K.S.A. 66-2006, and amendments thereto;

(D) administer contributions to the Kansas universal service fund pursuant to subsection (a) of K.S.A. 66-2008, and amendments thereto;

(E) assess costs and expenses pursuant to K.S.A. 66-1501 et seq., and amendments thereto, but the commission shall not use this authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection;

(F) request information from telecommunications carriers and electing carriers pursuant to K.A.R. 82-1-234a(b) and subject to the provisions of K.A.R. 82-1-221a and K.S.A. 66-1220a, and amendments thereto, but the commission shall not use this authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection; and

(G) administer consumer complaints against telecommunications carriers and electing carriers to investigate fraud, undue discrimination and other practices harmful to consumers, but the commission shall not use this authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection.

Sec. 9. K.S.A. 2012 Supp. 66-2006 is hereby amended to read as follows: 66-2006. (a) On or before January 1, 1997, the commission shall establish the Kansas lifeline service program, hereinafter referred to as the KLSP. The purpose of the KLSP shall be to promote the provision of universal service by local exchange carriers to persons with low income.

The KLSP shall be targeted to maintain affordable rates for residential local exchange service. The commission shall approve a means test to determine the eligibility of customers for such low-income assistance.

~~(b) Every local exchange carrier providing residential local telecommunications services that have been price deregulated in this state pursuant to subsection (q) of K.S.A. 66-2005, and amendments thereto, shall, and any other~~ A local exchange carrier, *electing carrier* or telecommunications carrier may, automatically enroll its existing and eligible customers in the KLSP, subject to the following:

(1) On or before January 1, 2009, the department of social and rehabilitation services, hereinafter referred to as the department, or any other successor state agency, may provide each participating carrier a list of those persons residing in the state that participate in programs which also qualify such persons to receive KLSP services. This listing shall consist of those persons who have consented to the release of their personal information to the KLSP carrier to receive KLSP services and include at a minimum the name, address and telephone number of such persons. Every six months thereafter, the department may provide to each participating carrier an updated list of persons consenting to such KLSP services. The secretary of the department may adopt rules and regulations to coordinate the acquisition and provision of the information to be provided pursuant to this subsection (b).

(2) The participating carrier shall use the list for the sole purpose of identifying those of its existing customers to whom it is currently providing telephone service.

(3) The participating carrier shall discontinue providing KLSP services to an eligible customer if the eligible customer notifies the participating carrier that the customer wishes to discontinue receiving those services.

(4) Each participating carrier receiving customer information pursuant to this subsection (b) shall execute a confidentiality agreement with the department prior to receiving non-public customer eligibility information. The agreement will specify that the customer information is released by the department to the participating carrier for the sole purpose of providing KLSP to eligible customers, and that the information cannot be released or used by the carrier for any other purpose unless authorized by the customer or otherwise required by law.

(c) To generate and facilitate participation in the lifeline service program, provide choice for Kansas consumers, and allow collection of federal lifeline program reimbursements, the KCC shall approve a wireline (non-CMRS) facilities-based telephone service provider's application for eligible telecommunications carrier, hereinafter referred to as the ETC, designation in a nonrural service area for the purpose of receiving low-income federal universal service fund support for participation in the lifeline service program, for the area equal to the applicant provider's

own service area, provided the applicant provider meets all other ETC eligibility requirements. The commission, however, may condition that such designation remain consistent with the guidelines of the federal program.

(d) *Telecommunications carriers and electing carriers may cease participation in the KLSP at any time upon provision of 90-days prior written notification to the commission. Telecommunications carriers and electing carriers participating in the KLSP shall be eligible to receive KUSF support for KLSP services, but shall not be subject to any regulation by the commission based on such participation other than that provided for in subsection (z) of K.S.A. 66-2005, and amendments thereto.*

Sec. 10. K.S.A. 66-2007 is hereby amended to read as follows: 66-2007. (a) All local exchange carriers ~~and telecommunications carriers~~, *not including electing carriers*, providing long distance service in Kansas shall reduce their statewide averaged basic long distance rates to reflect the net reductions in access charges; however, such carriers shall be allowed to increase long distance rates to reflect the KUSF funding requirements set forth in K.S.A. 66-2008, *and amendments thereto.*

(b) The commission shall approve, upon not more than 120 days' notice, any basic local exchange price increases that in the aggregate in any one year are \$1.50 or less per access line per month, that are proposed by any rural telephone company which is subject to traditional rate of return regulation and that comply with the requirements of this section. Any such proposed price increases shall be presumed reasonable and not subject to commission investigation and review if the rural telephone company has followed the notice requirements set forth below. However, the commission shall initiate an investigation if more than 15% of the subscribers subject to the rate increase request such an investigation within 60 days of the date of distribution of the notice of the proposed change. Upon filing such an application for a rate increase, any rural telephone company seeking expedited approval of the proposed rate under this section shall send a notice to its subscribers by regular mail, which may be included with regular subscriber mailings. Such mailings shall include the name, mailing address and telephone number of the commission. The notice shall include a schedule of the proposed local exchange rates, the effective date of the rates and a description of the procedures by which the subscribers can petition the commission to determine the reasonableness of the proposed rates, including a provision specifically stating that protest by 15% or more of subscribers subject to the proposed rate increase would require the commission to initiate an investigation concerning the reasonableness of the proposed rate increase.

(c) The commission shall have the right to investigate and determine the reasonableness of an increase in local exchange rates and charges

under subsection (b) by any rural telephone company within one year of the time local exchange rates or charges are increased. If the commission determines such rate or charge increases are unreasonable, the commission shall have the authority to order a rate hearing and, after such hearing, shall have the authority to rescind all or any portion of the increases found to be unreasonable.

Sec. 11. K.S.A. 2012 Supp. 66-2008 is hereby amended to read as follows: 66-2008. On or before January 1, 1997, the commission shall establish the Kansas universal service fund, hereinafter referred to as the KUSF.

(a) The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services and, to the extent not prohibited by federal law, every provider of interconnected VoIP service, as defined by 47 C.F.R. § 9.3 (October 1, 2005), to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility, wireless telecommunications service provider or provider of interconnected VoIP service which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer.

Any contributions in excess of distributions collected in any reporting year shall be applied to reduce the estimated contribution that would otherwise be necessary for the following year.

(b) Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

(c) *Beginning January 1, 2014:*

(1) *Annual distributions from the KUSF for a local exchange carrier subject to price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, shall be capped at the lesser of:*

(A) *90% of KUSF support the carrier received for the 12-month period ending February 28, 2013; or*

(B) *\$11,400,000.*

The amounts prescribed in subparagraph (A) or (B) shall not include KUSF support for Kansas lifeline service program purposes, pursuant to K.S.A. 66-2006, and amendments thereto.

(2) *Local exchange carriers subject to price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, shall not receive KUSF support for any residential or business lines within an exchange that the commission has granted price deregulation pursuant to subsections*

(q)(1)(B), (C) or (D) of K.S.A. 66-2005, and amendments thereto, except for areas within any census block in such an exchange in which there is no wireline carrier providing local exchange access lines that does not receive KUSF support, not including KUSF support for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, for such access lines.

(3) Local exchange carriers subject to price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, shall receive the same per line, per month KUSF support as established in the April 13, 2000 notice in commission docket numbers 99-GIMT-326-GIT and 00-GIMT-236-GIT subject to the cap percentage in subsection (c)(1), not including KUSF support for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, except that the amount shall be reduced by any funding received by such carrier from the federal communication commission's connect America fund II for the same household, if feasible, or for the same census block.

(4) The commission shall discontinue the use of the "identical support" rule and shall cap all competitive eligible telecommunications carriers' KUSF high cost support as of March 1, 2013, and beginning March 1, 2014, over a period of four years in annual equal increments, reduce to zero, beginning March 1, 2018, the amount of KUSF high cost support received by competitive eligible telecommunications carriers. Nothing in this section shall be construed to affect competitive eligible telecommunications carriers' eligibility for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto. For the purposes of this subsection, "competitive eligible telecommunications carrier" means a telecommunications carrier designated by the commission as an eligible telecommunications carrier after January 1, 1998. "Competitive eligible telecommunications carrier" shall not mean any local exchange carrier or any electing carrier designated by the commission as an eligible telecommunications carrier by order dated December 5, 1997, in docket No. 98-GIMT-241-GIT, or any such local exchange carrier's or electing carrier's successors or assigns.

(5) An electing carrier shall no longer be eligible to receive high cost support from the KUSF.

(d) (1) Subject to paragraph (2), the commission may periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly and annually report such changes to the senate standing committee on utilities and the house standing committee on utilities and telecommunications.

(2) The commission shall periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommu-

communications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly *undertake a review of the capped amount of KUSF support available for each local exchange carrier operating under price cap regulation that receives such support, not including Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, and determine if a lesser amount is appropriate for KUSF distributions after March 1, 2019. Reviews of such carriers shall be based on the forward-looking costs of providing basic voice service, using inputs that reflect the actual geography being served and that reflect the scale and scope of the local exchange carrier providing basic local voice service within each exchange.*

(d) ~~Any qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider may request supplemental funding from the KUSF based upon a percentage increase in access lines over the 12-month period prior to the request. The supplemental funding shall be incurred for the purpose of providing services to and within the service area of the qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider. Supplemental funding from the KUSF shall be used for infrastructure expenditures necessary to serve additional customers within the service area of such qualifying utility, provider or carrier. All affected parties shall be allowed to review and verify a request of such a qualified utility, carrier or provider for supplemental funding from the KUSF, and to intervene in any commission proceeding regarding such request. The commission shall issue an order on the request within 120 days of filing. Additional funding also may be requested for: The recovery of shortfalls due to additional rebalancing of rates to continue maintenance of parity with interstate access rates; shortfalls due to changes to access revenue requirements resulting from changes in federal rules; additional investment required to provide universal service and enhanced universal service, deployed subject to subsection (a) of K.S.A. 66-2005, and amendments thereto; and for infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory or judicial authority. Such requests shall be subject to simplified filing procedures and the expedited review procedures, as outlined in the stipulation attached to the order of November 19, 1990 in docket no. 127,140-U (Phase IV).~~

(e) (I) For each local exchange carrier electing pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto, to operate under traditional rate of return regulation, all KUSF support, including any adjustment thereto pursuant to this section shall be based on such carrier's embedded costs, revenue requirements, investments and expenses. *Until at least March 1, 2017, any modification of such support shall be made*

only as a direct result of changes in those factors enumerated in this subsection. Nothing in this subsection shall prohibit the commission from conducting a general investigation regarding effects of federal universal service reform on KUSF support and the telecommunications public policy of the state of Kansas as expressed in K.S.A. 66-2001, and amendments thereto. The commission may present any findings and recommendations to the telecommunications study committee established in section 1, and amendments thereto.

(2) *Notwithstanding any other provision of law, no KUSF support received by a local exchange carrier electing pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto, to operate under traditional rate of return regulation shall be used to offset any loss of federal universal service fund support for such carrier, except that such limitation on KUSF support shall not preclude recovery of reductions in intrastate access revenue pursuant to subsection (c) of K.S.A. 66-2005, and amendments thereto.*

(3) *Notwithstanding any other provision of law, the total KUSF distributions made to all local exchange carriers operating under traditional rate of return regulation pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto, shall not exceed an annual \$30,000,000 cap. A waiver of the cap shall be granted based on a demonstration by a carrier that such carrier would experience significant hardship due to force majeure or natural disaster as determined by the commission.*

(f) *Additional supplemental funding from the KUSF, other than as provided in subsection ~~(d)~~(e), may be authorized at the discretion of the commission. However, the commission may require approval of such funding to be based upon a general rate case filing. With respect to any request for additional supplemental funding from the KUSF and to any audit of a rural telephone company's KUSF support, the commission shall act expeditiously, but and shall not be subject to the ~~120-day~~ 240-day deadline set forth in subsection ~~(d)~~ for rate case applications pursuant to K.S.A. 66-117, and amendments thereto.*

Sec. 12. K.S.A. 2012 Supp. 66-2009 is hereby amended to read as follows: 66-2009. (a) Local exchange carriers, *not including electing carriers*, that provided switched local exchange services in the state prior to January 1, 1996, or their successors, shall serve as the carrier of last resort in their exchanges and shall be eligible to receive KUSF funding. However, with respect to the Hill City exchange area in which multiple carriers were certified prior to January 1, 1996, the commission's determination, subject to court appeals, shall determine which authorized carrier shall serve as carrier of last resort. The local exchange carrier serving as the carrier of last resort shall remain the carrier of last resort and shall be entitled to recover the costs of serving as carrier of last resort.

(b) Beginning March 1, 1997, the amount of KUSF funds owed to

each qualifying telecommunications carrier, telecommunications public utility or wireless telecommunications service provider in the state, based upon the revenue requirements assigned to the funds for such qualifying utility, carrier or provider, shall be allocated by the fund administrator in equal monthly installments.

(c) (1) For the purposes of this subsection:

(A) “Alternative service provider” means any person or entity providing local telecommunications services or any person or entity allowing another person or entity to use its equipment or facilities to provide local telecommunications services or any person or entity securing rights to select an alternative service provider for a property owner or developer, and does not include a local exchange carrier providing service within its commission-approved local exchange service area.

(B) “Alternative technology” means any technology that offers local telecommunications service and functionality comparable to that provided through an existing alternative service provider’s facilities, and may include a technology that does not require the use of any public right-of-way.

(C) “Greenfield area” means an area that requires entirely new construction of local loops, in addition to the deployment of any necessary switching and other network equipment, to serve new real property developments.

(D) “Local telecommunications service” means two-way voice service capable of being originated and terminated within a local exchange service area, regardless of the technology used to provision the voice service.

(E) “Owner or developer” means the owner or developer of a business or residential property, any condominium association or homeowners’ association thereof, any other person or entity having ownership in, or control over, the property, or any person acting on behalf of such owner or developer.

(F) “Real property” includes, but is not limited to, any single tenant or multi-tenant business or residential property, subdivisions, condominiums, apartments, office buildings or office parks.

(2) A local exchange carrier obligated by this section to serve as the carrier of last resort is hereby relieved of that obligation, and shall not be obligated to provide basic local telecommunications service to any occupants of real property if the owner or developer of the real property, or a person acting on behalf of the owner or developer of real property, engages in any of the following acts:

(A) Permits an alternative service provider to install its facilities or equipment used to provide local telecommunications service based on a condition of exclusion of the local exchange carrier, during the construction phase of the real property;

(B) accepts or agrees to accept incentives or rewards from an alternative service provider that are contingent upon the provision of any or

all local telecommunications services by one or more alternative service providers to the exclusion of the local exchange carrier; or

(C) collects from the occupants or residents of the real property mandatory charges for the provision of any local telecommunications service provided by an alternative service provider to the occupants or residents in any manner, including, but not limited to, collection through rent, fees or dues.

(3) The local exchange carrier relieved of its carrier of last resort obligation to provide basic local telecommunications service to the occupants of the real property, pursuant to subsection (c), shall notify the commission of that fact within 120 days after receiving knowledge of the existence of such fact.

(4) A local exchange carrier that is not automatically relieved of its carrier of last resort obligation pursuant to paragraph (2) of subsection (c) may seek a waiver of its carrier of last resort obligation from the commission for good cause shown based on the facts and circumstances of the provision of local telecommunications service or internet access service to a particular real property. Upon petition for such relief, notice shall be given by the local exchange carrier at the same time to the relevant owner or developer. The commission shall make a determination concerning the petition on or before 90 days after such petition is filed.

(5) If all conditions described in paragraph (2) or (4) of subsection (c) cease to exist at the property, and the owner or developer requests in writing that the local exchange carrier make local telecommunications service available to occupants of the real property and confirms in writing that all conditions described in paragraph (2) or (4) of subsection (c) have ceased to exist at the property, the carrier of last resort obligation under this section shall again apply to the local exchange carrier at the real property. The local exchange carrier shall provide notice to the commission that it is assuming the carrier-of-last-resort obligation. The local exchange carrier may require that the owner or developer pay to the local exchange carrier in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the real property initially. The commission may verify that the fee enables the local exchange carrier to recover its costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the real property initially, including, but not limited to, amounts necessary to install or retrofit any facilities or equipment, to cut or trench sidewalks and streets and to restore roads, sidewalks, block walls or landscapes to original conditions. The local exchange carrier shall have a reasonable period of time following the request from the owner or developer to make arrangements for local telecommunications service availability. If a local exchange carrier is relieved of its carrier of last resort obligation under paragraph (2) or (4) of subsection (c), the owner or developer shall notify all occupants and any

subsequent owner of the specific real property of the following: (1) That the incumbent local exchange carrier does not have facilities installed to serve the specific real property, and that such carrier has been relieved of its carrier of last resort obligations; and (2) the name of the person that will be providing local telecommunications service to the real property, and the type of technology that will be used to provide such service. An incumbent local exchange carrier may meet the carrier's obligations under this section using any available alternative technology. If any conditions described in paragraph (2) or (4) of subsection (c) again exist at the real property, the relief in paragraph (2) or (4) of subsection (c) shall again apply.

(6) When real property is located in a greenfield area, a carrier of last resort shall not automatically be excused from its obligations under paragraph (2) of subsection (c) unless the alternative service provider possesses or shall possess at the time of commencement of service the capability to provide local telecommunications service or the functional equivalent of such service through any form of technology.

(7) If an owner or developer of real property permits an alternative service provider to install its facilities or equipment used to provide local telecommunications service to such property based on a condition of exclusion of the local exchange carrier, the owner or developer must provide written notice to the purchaser of any such real property that there is an exclusion of that local exchange carrier, and that the alternative service provider is the exclusive provider of service to such property.

Sec. 13. K.S.A. 2012 Supp. 75-7224 is hereby amended to read as follows: 75-7224. (a) The board shall:

(1) Provide a program to facilitate the use of broadband technology-based video communication for distance learning and telemedicine by schools, libraries and hospitals;

(2) transition schools, libraries and hospitals that have a direct KAN-ED connection as of January 1, 2012, to a commercially provided broadband internet connection no later than June 30, 2013. At the time a school, library or hospital has been transitioned off a KAN-ED connection, the board shall pay up to \$350 per month to such school, library or hospital for the cost of broadband service until June 30, 2013;

(3) provide the secretary of commerce any information necessary to conduct the needs assessment described in subsection (b);

(4) assist schools, libraries and hospitals to apply for federal grants to be used for purposes consistent with this act; and

(5) collect data regarding:

(A) Distance learning and telemedicine usage; and

(B) the volume of data accessed.

The board shall develop a methodology for updating and validating any

data collected for periodic revisions of the program, standards and priorities.

(b) (1) The secretary of commerce shall facilitate the execution of the needs assessment and the creation of the report. The secretary shall contract with a third party that has expertise in telecommunications services for educational institutions to conduct such needs assessment and create such report.

(2) The needs assessment shall include, for each school, library and hospital connected to the network as of January 1, 2012: Current and future broadband service and quality needs and a determination of all KAN-ED expenses for shared services or infrastructure, including any costs deferred by federal moneys, that are providing services and network connections. Based on the results of the needs assessment, the secretary of commerce, in coordination with the third party contractor, shall create a report that: (A) Compares the utilization, efficiency and effectiveness of KAN-ED to other similar programs in other states for schools, libraries and hospitals; (B) determines if the KAN-ED program, as of the effective date of this act, is worth its cost in terms of price, service, quality, needed network upgrades and increased utilization of broadband by schools, libraries and hospitals; (C) determines if there are alternative models or opportunities for broadband procurement by schools, libraries and hospitals; (D) determines if the services and applications offered by KAN-ED lead to full utilization of broadband technology by schools, libraries, hospitals and their surrounding communities; and (E) recommends any cost-effective broadband services that are available.

(3) The board shall reimburse the cost of conducting such needs assessment and report described in paragraph (2), not to exceed \$250,000.

(4) The results of such needs assessment and the report shall be submitted to the board on or before January 1, 2013.

(c) The board may request and receive assistance from any school, any library, any hospital, the state corporation commission, any other agency of the state or any telecommunications, cable or other communications services provider to gather necessary data to implement such program.

(d) The board shall establish: (1) Technical standards for operation and maintenance of the program; (2) the method of monitoring operations of the program; and (3) the method or methods of adjusting the program to reflect the needs of schools, libraries and hospitals as determined by the needs assessment or ongoing data collection for each such entity. Such standards and methods shall be included in the board's report to the legislature pursuant to K.S.A. 2012 Supp. 75-7226, and amendments thereto.

(e) Based on the findings of the needs assessments or collected data, the board shall develop a plan to: (1) Facilitate the use of broadband technology-based video communication for distance learning and tele-

medicine by schools, libraries and hospitals; *and* (2) transition schools, libraries and hospitals that have a direct KAN-ED connection as of January 1, 2012, to a commercially provided broadband internet connection no later than June 30, 2013. The plan may require users of the program to bear part of its cost. Such plan shall be included in the board's report to the legislature pursuant to K.S.A. 2012 Supp. 75-7226, and amendments thereto.

(f) The board may appoint such advisory committees as the board determines necessary to carry out the purposes of this act. The membership of advisory committees may include both members of the board and persons who are not board members. Such advisory committees, to the extent appropriate, shall include both communications services providers and participants knowledgeable about topics such as network facilities and services, distance learning and telemedicine, user training and such other topics as may be necessary or useful. Members of advisory committees appointed by the board shall receive amounts provided for in subsection (e) of K.S.A. 75-3223, and amendments thereto.

(g) The board shall have all other powers necessary to achieve the purposes of this act, including, but not limited to, the power to: (1) *Fix, charge and collect user fees for services provided by the KAN-ED program in accordance with the plan developed pursuant to subsection (e); and* (2) receive any appropriations, *fees*, donations, grants, bequests and devises, conditional and otherwise, of money, property, services or other things of value for the purposes of this act.

(h) The state department of education, the office of information technology services of the department of administration, the state corporation commission and all other state agencies shall cooperate with the board in providing information and other assistance requested by the board for the performance of its duties pursuant to this act at no cost to such agencies.

Sec. 14. K.S.A. 66-1,188, 66-1,191, 66-1,195, 66-2002, 66-2003 and 66-2007 and K.S.A. 2012 Supp. 66-1,187, 66-2005, 66-2006, 66-2008, 66-2009 and 75-7224 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 17, 2013.

CHAPTER 111

HOUSE BILL No. 2363

AN ACT concerning water; relating to wastewater regulations; relating to streams, dams and obstructions; amending K.S.A. 82a-307 and K.S.A. 2012 Supp. 82a-301, 82a-302, 82a-303b, 82a-326, 82a-734 and 82a-1901 and repealing the existing sections; also repealing K.S.A. 24-105, 24-107, 82a-312, 82a-313, 82a-314 and K.S.A. 2012 Supp. 24-106, 74-509, 82a-307a, 82a-326a and 82a-735.

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

New Section 1. (a) Subject to existing water rights and the principle of beneficial use, the chief engineer may grant, upon application made therefor, limited transfer permits to authorize the use of up to 4,000,000 gallons from an existing water right. The term of such limited transfer permit will be limited to a single calendar year. Each application submitted for a limited transfer permit shall be on a form prescribed by the chief engineer and accompanied by an application fee of \$200.

(b) (1) If the base water right is groundwater, the use of water can be transferred to another well within the same source of supply within two miles.

(2) If the base water right is surface water, the use can be transferred to another surface water use within the same surface water system.

(c) The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this section. Such rules and regulations shall require that there is no increase in consumptive use enabled by the transfer permit, prescribe necessary recordkeeping and reporting requirements, prevent impairment of existing rights and address any other matter deemed necessary by the chief engineer to protect the public interest.

(d) Nothing in this section shall be deemed to vest in the holder of any permit granted pursuant to provisions of this section any permanent right to appropriate water except as is provided by such permit.

(e) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

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

New Sec. 2. Any rules and regulations adopted by the secretary of health and environment pursuant to K.S.A. 65-171d, and amendments thereto, shall not apply to land-based sand and gravel pits or aggregate mining operations utilizing washwater ponds if the only water or wastewater directed to the dredge pit or washwater pond consists of the following:

- (a) Dredge return flows;
- (b) flows generated from aggregate classification; or

(c) flows from washing aggregate, if water used in such flows is returned to the dredge pit or washwater pond.

Sec. 3. K.S.A. 2012 Supp. 82a-734 is hereby amended to read as follows: 82a-734. (a) An operator shall notify the chief engineer of the location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded or operated by the operator.

(b) The net evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall be construed to be a beneficial use or diversion of water for the purposes of the Kansas water appropriation act, K.S.A. 82a-701 et seq., and amendments thereto, if the sand and gravel pit is opened or operated in a township where the average annual potential net evaporation is greater than 18 inches per year, as determined by the chief engineer.

(c) If the chief engineer determines that an existing or proposed sand and gravel pit operation is a beneficial use of water, the operator shall apply to the chief engineer for a permit to appropriate water in accordance with the Kansas water appropriation act or otherwise acquire ownership or control of sufficient water rights, or by other methods pursuant to rules and regulations adopted by the chief engineer, or both, to offset net evaporation for the operation. The chief engineer may reduce this required offset based on the estimated use of groundwater by the existing vegetation.

(d) (1) The permit shall authorize net evaporation as the primary use, and hydraulic dredging and sand washing as secondary uses of water if such secondary uses are located within the same source of supply and are associated with the operation. Any secondary uses shall use water in a manner in which there is no significant net consumptive use. The permit shall not be subject to the installation of a water flow meter or administration of minimum desirable stream flow. *Where the average potential net evaporation is less than 18 inches per year as determined by the chief engineer, the chief engineer shall issue a single term permit for the life of the project, not to exceed 80 years, for such secondary uses.*

(2) The secondary uses shall be granted for the proposed life of the project or until the exhaustion of sand and gravel reserves. At the end of the industrial project, the owner shall file an application authorized by K.S.A. 82a-708b, and amendments thereto, to change the primary use made of water to recreational use to authorize the net evaporation use caused by the exposed groundwater.

(3) If a permit is denied, the chief engineer shall set forth all reasons for such denial.

(4) Any applicant who is denied a project permit by a final order of the chief engineer under this section may appeal such order in the manner provided by the Kansas judicial review act.

(5) Any application for a project permit shall be accompanied by a

filing fee of \$500 and any request for modification shall be accompanied by a fee of \$250. Applicants for a project permit under this section shall not be required to pay fees pursuant to K.S.A. 82a-708a and 82a-708c, and amendments thereto, as part of such application.

(e) (1) The initial period of time allowed to complete construction of diversion works pursuant to an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be reasonable and consistent with the proposed use. The chief engineer may allow extension of such period by not to exceed two 10-year extensions if it can be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area. The two 10-year extensions may be granted at the same time, to run consecutively, if the applicant submits to the chief engineer a written development plan.

(2) The period of time allowed to perfect an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be not less than 20 years and, for good cause shown, the chief engineer may allow one or more 10-year extensions of such period. The chief engineer shall consider the time needed until exhaustion of proven reserves, closure in accordance with the surface land reclamation and mining act, K.S.A. 49-601 et seq., and amendments thereto, and the availability of water for the proposed use, but in no case shall allow longer than 80 years for perfection.

(3) Nothing herein shall require an extension of time to construct diversion works or to perfect a water right if there is demonstrable impairment of a use under an existing water right from the same source of supply, as determined pursuant to K.S.A. 82a-711, and amendments thereto.

(4) Upon examination of the diversion works for sand and gravel operations, the chief engineer or the chief engineer's duly authorized representative shall, within 90 days of the examination, notify the applicant if there was a failure to construct the diversion works at the authorized location or any deficiency of the terms and conditions of the permit. This notice will provide steps necessary to gain compliance with state law. If the chief engineer fails to examine the diversion works within two years of the notice of completion for any sand and gravel operation diversion works, the applicant shall not be required to forfeit priority date as a result of failure to construct a diversion works at the authorized location or any deficiency of the terms and conditions of the permit.

(f) Net evaporation from sand and gravel pits, as calculated by the chief engineer, will be reported as an industrial use to the director of taxation for the purpose of assessing the water protection fee pursuant to K.S.A. 82a-954, and amendments thereto.

(g) This section shall be part of and supplemental to the Kansas water appropriations act.

Sec. 4. K.S.A. 2012 Supp. 82a-301 is hereby amended to read as follows: 82a-301. (a) (1) Except as provided in ~~subsection~~ *subsections (c) and (d)*, 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 to: ~~(1)~~

(A) Construct, *modify or add to* any dam ~~or other water obstruction~~;
~~(2)(B) make, construct, modify or permit to be made or constructed any change in any dam or other add to any water obstruction in a designated stream;~~

~~(3) make or permit to be made any change in or addition to any existing water obstruction; or~~

~~(4)(C) change or diminish the course, current, or cross section of any designated stream within this state.~~

(2) Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer.

(3) ~~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;

(1) “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 a storage volume at the top of the emergency spillway elevation of 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 measured from the lowest elevation of the streambed, downstream toe or outside limit of the dam to the elevation of the top of the dam.~~

(2) “Designated stream” means a natural or man-made channel that conveys drainage or runoff from a watershed having an area of:

(A) One or more square miles in zone one, which includes all geographic points located in or east of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick or Sumner counties;

(B) two or more square miles in zone two, which includes all geographic points located west of zone one and in or east of Smith, Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or

(C) three or more square miles in zone three, which includes all geographic points located west of zone two.

(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 change in the cross section of a designated stream is obstructed less than 5% and the water obstruction or change is contained within a land area measuring 25 feet or less along the stream length; or*

(B) (i) *the water obstruction is not a dam as defined in subsection (b);*

~~(B)~~(ii) *the water obstruction is not located within an incorporated area;*

~~(C)~~(iii) *every part of the water obstruction, and any water impounded by such obstruction, is located more than 300 feet from any property boundary; and*

~~(D)~~(iv) *the watershed area above the water obstruction is ~~640 acres~~ five square miles or less.*

(2) If the water obstruction does not meet the requirements of subsection ~~(e)(1)(C)(c)(1)(B)(iii)~~, but meets all other requirements of subsection (c)(1)(B), 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)~~(A) *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)~~(B) *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.

(d) The prior written consent or permit of the chief engineer shall not be required for construction or modification of a hazard class A dam that:

(1) Has a height of less than 30 feet and a storage volume at the top of the emergency spillway elevation of less than 125 acre feet, and the dam location and dimensions have been registered with the division of water resources in a written form prescribed by the chief engineer; or

(2) is a wastewater storage structure for a confined feeding facility that has been approved by the secretary of health and environment pursuant to K.S.A. 65-171d, and amendments thereto.

Sec. 5. K.S.A. 2012 Supp. 82a-302 is hereby amended to read as follows: 82a-302. (a) *Except as otherwise provided for general permits, each application for the consent or permit required by K.S.A. 82a-301, and amendments thereto, shall be accompanied by complete maps, plans, profiles and specifications of such ~~dam or other water obstruction, or of the changes~~ construction, modification or ~~additions~~ addition proposed to*

be made in such dam or other water obstruction, the required application fee as provided in subsection (b) unless otherwise exempted, and such other data and information as the chief engineer may require. ~~The chief engineer shall maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit required by K.S.A. 82a-301, and amendments thereto. Such list may include licensed professional engineers employed by a local unit of government. Notwithstanding any law to the contrary, an applicant for the consent or permit required by K.S.A. 82a-301, and amendments thereto, may have the application reviewed by a licensed professional engineer approved by the chief engineer pursuant to this subsection provided such engineer is not an employee of the applicant. If such licensed professional engineer finds that such dam or other water obstruction meets established standards for the construction, modification, operation and maintenance of dams and other water obstructions, such findings shall be submitted in complete form to the chief engineer. Upon such submittance, the chief engineer shall grant such consent or permit within 45 days unless the chief engineer finds to the contrary that such dam or other water obstruction does not meet established standards for the construction, modification, operation and maintenance of dams and other water obstructions. If the chief engineer declines to grant such consent or permit based upon a contrary finding, the chief engineer shall provide to the applicant within 15 days a written explanation setting forth the basis for the chief engineer's contrary finding. The chief engineer's action in declining to grant such consent or permit and any hearing related thereto shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person aggrieved by any order or decision of the chief engineer shall be entitled to appellate review in accordance with the provisions of the Kansas judicial review act. Such applicant shall pay all costs associated with the review by the licensed professional engineer. The chief engineer shall adopt rules and regulations for the issuance of a general permit which may be issued for projects which require limited supervision and review.~~

(b) (1) ~~The application fee for a permit to construct, modify or add to a dam shall be \$200. shall be based upon the stage of construction at the time that a complete application has been submitted. The construction in progress fee shall be applicable for construction begun prior to approval by the chief engineer. Such fee shall be in addition to any other penalty for an unpermitted structure. Such fees shall be as follows:~~

Fees for new dam or dam modification applications	
Pre-Construction	Construction In Progress
\$200	\$500

~~(2) Permit fees for stream obstructions/channel changes application fee is based upon two criteria and are as follows:~~

- ~~(A) The drainage area category; and~~
- ~~(B) the stage of construction when the application is submitted.~~

Drainage Area Category	Pre- Construction	Construction In Progress
Major (Drainage area greater than 50 square miles)	\$500	\$1000
Moderate (Drainage area 5 to 50 square miles)	\$200	\$400
Minor (Drainage area less than 5 square miles)	\$100	\$200
General Permit	\$100	\$200

(2) *The application fee for a permit to construct, modify, or add to a water obstruction or to change or diminish the course, current or cross section of a stream shall be based on the watershed area.*

Watershed Area Above the Project	Permit Application Fee
Less than 5 square miles	\$100
Between 5 and 50 square miles	\$200
More than 50 square miles	\$500

(3) *The application fee for a general permit shall be \$100.*

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2012 Supp. 82a-328, and amendments thereto.

Sec. 6. K.S.A. 2012 Supp. 82a-303b is hereby amended to read as follows: 82a-303b. (a) (1) In order to secure conformity with adopted rules and regulations and to assure compliance with the terms, conditions or restrictions of any consent or permit granted pursuant to the provisions of K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief engineer or an authorized representative of the chief engineer shall have the power and the duty to inspect any dam or other water obstruction. Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and amendments thereto, by the chief engineer that a dam is unsafe, the chief engineer shall order an annual inspection of the dam until it is either in compliance with all applicable provisions of this act, any rules and regulations promulgated pursuant to this act, permit conditions and orders of the chief engineer; or the dam is removed. The safety inspection shall be conducted by the chief engineer or authorized representative and the cost shall be paid by the dam owner. The class and size of a dam ~~provided for by the provisions of this act~~ shall be defined by rules and regulations adopted by the chief engineer pursuant to K.S.A. 82a-303a, and amendments thereto. Inspection fees are as follows:

Size of Dam	Inspection fee
Class 1	\$1,500
Class 2	\$1,500
Class 3	\$2,500
Class 4	\$4,000

(2) Each hazard class C dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every three years, unless otherwise ordered by the chief engineer.

(3) Each hazard class B dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every five years unless otherwise ordered by the chief engineer.

(4) Within 60 days of the date of inspection, a report of the inspection shall be provided to the chief engineer by the licensed professional engineer who conducted the inspection. The report shall document the physical condition of the dam, describing any deficiencies observed, an analysis of the capacity of the dam and its spillway works, compliance of the dam with approved plans and permit conditions, changes observed in the condition of the dam since the previous inspection, an assessment of the hazard classification of the dam including a statement that the engineer either agrees or disagrees with the current classification, and any other information relevant to the safety of the dam or specifically requested by the chief engineer.

(5) Upon failure of a dam owner to comply with the applicable inspection interval, the chief engineer or such chief engineer's authorized representative shall conduct a mandatory inspection of the dam and the costs as established by this act for the inspection shall be paid by the owner, in addition to any other remedies provided for violations of this act.

(6) The failure to file a complete and timely report as required by the provisions of this act, or the failure to submit the fees assessed for inspections conducted by the chief engineer or ~~such~~ the chief engineer's authorized representative shall be deemed a violation of this act and subject to the penalties provided by K.S.A. 82a-305a, and amendments thereto.

(b) For the purpose of inspecting any dam or other water obstruction, the chief engineer or an authorized representative of the chief engineer shall have the right of access to private property. Costs for any work which may be required by the chief engineer or the authorized representative prior to or as a result of the inspection of a dam or other water obstruction shall be paid by the owner, governmental agency or operator of such dam or other water obstruction.

(c) All fees collected by the chief engineer pursuant to this section

shall be remitted to the state treasurer as provided in K.S.A. 2012 Supp. 82a-328, and amendments thereto.

Sec. 7. K.S.A. 82a-307 is hereby amended to read as follows: 82a-307. (a) Upon petition of ~~five~~ (50) taxpayers of any county of this state, owning land in the flood plain of any river in such county, *or upon enactment of a resolution by the county commission of such county*, the board of county commissioners of each county in this state are hereby authorized within their respective jurisdictions to clean and maintain the banks and channels of the streams and watercourses within definitely established bank lines, ~~as provided in K.S.A. 82a-307a~~, and to keep ~~said such~~ streams free of drift, trees and other ~~obstructions~~ *debris*, for the purpose of reducing floods and overflows, ~~and for the purposes aforesaid~~. *Upon such petition or resolution, the board of county commissioners may remove debris pursuant to this section, but shall not change or diminish the course, current or cross section of any stream.*

(b) ~~The said~~ board of county commissioners, *having obtained written permission from the landowner*, may enter upon private property, if necessary, to clean and maintain such streams, doing as little damage as possible thereto, ~~and when~~. *If material damage shall be* done to any property, ~~said the~~ commissioners shall allow reasonable compensation therefor, ~~when claimed by the owner thereof~~; *if said the landowner presents a claim is presented* in writing to ~~said the~~ board within ~~ten (10)~~ 60 days from the date of ~~the removal of said obstruction~~, ~~and that such alleged material damage.~~

(c) Nothing in this act shall be construed to permit the board of county commissioners of any county to remove or destroy any permanent improvement, including dams and bridges, in and over such streams, providing such improvements, dams or bridges have been lawfully placed thereon.

Sec. 8. K.S.A. 2012 Supp. 82a-326 is hereby amended to read as follows: 82a-326. When used in this act:

(a) “Water development project” means any project or plan which ~~may be allowed or permitted~~ *requires a permit* pursuant to K.S.A. 24-126, 24-1213, 82a-301 et seq., and amendments thereto, or the multi-purpose small lakes program act, ~~and amendments thereto~~;

(b) “environmental review agencies” means the:

- (1) Kansas department of wildlife, parks and tourism;
- (2) Kansas forest service;
- (3) state biological survey;
- (4) Kansas department of health and environment;
- (5) state historical society;
- (6) Kansas department of agriculture division of conservation; and
- (7) state corporation commission.

Sec. 9. K.S.A. 2012 Supp. 82a-1901 is hereby amended to read as

follows: 82a-1901. (a) Orders of the chief engineer of the division of water resources of the department of agriculture pursuant to K.S.A. 42-703, 42-722, 42-722a, 82a-708b, 82a-711, 82a-718 and 82a-1038 and K.S.A. 2012 *Supp.* 82a-1041, and amendments thereto, and failure of the chief engineer to act pursuant to K.S.A. 82a-714, and amendments thereto, shall be subject to review in accordance with the provisions of the Kansas administrative procedure act.

Such review shall be conducted by the secretary of agriculture or a presiding officer from the office of administrative hearings within the department of administration. The secretary of agriculture shall not have the authority otherwise to designate a presiding officer to conduct such review unless at the party's request pursuant to K.S.A. 75-37,121, and amendments thereto.

(b) The order of the secretary of agriculture or the administrative law judge or presiding officer upon review pursuant to subsection (a) shall be a final order under the Kansas administrative procedure act. Such order shall not be subject to reconsideration pursuant to K.S.A. 77-529, and amendments thereto, and shall be subject to review in accordance with the Kansas judicial review act.

(c) This act shall not affect any administrative proceeding pending before the chief engineer of the division of water resources of the department of agriculture, the secretary of agriculture or any administrative hearing officer on July 1, 1999, and such matter shall proceed as though no change in the law had been made with regard to such proceeding.

Sec. 10. K.S.A. 24-105, 24-107, 82a-307, 82a-312, 82a-313 and 82a-314 and K.S.A. 2012 *Supp.* 24-106, 74-509, 82a-301, 82a-302, 82a-303b, 82a-307a, 82a-326, 82a-326a, 82-734, 82a-735 and 82a-1901 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 17, 2013.

CHAPTER 112

Substitute for HOUSE BILL No. 2183
(Amended by Chapter 133)

AN ACT concerning the department of health and environment; relating to the designation and control of infectious and contagious diseases; concerning the office of laboratory services; creating the office of laboratory services operating fund and providing for certain fees and deposits to such fund; concerning health information technology; relating to the medical assistance recovery program; amending K.S.A. 39-702, 58-3957, 65-116a, 65-128, 65-157, 65-1,109a and 75-5608 and K.S.A. 2012 Supp. 28-115, 39-709, 65-6821, 65-6822, 65-6823, 65-6824, 65-6825, 65-6828, 65-6829, 65-6830, 65-6831, 65-6832, 65-6833 and 65-6834 and repealing the existing sections; also repealing K.S.A. 75-5607 and K.S.A. 2012 Supp. 65-129a, 65-6826 and 65-6827.

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

Section 1. K.S.A. 65-116a is hereby amended to read as follows: 65-116a. As used in ~~this act~~ K.S.A. 65-116a through K.S.A. 2012 Supp. 65-129f, and amendments thereto:

(a) ~~The word “tuberculosis” shall be construed to mean that the disease is in a communicable or infectious stage as established by chest x-ray, microscopical examination of sputum, or other diagnostic procedures approved by the secretary of health and environment, and “Blood” means human blood, human blood components and products made from human blood.~~

(b) ~~the words “Health officer” shall include~~ means the secretary of health and environment or the secretary’s designee and all local health officers.

(c) *“Infectious and contagious diseases” means those diseases so designated by the secretary of health and environment pursuant to K.S.A. 65-128, and amendments thereto.*

(d) *“Occupational exposure” means skin, eye, mucous membrane or parenteral contact with blood or other potentially infectious materials that might result from the performance of an employee’s duties.*

(e) *“Other potentially infectious materials” means: (1) The human body fluids including semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids; (2) any unfixed tissue or organ (other than intact skin) from a human (living or dead); (3) cell or tissue cultures containing human immunodeficiency virus (HIV), organ cultures, and culture medium or other solutions containing HIV, the hepatitis B virus (HBV), hepatitis C virus (HCV) and blood, organs, or other tissues from experimental animals infected with HIV, HBV or HCV; and (4) other biological materials, as designated by the secretary of health and environment, capable of transmitting an infectious or contagious disease-causing agent from one person to another.*

(f) *“Tuberculosis” means a latent infection or active disease caused by the bacterium, mycobacterium tuberculosis.*

Sec. 2. K.S.A. 65-128 is hereby amended to read as follows: 65-128.

(a) For the protection of the public health and for the control of infectious or contagious diseases, the secretary of health and environment by rules and regulations shall designate such diseases as are infectious or contagious in their nature, ~~and the secretary of health and environment is authorized to adopt rules and regulations for the isolation and quarantine of such diseases and persons afflicted with or exposed to such diseases as may be necessary to prevent the spread and dissemination of diseases dangerous to the public health.~~

(b) ~~As used in K.S.A. 65-118, 65-119, 65-122, 65-123, 65-126 and 65-129, and amendments thereto, “infectious or contagious disease” means any disease designated by the secretary of health and environment as an infectious or contagious disease in accordance with subsection (a) but the infectious or contagious disease acquired immune deficiency syndrome or any causative agent thereof shall not constitute an infectious or contagious disease for the purposes of K.S.A. 65-118, 65-119, 65-122, 65-123, 65-126 and 65-129, and amendments thereto, because such disease is subject to the provisions of K.S.A. 65-6001 through 65-6007 and amendments thereto.~~ *The secretary of health and environment is authorized to issue such orders and adopt rules and regulations as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health, including, but not limited to, providing for the testing for such diseases and the isolation and quarantine of persons afflicted with or exposed to such diseases.*

(c) *No later than January 1, 2014, the secretary shall develop and adopt rules and regulations providing for the protection of individuals who provide medical or nursing services, clinical or forensic laboratory services, emergency medical services and firefighting, law enforcement and correctional services, or who provide any other service, or individuals who receive any such services or are in any other employment where the individual may encounter occupational exposure to blood and other potentially infectious materials.*

New Sec. 3. The changes to law in K.S.A. 65-116a and 65-128 made by this act shall be known as Chy J. Miller’s law.

Sec. 4. K.S.A. 65-157 is hereby amended to read as follows: 65-157. The analysis of all waters required in the rules and regulations shall be made by the office of laboratory services of the department of health and environment and the fees collected under the provisions of this act by the secretary of health and environment shall be remitted by 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 ~~state general fund~~ *office of laboratory services operating fund*.

Sec. 5. K.S.A. 65-1,109a is hereby amended to read as follows: 65-1,109a. (a) The secretary of health and environment may adopt rules and regulations establishing: (1) Procedures and qualifications for certification of laboratories performing analyses required pursuant to K.S.A. 65-161 et seq., 65-171d, 65-3001 et seq., 65-3401 et seq. or 65-3430 et seq. or K.S.A. 65-3452a et seq. or 65-34,105 et seq., and amendments thereto; and (2) a schedule of fees to defray all or part of the costs of administering the certification program. Such fees shall not be refundable. Failure to pay assessed fees shall be cause for denial of certification.

(b) Any person who violates any provision of the rules and regulations adopted under this act shall, after notice and hearing in accordance with the Kansas administrative procedure act, be subject to suspension, denial or revocation of any certification granted hereunder and a civil penalty not to exceed \$500. Each day a violation continues shall be deemed a separate violation.

(c) The secretary of health and environment shall remit all moneys received from fees or penalties pursuant to this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the ~~state general fund~~ *office of laboratory services operating fund*.

Sec. 6. K.S.A. 75-5608 is hereby amended to read as follows: 75-5608. (a) *There is hereby established under the supervision of the secretary of health and environment, an office of laboratory services.* The office of laboratory services shall provide laboratory information and perform laboratory tests and experiments as directed by the secretary of health and environment and shall exercise such other powers, duties and functions as the secretary of health and environment may direct.

(b) *The secretary may adopt rules and regulations for the collection and biological or chemical analysis of samples received by the office of laboratory services. The secretary, by adoption of rules and regulations, may fix fees for any biological or chemical analysis services provided by the office of laboratory services and waive any such fees whenever the secretary finds that waiver is in the interest of protecting the public health and safety. The secretary shall waive fees for such services provided to public health departments and state hospitals. Fees charged and collected shall not exceed the actual cost of the analysis and testing provided by the office of laboratory services.*

(c) *Fees collected under this section shall be remitted by 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 office of laboratory services operating fund.

New Sec. 7. (a) There is hereby created in the state treasury the office of laboratory services operating fund. Expenditures from the office of laboratory services operating fund shall be used by the department of health and environment only for the purposes of operating the office of laboratory services. All such expenditures from the office of laboratory services operating fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment or the secretary's designee.

(b) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the office of laboratory services operating fund interest earnings based on:

- (1) The average daily balance of moneys in the office of laboratory services operating fund, for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

Sec. 8. K.S.A. 2012 Supp. 65-6821 is hereby amended to read as follows: 65-6821. ~~(a) K.S.A. 2012 Supp. 65-6821 through 65-6834 and section 20, and amendments thereto, shall be known and may be cited as the Kansas health information technology and exchange act.~~

~~(b) This section shall take effect on and after July 1, 2011.~~

Sec. 9. K.S.A. 2012 Supp. 65-6822 is hereby amended to read as follows: 65-6822. As used in the Kansas health information technology and exchange act:

(a) "Act" means the Kansas health information technology and exchange act.

(b) "Approved ~~HIO~~ health information organization" means a health information organization operating in the state ~~which has been approved by the corporation~~ under a valid certificate of authority issued by the department.

(c) ~~"Corporation" means the Kansas health information exchange, inc., created by executive order 10-06.~~ "Authorization" means a document that permits a covered entity to use or disclose protected health information for purposes other than to carry out treatment, payment or health care operations, and that complies with the requirements of 45 C.F.R. § 164.508.

(d) "Covered entity" means a health care provider, a health care component of a hybrid entity, a health plan or a health care clearinghouse a covered entity as the term is defined in 45 C.F.R. § 160.103.

(e) ~~"Designated record set" means designated record set as that term is defined by the HIPAA privacy rule~~ "Department" means the Kansas department of health and environment.

(f) “Disclosure” means disclosure as that term is defined by the HIPAA privacy rule.

(g) ~~“DPOA-HC” means the person to whom a durable power of attorney for health care decisions has been granted by an individual in accordance with K.S.A. 58-625 et seq., and amendments thereto.~~

~~(h) “Electronic protected health information” means electronic health information as that term is defined by the HIPAA privacy rule.~~

~~(i) “Health care” means health care as that term is defined by the HIPAA privacy rule.~~

~~(j) “Health care clearinghouse” means a health care clearinghouse, as that term is defined by the HIPAA privacy rule, doing business within the state.~~

~~(h)~~(h) “Health care provider” means a health care provider, as that term is defined by the HIPAA privacy rule, ~~that furnishes health care to individuals in the state.~~

~~(i)~~(i) “Health information” means health information as that term is defined by the HIPAA privacy rule.

~~(m)~~(j) “Health information organization” means any entity operating in the state which:

(1) Maintains technical infrastructure for the electronic movement of health information among covered entities; and

(2) promulgates and enforces policies governing participation in such ~~sharing of health information exchange.~~

~~(n)~~(k) “Health information technology” means an information processing application using computer hardware and software for the storage, retrieval, use and disclosure of health information for communication, decision-making, quality, safety and efficiency of health care. “Health information technology” includes, but is not limited to: (1) An electronic health record; (2) a personal health record; (3) *the sharing of health information exchange electronically*; (4) electronic order entry; and (5) electronic decision support.

~~(o) “Health plan” means a health plan, as that term is defined by the HIPAA privacy rule, doing business within the state.~~

~~(p)~~(l) “HIPAA privacy rule” means the privacy rule of the administrative simplification subtitle of the health insurance portability and accountability act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. part 160 and 45 C.F.R. part 164, subparts A and E.

~~(q) “Hybrid entity” means hybrid entity as that term is defined by the HIPAA privacy rule.~~

~~(r)~~(m) “Individual” means individual as that term is defined by the HIPAA privacy rule.

~~(s)~~(n) “Individually identifiable health information” means individually identifiable health information as that term is defined by the HIPAA privacy rule.

~~(t) “Interoperability” means the capacity of two or more information~~

~~systems to exchange information or data in an accurate, effective, secure and consistent manner.~~

~~(u)~~(o) “Participation agreement” means a written agreement between a covered entity and an approved ~~HIO~~ *health information organization* concerning the covered entity’s participation in the approved ~~HIO~~ *health information organization* on terms consistent with K.S.A. 2012 Supp. 65-6832, and amendments thereto.

~~(v)~~(p) “Personal representative” means the person who has the legal authority to act on behalf of an individual.

~~(w)~~(q) “Protected health information” means protected health information as that term is defined by the HIPAA privacy rule.

~~(x)~~ “Public health authority” means public health authority as that term is defined by the HIPAA privacy rule.

~~(y)~~(r) “Secretary” means the secretary of health and environment.

~~(z)~~ “Standard authorization form” means the standard authorization form developed and promulgated by the secretary pursuant to K.S.A. 2012 Supp. 65-6826, and amendments thereto.

~~(aa)~~(s) “State” means the state of Kansas.

~~(bb)~~(t) “Use” means, with respect to individually identifiable health information, use as the term is defined by the HIPAA privacy rule.

~~This section shall take effect on and after July 1, 2011.~~

Sec. 10. K.S.A. 2012 Supp. 65-6823 is hereby amended to read as follows: 65-6823. ~~(a)~~ It is the purpose of this act to harmonize state law with the HIPAA privacy rule with respect to individual access to protected health information, proper safeguarding of protected health information, and the use and disclosure of protected health information for purposes of facilitating the development and use of health information technology and ~~health information exchange~~ *the sharing of health information electronically.*

~~(b) This section shall take effect on and after July 1, 2011.~~

Sec. 11. K.S.A. 2012 Supp. 65-6824 is hereby amended to read as follows: 65-6824. (a) A covered entity shall provide an individual or such individual’s personal representative with access to the individual’s protected health information maintained ~~by the,~~ *collected, used or disseminated by or for the* covered entity ~~in a designated record set~~ in compliance with 45 C.F.R. § 164.524.

(b) A covered entity shall implement and maintain appropriate administrative, technical and physical safeguards to protect the privacy of protected health information in a manner consistent with 45 C.F.R. § 164.530(c).

~~(c) This section shall take effect on and after July 1, 2011.~~

Sec. 12. K.S.A. 2012 Supp. 65-6825 is hereby amended to read as follows: 65-6825. (a) No covered entity shall use or disclose protected health information except as follows:

(1) ~~Use and disclosure of protected health information~~*In a manner consistent with an authorization that satisfies the requirements of 45 C.F.R. § 164.508;*

(2) ~~use and disclosure of protected health information without an authorization~~*in a manner as permitted under 45 C.F.R. §§ 164.502, 164.506, 164.508, 164.510 and 164.512; or*

(3) ~~use and disclosure of protected health information~~ *in a manner as required under 45 C.F.R. § 164.502.*

(b) ~~Notwithstanding the provisions of subsection (a), no covered entity shall disclose an individual's protected health information to a health information organization for any purpose without an authorization that satisfies the requirements of 45 C.F.R. § 164.508, unless~~*A covered entity may disclose an individual's protected health information to a health information organization without an authorization if such covered entity:*

(1) ~~Is a party to a current participation agreement with an approved HHO~~ *health information organization at the time the disclosure is made;*

(2) ~~discloses the individual's protected health information to that approved HHO~~ *health information organization in a manner consistent with the approved HHO's established procedures of the approved health information organization; and*

(3) ~~prior to the disclosure, has furnished~~*furnishes* to the individual, or such individual's personal representative, whose information is to be disclosed to the approved ~~HHO~~ *health information organization*, the notice required under K.S.A. 2012 Supp. 65-6832, and amendments thereto; ~~and~~

(4) ~~restricts disclosure to the approved HHO of any protected health information concerning the individual that is the subject of a written request delivered to the covered entity by the individual, or such individual's personal representative, for reasonable restrictions on disclosure of all or any specified categories of the individual's protected health information; as defined pursuant to K.S.A. 2012 Supp. 65-6832, and amendments thereto, following the covered entity's receipt of such written request.~~

(c) ~~Notwithstanding the provisions of subsections (a) and (b),~~*A covered entity that uses or discloses protected health information in compliance with this section shall be immune from any civil or criminal liability or any adverse administrative action arising out of or relating to such use or disclosure.*

(d) ~~This section shall take effect on and after July 1, 2011.~~

Sec. 13. K.S.A. 2012 Supp. 65-6828 is hereby amended to read as follows: 65-6828. To the extent any provision of state law regarding the confidentiality, privacy, security or privileged status of any protected health information conflicts with, *is contrary to, or more stringent than* the provisions of this act, the provisions of this act shall control, except that: (a) Nothing in this act shall limit or restrict the effect and application

of the peer review statute, K.S.A. 65-4915, and amendments thereto; the risk management statute, K.S.A. 65-4921 *through* 65-4930, and amendments thereto; or any statutory health care provider-patient evidentiary privilege applicable to a judicial or administrative proceeding; and

(b) nothing in this act shall limit or restrict the ability of any state agency to require the disclosure of protected health information by any person or entity pursuant to law.

Sec. 14. K.S.A. 2012 Supp. 65-6829 is hereby amended to read as follows: 65-6829. ~~(a) A health care provider~~ *covered entity* may disclose protected health information without authorization to any state agency for any public health purpose that is required by law. Nothing in this act shall be construed to limit the use, transfer or disclosure of protected health information as required or permitted by any other provision of law for *public health purposes*.

~~(b) This section shall take effect on and after July 1, 2011.~~

Sec. 15. K.S.A. 2012 Supp. 65-6830 is hereby amended to read as follows: 65-6830. ~~(a) The corporation~~ *department* shall establish and revise, as appropriate, standards for *the* approval and operation of statewide and regional health information organizations operating in the state as approved ~~HIOs~~ *health information organizations* including, but not limited to, the following:

~~(a) Satisfaction of certification standards for health information exchanges promulgated by the federal government;~~

~~(b)(1)~~ Adherence to nationally recognized standards for interoperability, *that is, the capacity of two or more information systems to share information or data in an accurate, effective, secure and consistent manner;*

~~(c)(2)~~ adoption and adherence to rules promulgated by the ~~corporation~~ *department* regarding access to and use and disclosure of protected health information maintained by or on an approved ~~HIO~~ *health information organization*;

~~(d)(3)~~ demonstration of adequate financial resources to sustain continued operations in compliance with the standards;

~~(e)(4)~~ participation in outreach activities for individuals and covered entities;

~~(f)(5)~~ conduct of operations in a transparent manner to promote consumer confidence;

~~(g)(6)~~ implementation of security breach notification procedures; and

~~(h)(7)~~ development of procedures for entering into and enforcing the terms of participation agreements with covered entities which satisfy the requirements established by the ~~corporation~~ *department* pursuant to K.S.A. 2012 Supp. 65-6832, and amendments thereto.

(b) *The department shall ensure that approved health information organizations operate within the state in a manner consistent with the*

protection of the security and privacy of health information of the citizens of Kansas.

(c) No expenditure shall be made from the state general fund for the purposes of administration, operation or oversight of the health information organizations defined in K.S.A. 65-6821, and amendments thereto, except that the secretary of health and environment may make operational expenditures for the purpose of adopting and administering the rules and regulations necessary to implement the Kansas health information technology act.

~~This section shall take effect on and after July 1, 2011.~~

Sec. 16. K.S.A. 2012 Supp. 65-6831 is hereby amended to read as follows: 65-6831. ~~(a) The corporation department shall establish and implement:~~

~~(1)(a) A process by which a health information-exchange organization may apply for and receive approval a certificate of authority issued by the corporation department by demonstrating compliance with the standards promulgated by the corporation department pursuant to K.S.A. 2012 Supp. 65-6830, and amendments thereto;~~

~~(2)(b) a process by which an approved-HHO health information organization shall be re-approved on appropriate intervals by demonstrating continued compliance with the standards promulgated by the corporation department pursuant to K.S.A. 2012 Supp. 65-6830, and amendments thereto; and~~

~~(3)(c) a process for the investigation of reported concerns and complaints regarding an approved-HHO health information organization and imposition of appropriate remedial and proactive measures to address any identified deficiencies.~~

~~(b) This section shall take effect on and after July 1, 2011.~~

Sec. 17. K.S.A. 2012 Supp. 65-6832 is hereby amended to read as follows: 65-6832. ~~(a) The corporation department shall establish requirements for participation agreements to be used by approved health information organizations in participation agreements with covered entities and shall include the following:~~

~~(1)(a) Specification of procedures for the covered entity to disclose by which an individual's protected health information to the approved HHO will be disclosed by covered entities, will be collected by approved health information organizations and will be shared with other participating covered entities and with the department as required by law for public health purposes;~~

~~(2)(b) specification of procedures for the covered entity to access an individual's protected health information from the approved HHO by which an individual may elect that protected health information be restricted from disclosure by approved health information organizations to covered entities;~~

~~(C)(c)~~ *specifications of purposes for, and procedures by which a covered entity can access an individual's protected health information from the approved health information organization, including access to restricted information by a covered entity in an emergency situation when necessary to properly treat the individual;*

(d) *specification of the written notice to be provided by the covered entity to any individual, or such individual's personal representative, prior to the covered entity's disclosure of the individual's protected health information to the approved HIO that explains how and what protected health information will be shared with the approved health information organization. Such written notice, which may be incorporated into the covered entity's notice of privacy practices required under the HIPAA privacy rule, shall include the following that:*

~~(A)(1)~~ *The individual's protected health information will be disclosed to the approved HIO health information organization to facilitate the provision of health care to the individual;*

~~(B)(2)~~ *the approved HIO health information organization maintains appropriate safeguards to protect the privacy and security of protected health information;*

~~(C)(3)~~ *only authorized individuals may access protected health information from the approved HIO health information organization;*

~~(D)(4)~~ *the individual, or such individual's personal representative, has the right to request in writing that the covered entity: (i) Not disclose any of the individual's protected health information to the approved HIO; or (ii) not disclose specified categories of the individual's protected health information to the approved HIO the individual's protected health information not be disclosed by the health information organization;*

~~(E)(5)~~ *such restrictions may result in a health care provider not having access to information necessary to provide appropriate care for the individual;*

~~(F)~~ *the covered entity is required to honor a written request delivered to the covered entity by an individual, or such individual's representative, not to disclose any of the individual's protected health information to an approved HIO; and*

~~(G)~~ *the covered entity is required to honor a written request delivered to the covered entity by an individual, or such individual's representative, for reasonable restrictions on the disclosure of specified categories of the individual's protected health information to an approved HIO; the health information organization is required to honor a written request not to disclose an individual's protected health information, except that disclosure is permitted (A) in an emergency situation when necessary to properly treat the individual, or (B) when necessary to satisfy a covered entity's legal obligation to report certain information to a government official; and*

(6) *the inability to access restricted information by a covered entity*

may result in a health care provider not having access to information necessary to provide appropriate care for the individual;

~~(4)(e) specification of documentation requirements to demonstrate delivery of such notice to an individual, or such individual's personal representative, by or on behalf of the covered entity prior to the covered entity's disclosure of the individual's protected health information to the approved HHO;~~

~~(5) standards for determining the reasonableness of an individual's written request, or the written request of such individual's personal representative, not to disclose specified categories of the individual's protected health information to the approved HHO based on the covered entity's technological capabilities; and~~

~~(6) specification of the purposes for which a covered entity may access protected health information through the approved HHO;~~

~~(b) This section shall take effect on and after July 1, 2011.~~

Sec. 18. K.S.A. 2012 Supp. 65-6833 is hereby amended to read as follows: 65-6833. ~~(a)~~ Any health information organization which is not an approved ~~HHO~~ *health information organization* shall not be eligible for any financial support from the state, or assistance or support from the state in securing any other source of funding.

~~(b) This section shall take effect on and after July 1, 2011.~~

Sec. 19. K.S.A. 2012 Supp. 65-6834 is hereby amended to read as follows: 65-6834. (a) ~~Notwithstanding any other provision of this act,~~ No use or disclosure of protected health information maintained by or on an approved ~~HHO~~ *health information organization* shall be made except pursuant to rules *and regulations* adopted by the ~~corporation~~ *department* consistent with this act. An approved ~~HHO~~ *health information organization* that uses or discloses protected health information in compliance with such rules shall be immune from any civil or criminal liability or any adverse administrative action arising out of or relating to such use or disclosure.

~~(b) This section shall take effect on and after July 1, 2011. Protected health information in the possession of an approved health information organization shall not be subject to discovery, subpoena or other means of legal compulsion for the release of such protected health information to any person or entity. An approved health information organization shall not be compelled by a request for production, subpoena, court order or otherwise, to disclose protected health information relating to an individual.~~

New Sec. 20. (a) There is hereby established an advisory council on health information technology. The advisory council on health information technology shall be advisory to the secretary of health and environment and shall be within the division of health of the department of health and environment.

(b) The advisory council on health information technology shall be composed of 23 voting members, as follows:

(1) The secretary of the Kansas department of health and environment, or such secretary's designee;

(2) the governor of the state of Kansas, or such governor's designee;

(3) four legislators selected as follows: The chairperson and ranking minority member or their designees of the committee on health and human services of the house of representatives, and the chairperson and ranking minority member or their designees from the committee on public health and welfare of the senate;

(4) two members appointed by the secretary who represent consumers;

(5) one member appointed by the secretary who represents employers;

(6) one member appointed by the secretary who represents payers;

(7) one member appointed by the secretary who represents local health departments from a list of three names submitted by the Kansas association of local health departments;

(8) three members appointed by the secretary who represent hospitals, from a list of three names for each position submitted by the Kansas hospital association. One of the hospital representatives appointed herein shall be involved in the administration of a critical access hospital;

(9) three members appointed by the secretary from a list of three names for each position by the Kansas medical society. At least two of the members appointed herein shall be practicing physicians, and one of the physicians shall be a physician in a primary care specialty;

(10) two members appointed by the secretary who represent pharmacists, from a list of three names submitted by the Kansas pharmacists association. At least one of the members appointed herein shall be a practicing pharmacist;

(11) one member appointed by the secretary who represents the university of Kansas center for health information from a list of three names submitted by the university of Kansas center for health information;

(12) one member appointed by the secretary who represents the Kansas foundation for medical care from a list of three names submitted by the Kansas foundation for medical care;

(13) one member appointed by the secretary who represents the Kansas optometric association from a list of three names submitted by the Kansas optometric association; and

(14) one member appointed by the secretary who represents the association of community mental health centers of Kansas from a list of three names submitted by the association of community mental health centers of Kansas.

(c) At the first meeting of the council, following the effective date of this act, terms of its members, except the secretary and governor or their

designees, shall be determined by lot with five members serving for one year, five members serving for two years, five members serving for three years, and six members serving for four years. Following their initial term, members of the council shall be eligible for re-appointment and, if re-appointed, shall serve for terms of four years. Members shall only be eligible to serve two consecutive four-year terms. Whenever a vacancy occurs regarding a member of the council due to the resignation, death, removal or expiration of a term, a new member shall be appointed prior to the next meeting, according to the process and to the specific position on the council as provided in subsection (b). In the event of a vacancy during an unexpired term due to resignation, death or removal of a council member, the appointment shall be for the remainder of the unexpired portion of the term. Each member of the council shall hold office for the term of appointment and until a successor has been appointed. Any member of the council may be removed by the secretary for malfeasance or misfeasance in office, regularly failing to attend meetings, or for any cause which renders the member incapable of the discharge of the duties of a member.

(d) The council shall meet at least four times per year and at such times as the council deems appropriate or as called by the secretary.

(e) Members of the council are entitled to compensation and expenses as provided in K.S.A. 75-3223, and amendments thereto. Members of the council attending council meetings or subcommittee meetings authorized by the council shall be paid mileage and all other applicable expenses, provided such expenses are consistent with policies established from time-to-time by the council.

Sec. 21 K.S.A. 2012 Supp. 28-115 is hereby amended to read as follows: 28-115. (a) The register of deeds of each county shall charge and collect the following fees:

For recording deeds, mortgages or other instruments of writing,	
for first page, not to exceed legal size page—8½" x 14"	\$6.00
For second page and each additional page or fraction thereof ..	2.00
Recording town plats, for each page	20.00
Recording release or assignment of real estate mortgage	5.00
Certificate, certifying any instrument on record	1.00
Acknowledgment of a signature .....	.50
For filing notices of tax liens under the internal revenue laws of the United States	5.00
For filing releases of tax liens, certificates of discharge, under the internal revenue laws of the United States or the revenue laws of the state of Kansas	5.00
For filing liens for materials and services under K.S.A. 58-201, and amendments thereto	5.00

(b) In addition to the fees required to be charged and collected pur-

suant to subsection (a), the register of deeds shall charge and collect an additional fee of \$2 per page for recording:

(1) The first page of any deeds, mortgages or other instruments of writing, not to exceed legal size—8½" x 14";

(2) the second page and each additional page or fraction of any deeds, mortgages or instruments of writing; and

(3) a release or assignment of real estate mortgage.

Any fees collected pursuant to this subsection shall be paid by the register of deeds to the county treasurer. The county treasurer shall deposit such funds in the register of deeds technology fund as provided by K.S.A. 2012 Supp. 28-115a, and amendments thereto.

(c) For any filing or service provided for in the uniform commercial code, the amount therein provided, shall be charged and collected. *No fee shall be charged or collected for any filing made by the secretary of health and environment or the secretary's designee pursuant to K.S.A. 39-709, and amendments thereto.*

(d) If the name or names of the signer or signers or any notary public to any instrument to be recorded are not plainly typed or printed under the signatures affixed to the instrument, the register of deeds shall charge and collect a fee of \$1 in addition to all other fees provided in this section.

(e) If sufficient space is not provided for the necessary recording information and certification on a document, such recording information shall be placed on an added sheet and such sheet shall be counted as a page. The document shall be of sufficient legibility so as to produce a clear and legible reproduction thereof. If a document is judged not to be of sufficient legibility so as to produce a clear and legible reproduction, such document shall be accompanied by an exact copy thereof which shall be of sufficient legibility so as to produce a clear and legible reproduction thereof and which shall be recorded contemporaneously with the document and shall be counted as additional pages. The register of deeds may reject any document which is not of sufficient legibility so as to produce a clear and legible reproduction thereof.

(f) Any document which was filed on or after January 1, 1989, which was of a size print or type smaller than 8-point type but which otherwise was properly filed shall be deemed to be validly filed.

(g) All fees required to be collected pursuant to this section, except those charged for the filing of liens and releases of tax liens under the internal revenue laws of the United States, shall be due and payable before the register of deeds shall be required to do the work. If the register of deeds fails to collect any of the fees provided in this section, the amount of the fees at the end of each quarter shall be deducted from the register's salary.

(h) Except as otherwise provided by subsection (b), all fees required to be collected pursuant to this section shall be paid by the register of

deeds to the county treasurer and deposited into the general fund of the county.

Sec. 22. K.S.A. 39-702 is hereby amended to read as follows: 39-702. The following words and phrases when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this section:

(a) “Secretary” means the secretary ~~of social and rehabilitation services for children and families, unless otherwise specified.~~

(b) “Applicants” means all persons who, as individuals, or in whose behalf requests are made of the secretary for aid or assistance.

(c) “Social welfare service” may include such functions as giving assistance, the prevention of public dependency, and promoting the rehabilitation of dependent persons or those who are approaching public dependency.

(d) “Assistance” includes such items or functions as the giving or providing of money, food stamps or coupons, food, clothing, shelter, medicine or other materials, the giving of any service, including instructive or scientific, and the providing of institutional care, which may be necessary or helpful to the recipient in providing the necessities of life for the recipient and the recipient’s dependents. The definitions of social welfare service and assistance in this section shall be deemed as partially descriptive and not limiting.

(e) “Aid to families with dependent children” means financial assistance with respect to or on behalf of a dependent child or dependent children and includes financial assistance for any month to meet the needs of the relative with whom any dependent child is living.

(f) “Medical assistance” means the payment of all or part of the cost of necessary: (1) Medical, remedial, rehabilitative or preventive care and services which are within the scope of services to be provided under a medical care plan developed by the secretary pursuant to this act and furnished by health care providers who have a current approved provider agreement with the secretary; and (2) transportation to obtain care and services which are within the scope of services to be provided under a medical care plan developed by the secretary pursuant to this act.

(g) “Dependent children” means needy children under the age of 18, or who are under the age of 19 and are full-time students in secondary schools or the equivalent educational program or are full-time students in a program of vocational or technical training if they may be reasonably expected to complete the training before attaining age 19, who have been deprived of parental or guardian support or care by reasons of the death, continued absence from the home, or physical or mental incapacity of a parent or guardian, and who are living with any blood relative, including those of the half-blood, and including first cousins, uncles, aunts, and persons of preceding generations are denoted by prefixes of grand, great,

or great-great, and including the spouses or former spouses of any persons named in the above groups, in a place of residence maintained by one or more of such relatives as their own home. The secretary may adopt rules and regulations which extend the deprivation requirement under this definition to include being deprived of parental or guardian support or care by reason of the unemployment of a parent or guardian. The term “dependent children” also includes children who would meet the foregoing requirements except for their removal from the home of a relative as a result of judicial determination to the effect that continuation therein would be contrary to the welfare of such children, for whose placement and care the secretary is responsible, who have been placed in a foster family home or child care institution as a result of such determination and who received aid to dependent children in or for the month in which court proceedings leading to such determination were initiated, or would have received such aid in or for such month if application had been made therefor, or in the case of a child who had been living with a relative specified above within six months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month such child had been living with and removed from the home of such a relative and application had been made therefor.

(h) “The blind” means not only those who are totally and permanently devoid of vision, but also those persons whose vision is so defective as to prevent the performance of ordinary activities for which eyesight is essential.

(i) “General assistance” means financial assistance in which the cost of such financial assistance is not participated in by the federal government. General assistance may be limited to transitional assistance in some instances as specified by rules and regulations adopted by the secretary.

(j) “Recipient” means a person who has received assistance under the terms of this act.

(k) “Intake office” means the place where the secretary shall maintain an office for receiving applications.

(l) “Adequate consideration” means consideration equal, or reasonably proportioned to the value of that for which it is given.

(m) “Transitional assistance” means a form of general assistance in which as little financial assistance as one payment may be made during each period of 12 consecutive calendar months to an eligible and needy person and all other persons for whom such person is legally responsible.

(n) “Title IV-D” means part D of title IV of the federal social security act (42 U.S.C. § 651; et seq.), ~~or acts amendatory thereof or supplemental thereto~~ as in effect on May 1, 1997.

Sec. 23. K.S.A. 2012 Supp. 39-709 is hereby amended to read as follows: 39-709. (a) *General eligibility requirements for assistance for which federal moneys are expended.* Subject to the additional require-

ments below, assistance in accordance with plans under which federal moneys are expended may be granted to any needy person who:

(1) Has insufficient income or resources to provide a reasonable subsistence compatible with decency and health. Where a husband and wife are living together, the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary, in determining need of any applicant for or recipient of assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or minor stepchild if the stepchild is living with such individual. The secretary in determining need of an individual may provide such income and resource exemptions as may be permitted by federal law. For purposes of eligibility for aid for families with dependent children, for food stamp assistance and for any other assistance provided through the ~~department of social and rehabilitation services~~ *Kansas department for children and families* under which federal moneys are expended, the secretary of ~~social and rehabilitation services~~ *for children and families* shall consider one motor vehicle owned by the applicant for assistance, regardless of the value of such vehicle, as exempt personal property and shall consider any equity in any additional motor vehicle owned by the applicant for assistance to be a nonexempt resource of the applicant for assistance.

(2) Is a citizen of the United States or is an alien lawfully admitted to the United States and who is residing in the state of Kansas.

(b) *Assistance to families with dependent children.* Assistance may be granted under this act to any dependent child, or relative, subject to the general eligibility requirements as set out in subsection (a), who resides in the state of Kansas or whose parent or other relative with whom the child is living resides in the state of Kansas. Such assistance shall be known as aid to families with dependent children. Where husband and wife are living together both shall register for work under the program requirements for aid to families with dependent children in accordance with criteria and guidelines prescribed by rules and regulations of the secretary.

(c) *Aid to families with dependent children; assignment of support rights and limited power of attorney.* By applying for or receiving aid to families with dependent children such applicant or recipient shall be deemed to have assigned to the secretary on behalf of the state any accrued, present or future rights to support from any other person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. In any case in which an order for child support has been established and the legal custodian and obligee under the order surrenders physical custody of the child to a caretaker relative without obtaining a modification

of legal custody and support rights on behalf of the child are assigned pursuant to this section, the surrender of physical custody and the assignment shall transfer, by operation of law, the child's support rights under the order to the secretary on behalf of the state. Such assignment shall be of all accrued, present or future rights to support of the child surrendered to the caretaker relative. The assignment of support rights shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant, recipient or obligee. By applying for or receiving aid to families with dependent children, or by surrendering physical custody of a child to a caretaker relative who is an applicant or recipient of such assistance on the child's behalf, the applicant, recipient or obligee is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full.

(d) *Eligibility requirements for general assistance, the cost of which is not shared by the federal government.* (1) General assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d).

(A) To qualify for general assistance in any form a needy person must have insufficient income or resources to provide a reasonable subsistence compatible with decency and health and, except as provided for transitional assistance, be a member of a family in which a minor child or a pregnant woman resides or be unable to engage in employment. The secretary shall adopt rules and regulations prescribing criteria for establishing when a minor child may be considered to be living with a family and whether a person is able to engage in employment, including such factors as age or physical or mental condition. Eligibility for general assistance, other than transitional assistance, is limited to families in which a minor child or a pregnant woman resides or to an adult or family in which all legally responsible family members are unable to engage in employment. Where a husband and wife are living together the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary in determining need of any applicant for or recipient of general assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of general assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or a minor stepchild if the stepchild is living with such indi-

vidual. In determining the need of an individual, the secretary may provide for income and resource exemptions.

(B) To qualify for general assistance in any form a needy person must be a citizen of the United States or an alien lawfully admitted to the United States and must be residing in the state of Kansas.

(2) General assistance in the form of transitional assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d), but who do not meet the criteria prescribed by rules and regulations of the secretary relating to inability to engage in employment or are not a member of a family in which a minor or a pregnant woman resides.

(3) In addition to the other requirements prescribed under this subsection (d), the secretary shall adopt rules and regulations which establish community work experience program requirements for eligibility for the receipt of general assistance in any form and which establish penalties to be imposed when a work assignment under a community work experience program requirement is not completed without good cause. The secretary may adopt rules and regulations establishing exemptions from any such community work experience program requirements. A first time failure to complete such a work assignment requirement shall result in ineligibility to receive general assistance for a period fixed by such rules and regulations of not more than three calendar months. A subsequent failure to complete such a work assignment requirement shall result in a period fixed by such rules and regulations of ineligibility of not more than six calendar months.

(4) If any person is found guilty of the crime of theft under the provisions of K.S.A. 39-720, and amendments thereto, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the provisions of K.S.A. 39-720, and amendments thereto, or the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction. If any person is found guilty by a court of competent jurisdiction of any state other than the state of Kansas of a crime involving welfare fraud, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the law of any other state concerning welfare fraud shall

become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the law of any other state concerning welfare fraud shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction.

(e) *Requirements for medical assistance for which federal moneys or state moneys or both are expended.* (1) When the secretary has adopted a medical care plan under which federal moneys or state moneys or both are expended, medical assistance in accordance with such plan shall be granted to any person who is a citizen of the United States or who is an alien lawfully admitted to the United States and who is residing in the state of Kansas, whose resources and income do not exceed the levels prescribed by the secretary. In determining the need of an individual, the secretary may provide for income and resource exemptions and protected income and resource levels. Resources from inheritance shall be counted. A disclaimer of an inheritance pursuant to K.S.A. 59-2291, and amendments thereto, shall constitute a transfer of resources. The secretary shall exempt principal and interest held in irrevocable trust pursuant to subsection (c) of K.S.A. 16-303, and amendments thereto, from the eligibility requirements of applicants for and recipients of medical assistance. Such assistance shall be known as medical assistance.

(2) For the purposes of medical assistance eligibility determinations on or after July 1, 2004, if an applicant or recipient owns property in joint tenancy with some other party and the applicant or recipient of medical assistance has restricted or conditioned their interest in such property to a specific and discrete property interest less than 100%, then such designation will cause the full value of the property to be considered an available resource to the applicant or recipient.

(3) (A) Resources from trusts shall be considered when determining eligibility of a trust beneficiary for medical assistance. Medical assistance is to be secondary to all resources, including trusts, that may be available to an applicant or recipient of medical assistance.

(B) If a trust has discretionary language, the trust shall be considered to be an available resource to the extent, using the full extent of discretion, the trustee may make any of the income or principal available to the applicant or recipient of medical assistance. Any such discretionary trust shall be considered an available resource unless: (i) At the time of creation or amendment of the trust, the trust states a clear intent that the trust is supplemental to public assistance; and (ii) the trust: (a) Is funded from resources of a person who, at the time of such funding, owed no duty of support to the applicant or recipient of medical assistance; or (b) is funded not more than nominally from resources of a person while that person owed a duty of support to the applicant or recipient of medical assistance.

(C) For the purposes of this paragraph, “public assistance” includes,

but is not limited to, medicaid, medical assistance or title XIX of the social security act.

(4) (A) When an applicant or recipient of medical assistance is a party to a contract, agreement or accord for personal services being provided by a nonlicensed individual or provider and such contract, agreement or accord involves health and welfare monitoring, pharmacy assistance, case management, communication with medical, health or other professionals, or other activities related to home health care, long term care, medical assistance benefits, or other related issues, any moneys paid under such contract, agreement or accord shall be considered to be an available resource unless the following restrictions are met: (i) The contract, agreement or accord must be in writing and executed prior to any services being provided; (ii) the moneys paid are in direct relationship with the fair market value of such services being provided by similarly situated and trained nonlicensed individuals; (iii) if no similarly situated nonlicensed individuals or situations can be found, the value of services will be based on federal hourly minimum wage standards; (iv) such individual providing the services will report all receipts of moneys as income to the appropriate state and federal governmental revenue agencies; (v) any amounts due under such contract, agreement or accord shall be paid after the services are rendered; (vi) the applicant or recipient shall have the power to revoke the contract, agreement or accord; and (vii) upon the death of the applicant or recipient, the contract, agreement or accord ceases.

(B) When an applicant or recipient of medical assistance is a party to a written contract for personal services being provided by a licensed health professional or facility and such contract involves health and welfare monitoring, pharmacy assistance, case management, communication with medical, health or other professionals, or other activities related to home health care, long term care, medical assistance benefits or other related issues, any moneys paid in advance of receipt of services for such contracts shall be considered to be an available resource.

(5) Any trust may be amended if such amendment is permitted by the Kansas uniform trust code.

(f) *Eligibility for medical assistance of resident receiving medical care outside state.* A person who is receiving medical care including long-term care outside of Kansas whose health would be endangered by the postponement of medical care until return to the state or by travel to return to Kansas, may be determined eligible for medical assistance if such individual is a resident of Kansas and all other eligibility factors are met. Persons who are receiving medical care on an ongoing basis in a long-term medical care facility in a state other than Kansas and who do not return to a care facility in Kansas when they are able to do so, shall no longer be eligible to receive assistance in Kansas unless such medical care is not available in a comparable facility or program providing such medical care in Kansas. For persons who are minors or who are under guardi-

anship, the actions of the parent or guardian shall be deemed to be the actions of the child or ward in determining whether or not the person is remaining outside the state voluntarily.

(g) *Medical assistance; assignment of rights to medical support and limited power of attorney; recovery from estates of deceased recipients.*

(1) Except as otherwise provided in K.S.A. 39-786 and 39-787, and amendments thereto, or as otherwise authorized on and after September 30, 1989, under section 303, ~~and amendments thereto~~, of the federal medicare catastrophic coverage act of 1988, whichever is applicable, by applying for or receiving medical assistance under a medical care plan in which federal funds are expended, any accrued, present or future rights to support and any rights to payment for medical care from a third party of an applicant or recipient and any other family member for whom the applicant is applying shall be deemed to have been assigned to the secretary on behalf of the state. The assignment shall automatically become effective upon the date of approval for such assistance without the requirement that any document be signed by the applicant or recipient. By applying for or receiving medical assistance the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments, representing payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for assistance and shall remain in effect until the assignment has been terminated in full. The assignment of any rights to payment for medical care from a third party under this subsection shall not prohibit a health care provider from directly billing an insurance carrier for services rendered if the provider has not submitted a claim covering such services to the secretary for payment. Support amounts collected on behalf of persons whose rights to support are assigned to the secretary only under this subsection and no other shall be distributed pursuant to subsection (d) of K.S.A. 39-756, and amendments thereto, except that any amounts designated as medical support shall be retained by the secretary for repayment of the unreimbursed portion of assistance. Amounts collected pursuant to the assignment of rights to payment for medical care from a third party shall also be retained by the secretary for repayment of the unreimbursed portion of assistance.

(2) The amount of any medical assistance paid after June 30, 1992, under the provisions of subsection (e) is (A) a claim against the property or any interest therein belonging to and a part of the estate of any deceased recipient or, if there is no estate, the estate of the surviving spouse, if any, shall be charged for such medical assistance paid to either or both, and (B) a claim against any funds of such recipient or spouse in any account under K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-

5829, and amendments thereto. There shall be no recovery of medical assistance correctly paid to or on behalf of an individual under subsection (e) except after the death of the surviving spouse of the individual, if any, and only at a time when the individual has no surviving child who is under 21 years of age or is blind or permanently and totally disabled. Transfers of real or personal property by recipients of medical assistance without adequate consideration are voidable and may be set aside. Except where there is a surviving spouse, or a surviving child who is under 21 years of age or is blind or permanently and totally disabled, the amount of any medical assistance paid under subsection (e) is a claim against the estate in any guardianship or conservatorship proceeding. The monetary value of any benefits received by the recipient of such medical assistance under long-term care insurance, as defined by K.S.A. 40-2227, and amendments thereto, shall be a credit against the amount of the claim provided for such medical assistance under this subsection (g). The secretary is authorized to enforce each claim provided for under this subsection (g). The secretary shall not be required to pursue every claim, but is granted discretion to determine which claims to pursue. All moneys received by the secretary from claims under this subsection (g) shall be deposited in the social welfare fund. The secretary may adopt rules and regulations for the implementation and administration of the medical assistance recovery program under this subsection (g).

(3) By applying for or receiving medical assistance under the provisions of article 7 of chapter 39 of the Kansas Statutes Annotated, *and amendments thereto*, such individual or such individual's agent, fiduciary, guardian, conservator, representative payee or other person acting on behalf of the individual consents to the following definitions of estate and the results therefrom:

(A) If an individual receives any medical assistance before July 1, 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, *and amendments thereto*, which forms the basis for a claim under subsection (g)(2), such claim is limited to the individual's probatable estate as defined by applicable law; and

(B) if an individual receives any medical assistance on or after July 1, 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, *and amendments thereto*, which forms the basis for a claim under subsection (g)(2), such claim shall apply to the individual's medical assistance estate. The medical assistance estate is defined as including all real and personal property and other assets in which the deceased individual had any legal title or interest immediately before or at the time of death to the extent of that interest or title. The medical assistance estate includes, without limitation assets conveyed to a survivor, heir or assign of the deceased recipient through joint tenancy, tenancy in common, survivorship, transfer-on-death deed, payable-on-death contract, life estate, trust, annuities or similar arrangement.

(4) ~~The secretary of social and rehabilitation services of health and environment or the secretary's designee is authorized to file and enforce a lien against the real property of a recipient of medical assistance in certain situations, subject to all prior liens of record and transfers for value to a bona fide purchaser of record. The lien must be filed in the office of the register of deeds of the county where the real property is located within one year from the date of death of the recipient and must contain the legal description of all real property in the county subject to the lien. This lien is for payments of medical assistance made by the department of social and rehabilitation services to the recipient who is an inpatient in a nursing home or other medical institution.~~

(A) *After the death of a recipient of medical assistance, the secretary of health and environment or the secretary's designee may place a lien on any interest in real property owned by such recipient.*

(B) *The secretary of health and environment or the secretary's designee may place a lien on any interest in real property owned by a recipient of medical assistance during the lifetime of such recipient. Such lien may be filed only after notice and an opportunity for a hearing has been given. Such lien may be enforced only upon competent medical testimony that the recipient cannot reasonably be expected to be discharged and returned home. A six-month period of compensated inpatient care at a nursing home, ~~nursing homes~~ or other medical institution shall constitute a determination by the ~~department of social and rehabilitation services~~ *department of health and environment* that the recipient cannot reasonably be expected to be discharged and returned home. To return home means the recipient leaves the nursing or medical facility and resides in the home on which the lien has been placed for a continuous period of at least 90 days without being readmitted as an inpatient to a nursing or medical facility. The amount of the lien shall be for the amount of assistance paid by the ~~department of social and rehabilitation services~~ *department of health and environment* after the expiration of six months from the date the recipient became eligible for compensated inpatient care at a nursing home, ~~nursing homes~~ or other ~~medical institution~~ *department of health and environment* until the time of the filing of the lien and for any amount paid thereafter for such medical assistance to the recipient. *After the lien is filed against any real property owned by the recipient, such lien will be dissolved if the recipient is discharged, returns home and resides upon the real property to which the lien is attached for a continuous period of at least 90 days without being readmitted as an inpatient to a nursing or medical facility. If the recipient is readmitted as an inpatient to a nursing or medical facility for a continuous period of less than 90 days, another continuous period of at least 90 days shall be completed prior to dissolution of the lien.**

(5) The lien filed by the secretary of *health and environment* or the secretary's designee for medical assistance correctly received may be enforced before or after the death of the recipient by the filing of an action

to foreclose such lien in the Kansas district court or through an estate probate court action in the county where the real property of the recipient is located. However, it may be enforced only:

- (A) After the death of the surviving spouse of the recipient;
- (B) when there is no child of the recipient, natural or adopted, who is 20 years of age or less residing in the home;
- (C) when there is no adult child of the recipient, natural or adopted, who is blind or disabled residing in the home; or
- (D) when no brother or sister of the recipient is lawfully residing in the home, who has resided there for at least one year immediately before the date of the recipient's admission to the nursing or medical facility, and has resided there on a continuous basis since that time.

(6) The lien remains on the property even after a transfer of the title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

- (A) The lien is satisfied. The recipient, the heirs, personal representative or assigns of the recipient may discharge such lien at any time by paying the amount of the lien to the secretary or the secretary's designee;
- (B) the lien is terminated by foreclosure of prior lien of record or settlement action taken in lieu of foreclosure; or
- (C) the value of the real property is consumed by the lien, at which time the secretary or the secretary's designee may force the sale for the real property to satisfy the lien; or

~~(D) after a lien is filed against the real property, it will be dissolved if the recipient leaves the nursing or medical facility and resides in the property to which the lien is attached for a period of more than 90 days without being readmitted as an inpatient to a nursing or medical facility, even though there may have been no reasonable expectation that this would occur. If the recipient is readmitted to a nursing or medical facility during this period, and does return home after being released, another 90 days must be completed before the lien can be dissolved.~~

(7) If the secretary of social and rehabilitation for aging and disability services or the secretary of health and environment, or both, or such secretary's designee has not filed an action to foreclose the lien in the Kansas district court in the county where the real property is located within 10 years from the date of the filing of the lien, then the lien shall become dormant, and shall cease to operate as a lien on the real estate of the recipient. Such dormant lien may be revived in the same manner as a dormant judgment lien is revived under K.S.A. 60-2403 et seq., and amendments thereto.

(8) *Within seven days of receipt of notice by the secretary for children and families or the secretary's designee of the death of a recipient of medical assistance under this subsection, the secretary for children and families or the secretary's designee shall give notice of such recipient's*

death to the secretary of health and environment or the secretary's designee.

(h) *Placement under the revised Kansas code for care of children or revised Kansas juvenile justice code; assignment of support rights and limited power of attorney.* In any case in which the secretary of social and rehabilitation services for children and families pays for the expenses of care and custody of a child pursuant to K.S.A. 2012 Supp. 38-2201 et seq. or 38-2301 et seq., and amendments thereto, including the expenses of any foster care placement, an assignment of all past, present and future support rights of the child in custody possessed by either parent or other person entitled to receive support payments for the child is, by operation of law, conveyed to the secretary. Such assignment shall become effective upon placement of a child in the custody of the secretary or upon payment of the expenses of care and custody of a child by the secretary without the requirement that any document be signed by the parent or other person entitled to receive support payments for the child. When the secretary pays for the expenses of care and custody of a child or a child is placed in the custody of the secretary, the parent or other person entitled to receive support payments for the child is also deemed to have appointed the secretary, or the secretary's designee, as attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary on behalf of the child. This limited power of attorney shall be effective from the date the assignment to support rights becomes effective and shall remain in effect until the assignment of support rights has been terminated in full.

(i) No person who voluntarily quits employment or who is fired from employment due to gross misconduct as defined by rules and regulations of the secretary or who is a fugitive from justice by reason of a felony conviction or charge shall be eligible to receive public assistance benefits in this state. Any recipient of public assistance who fails to timely comply with monthly reporting requirements under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regulations.

(j) If the applicant or recipient of aid to families with dependent children is a mother of the dependent child, as a condition of the mother's eligibility for aid to families with dependent children the mother shall identify by name and, if known, by current address the father of the dependent child except that the secretary may adopt by rules and regulations exceptions to this requirement in cases of undue hardship. Any recipient of aid to families with dependent children who fails to cooperate with requirements relating to child support enforcement under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regula-

tions which penalty shall progress to ineligibility for the family after three months of noncooperation.

(k) By applying for or receiving child care benefits or food stamps, the applicant or recipient shall be deemed to have assigned, pursuant to K.S.A. 39-756, and amendments thereto, to the secretary on behalf of the state only accrued, present or future rights to support from any other person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. The assignment of support rights shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant or recipient. By applying for or receiving child care benefits or food stamps, the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full. An applicant or recipient who has assigned support rights to the secretary pursuant to this subsection shall cooperate in establishing and enforcing support obligations to the same extent required of applicants for or recipients of aid to families with dependent children.

Sec. 24. K.S.A. 58-3957 is hereby amended to read as follows: 58-3957. (a) (1) A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file with the administrator a claim on a form prescribed by the administrator and verified by the claimant.

(2) *The department of health and environment may claim an interest in any property paid or delivered to the administrator if the deceased owner of such property received medical assistance under K.S.A. 39-709, and amendments thereto, except that such claim shall not exceed the amount of medical assistance received by the deceased owner.*

(3) The administrator may hold a hearing on the claim in accordance with the provisions of the Kansas administrative procedure act. The decision resulting from any hearing shall be a public record.

(b) The administrator shall consider each claim within 90 days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice

of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(c) If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator, together with any additional amount required by K.S.A. 58-3954, and amendments thereto. Interest reported under the previous disposition of unclaimed property act shall not be computed, paid or delivered to the claimant after enactment of this act. If the claim is for property presumed abandoned under K.S.A. 58-3943, and amendments thereto, which was sold by the administrator within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater.

(d) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator, would be subject to subsection (c) shall add any additional amount as provided in K.S.A. 58-3954, and amendments thereto. The additional amount shall be repaid to the holder by the administrator in the same manner as the principal.

Sec. 25. K.S.A. 39-702, 58-3957, 65-116a, 65-128, 65-157, 65-1,109a, 75-5607 and 75-5608 and K.S.A. 2012 Supp. 28-115, 39-709, 65-129a, 65-6821, 65-6822, 65-6823, 65-6824, 65-6825, 65-6826, 65-6827, 65-6828, 65-6829, 65-6830, 65-6831, 65-6832, 65-6833 and 65-6834 are hereby repealed.

Sec. 26. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 17, 2013.

CHAPTER 113

HOUSE BILL No. 2234

AN ACT concerning transportation; relating to the Kansas turnpike authority; director of operations; relating to contracts between the authority and the Kansas department of transportation; concerning purchase of certain real estate; use of toll revenue; amending K.S.A. 68-2003, 68-2009 and 68-2021 and repealing the existing sections; also repealing K.S.A. 68-2030, 68-2031, 68-2032, 68-2033, 68-2034, 68-2035, 68-2036, 68-2037, 68-2038, 68-2039, 68-2040, 68-2041, 68-2042, 68-2043, 68-2044, 68-2045, 68-2046, 68-2047, 68-2048, 68-2048a, 68-2048b, 68-2048c, 68-2051, 68-2052, 68-2053, 68-2054, 68-2055, 68-2056, 68-2057, 68-2058, 68-2059, 68-2060, 68-2061, 68-2062, 68-2063, 68-2064, 68-2065, 68-2066, 68-2067, 68-2068, 68-2069, 68-2070, 68-2071, 68-2072, 68-2073, 68-2074, 68-2075, 68-2076, 68-2077, 68-2078, 68-2079, 68-2080, 68-2081, 68-2082, 68-2083, 68-2084, 68-2085, 68-2086, 68-2087, 68-2088, 68-2089, 68-2090, 68-2091, 68-2092, 68-2093, 68-2094, 68-2095, 68-2096, 68-2097, 68-2098, 68-2099, 68-20,100, 68-20,101, 68-20,102, 68-20,103, 68-20,104, 68-20,105, 68-20,106, 68-20,107, 68-20,108, 68-20,109, 68-20,110, 68-20,111, 68-20,112, 68-20,113, 68-20,114, 68-20,115, 68-20,116, 68-20,117, 68-20,118, 68-20,119 and 75-5028.

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

Section 1. K.S.A. 68-2003 is hereby amended to read as follows: 68-2003. (a) There is hereby created a body politic and corporate to be known as the Kansas turnpike authority. The authority is hereby constituted a public instrumentality and the exercise by the authority of the powers conferred by this act in the construction, operation and maintenance of turnpike projects shall be deemed and held to be the performance of an essential governmental function.

(b) The Kansas turnpike authority shall consist of five members. Two members shall be appointed by the governor for terms of four years. The members appointed by the governor shall be residents of the state and shall each year be owners of revenue bonds issued by the Kansas turnpike authority. One member of the authority shall be the secretary of transportation. One member shall be the chairperson of the committee on transportation and tourism of the senate, and one member shall be a member of the committee on transportation of the house of representatives and shall be appointed by the speaker of the house of representatives. Any person appointed by the governor to fill a vacancy on the authority shall be appointed to serve only for the unexpired term, and a member of the authority shall be eligible for reappointment. A member of the authority may be removed by the governor for misfeasance, malfeasance or willful neglect of duty, but only after reasonable notice and a public hearing conducted in accordance with the provisions of the Kansas administrative procedure act. Each member of the authority, before entering upon the member's duties, shall take and subscribe an oath or affirmation as required by law.

(c) The authority shall elect one member as chairperson of the authority and another as vice-chairperson. The authority shall also elect a secretary-treasurer who need not be a member of the authority. The

chairperson, vice-chairperson and secretary-treasurer shall serve as officers at the pleasure of the authority. Three members of the authority shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(d) Members of the Kansas turnpike authority attending meetings of such authority, or attending a subcommittee meeting thereof authorized by such authority, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(e) *On and after July 1, 2013, the secretary of transportation shall serve as the director of operations of the authority. The director of operations shall be responsible for the daily administration of the toll roads, bridges, structures and facilities constructed, maintained or operated pursuant to this act. The director of operations or the director's designee shall have such powers as are necessary to carry out these responsibilities. The provisions of this subsection shall expire and have no effect on and after July 1, 2016.*

Sec. 2. K.S.A. 68-2009 is hereby amended to read as follows: 68-2009.

(a) The authority is hereby authorized to fix, revise, charge and collect tolls for the use of each turnpike project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, motor fuel filling stations, garages, and restaurants, or for any other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use. All contracts made by the authority for retail establishments or locations for retail establishments shall be made separately for each retail establishment or location for a retail establishment and sealed bids shall be asked separately on each retail establishment or each location for a retail establishment by public offering duly advertised as provided by law for the advertising for bids on state highway construction projects and each such contract shall be let by the authority in like manner as provided by law for the letting of highway construction contracts by the secretary of transportation. Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls from the turnpike project or projects in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay—~~(a)~~: (1) The cost of maintaining, repairing and operating such turnpike project or projects; and ~~(b)~~(2) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes.

(b) Such tolls shall not be subject to supervision or regulation by any

other commission, board, bureau or agency of the state. The tolls and all other revenues derived from the turnpike project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

(c) The authority shall not use toll or other revenue for any other purposes than those set forth in this section.

Sec. 3. K.S.A. 68-2021 is hereby amended to read as follows: 68-2021. *On and after July 1, 2016*, the secretary of transportation and the Kansas turnpike authority are hereby authorized and empowered to contract with each other, by the terms of which contract or contracts the secretary may undertake; (1) to provide personnel and equipment, either of the department of transportation or consulting or contracting firms, required in making any traffic and cost studies or surveys or origin-destination studies necessary preliminary to financing by the Kansas turnpike authority of any particular toll project undertaken as authorized by law, and to do such work; *and*

(2) to provide personnel and equipment required, and to do any engineering, geological work, soils testing or materials testing which may be required by the Kansas turnpike authority either preliminary to the financing of any particular toll project authorized by law or which may be required after such financing and during the construction of such project; ~~Provided, That~~ *The charges for services contemplated by such project*

shall be made by the secretary of transportation on the basis of the total and actual cost to the department of all wages, salaries, expenses, equipment rental, damage to equipment, depreciation or other charges and expenses chargeable to the services to be rendered to the Kansas turnpike authority. ~~Provided further, except~~ that the total amount of any credit and funds advanced hereunder shall not at any one time exceed the sum of ~~two hundred fifty thousand dollars (\$250,000)~~ \$250,000.

New Sec. 4. (a) The secretary of transportation and the Kansas turnpike authority are hereby authorized and empowered to contract with each other to provide personnel and equipment and other resources, either of the department of transportation, the Kansas turnpike authority or consulting or contracting firms for: (1) Recordkeeping, reporting, administrative, planning, engineering, legal and clerical functions; and

(2) construction, operation and maintenance of turnpike projects and highways of the state.

(b) The Kansas turnpike authority shall retain its separate identity, powers and duties as an instrumentality of the state. Duplication of effort, facilities and equipment shall be minimized by the authority and the secretary of transportation in operation and maintenance of turnpikes and highways of the state. The authority and the secretary are authorized to take such action as necessary to implement this section, including the temporary transfer of personnel, property and equipment from the authority to the secretary, and the secretary to the authority, to effect contracts described in subsection (a). The integrity of the bonded indebtedness shall be maintained through the actions of the authority.

(c) The provisions of this section shall expire and have no effect on and after July 1, 2016.

Sec. 5. K.S.A. 68-2003, 68-2009, 68-2021, 68-2030, 68-2031, 68-2032, 68-2033, 68-2034, 68-2035, 68-2036, 68-2037, 68-2038, 68-2039, 68-2040, 68-2041, 68-2042, 68-2043, 68-2044, 68-2045, 68-2046, 68-2047, 68-2048, 68-2048a, 68-2048b, 68-2048c, 68-2051, 68-2052, 68-2053, 68-2054, 68-2055, 68-2056, 68-2057, 68-2058, 68-2059, 68-2060, 68-2061, 68-2062, 68-2063, 68-2064, 68-2065, 68-2066, 68-2067, 68-2068, 68-2069, 68-2070, 68-2071, 68-2072, 68-2073, 68-2074, 68-2075, 68-2076, 68-2077, 68-2078, 68-2079, 68-2080, 68-2081, 68-2082, 68-2083, 68-2084, 68-2085, 68-2086, 68-2087, 68-2088, 68-2089, 68-2090, 68-2091, 68-2092, 68-2093, 68-2094, 68-2095, 68-2096, 68-2097, 68-2098, 68-2099, 68-20,100, 68-20,101, 68-20,102, 68-20,103, 68-20,104, 68-20,105, 68-20,106, 68-20,107, 68-20,108, 68-20,109, 68-20,110, 68-20,111, 68-20,112, 68-20,113, 68-20,114, 68-20,115, 68-20,116, 68-20,117, 68-20,118, 68-20,119 and 75-5028 are hereby repealed.

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

Approved April 19, 2013.

CHAPTER 114

SENATE BILL No. 199

AN ACT concerning health care; relating to stem cell therapy and unused medications; amending K.S.A. 2012 Supp. 65-1636, 65-1669, 65-1670, 65-1671 and 65-1674 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 65-1664, 65-1665, 65-1666 and 65-1667.

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

Section 1. (a) The university of Kansas medical center shall establish the midwest stem cell therapy center. The center shall:

(1) Focus on activities that advance adult, cord blood and related stem cell and non-embryonic stem cell research and therapies for patient treatment;

(2) serve as a core facility to produce clinical grade stem cells from adult tissues, cord blood and related materials for use in clinical trials and therapies;

(3) facilitate the delivery of adult, cord blood and related stem cell therapies to Kansas City and midwest region hospitals where appropriate;

(4) partner and collaborate with the blood and marrow transplant center of Kansas to foster a regional network of physicians trained in adult, cord blood and related stem cell therapy applications;

(5) create and maintain a database resource for physicians and patients that provides a comprehensive global list of available stem cell clinical trials and therapies;

(6) initiate clinical trials with adult, cord blood and related stem cells;

(7) create education modules to train and educate physicians and research scientists about peer-reviewed adult, cord blood and related stem cell therapy applications for patients;

(8) distribute information to Kansas physicians about methods for successful treatments with adult, cord blood and related stem cells through basic and clinical research; and

(9) inform the public on available adult, cord blood and related stem cell therapeutic options.

Sec. 2. (a) The executive vice chancellor of the university of Kansas medical center shall appoint the director of the midwest stem cell therapy center.

(b) The director shall report to the executive vice chancellor of the university of Kansas medical center.

(c) The director of the midwest stem cell therapy center shall have experience in adult or cord blood stem cell research and experience in clinical applications of adult or cord blood stem cell therapies.

(d) The director of the midwest stem cell therapy center shall be responsible for administration of the midwest stem cell therapy center, including the overall direction of personnel, equipment and facilities.

(e) The director of the midwest stem cell therapy center shall be responsible for coordination of patient treatment and research with adult, cord blood and related stem cells and non-embryonic stem cells.

(f) The director of the midwest stem cell therapy center is hereby authorized to solicit and receive grants, gifts, contributions or bequests made for the purpose of furthering the goals and missions of the midwest stem cell therapy center. The director of the midwest stem cell therapy center shall remit all moneys so received to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the midwest stem cell therapy center fund.

(g) Fees received for core charges for cell processing and manufacturing, clinical trial fees and similar service charges shall be paid to the university of Kansas medical center research institute, inc. or university of Kansas endowment, as determined by the director.

(h) The university of Kansas endowment association may accept gifts directly designated for the benefit of the midwest stem cell therapy center consistent with its corporate purpose as a nonprofit charitable corporation whose mission seeks the advancement of the university of Kansas.

(i) The director of the midwest stem cell therapy center shall annually submit a report to the senate committee on ways and means, senate committee on public health and welfare, house committee on appropriations and house committee on health and human services at the beginning of the regular session of the legislature beginning in 2014 on the fees received, expenditure of moneys appropriated and activities of the midwest stem cell therapy center, including the activities of its affiliated organizations, and the activities of the advisory board.

Sec. 3. (a) There is hereby established in the state treasury the midwest stem cell therapy center fund. Expenditures from the fund may be made for the purposes of furthering the goals and missions of the midwest stem cell therapy center and for such other purposes as may be specified with regard to any grant, gift, contribution or bequest. All such expenditures shall be authorized by the director of the midwest stem cell therapy center and made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of midwest stem cell therapy center.

(b) On or before the 10th of each month, the director of accounts

and reports shall transfer from the state general fund to the midwest stem cell therapy center fund interest earnings based on:

(1) The average daily balance of moneys in the midwest stem cell therapy center fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

Sec. 4. (a) There is hereby established the advisory board to the midwest stem cell therapy center which shall be composed of 14 members and one ex officio member as follows:

(1) One person representing the patient community appointed by the governor and such original member shall serve two years;

(2) one person representing the physician community appointed by the governor and such original member shall serve three years;

(3) one person representing the university of Kansas appointed by the state board of regents and such original member shall serve one year;

(4) one person representing Kansas state university appointed by the state board of regents and such original member shall serve one year;

(5) one person representing the university of Kansas medical center appointed by the executive vice chancellor and such original member shall serve three years;

(6) one person representing the institute for advancing medical innovation appointed by the director of the institute for advancing medical innovation and such original member shall serve one year;

(7) one person representing the university of Kansas cancer center appointed by the director of the university of Kansas cancer center and such original member shall serve two years;

(8) one person representing the university of Kansas hospital authority appointed by the board of directors of the university of Kansas hospital authority and such original member shall serve for one year;

(9) one member of the house of representatives appointed by the speaker of the house and such original member shall serve for two years;

(10) one member of the senate appointed by the president of the senate and such original member shall serve for three years;

(11) one person with a nationally respected reputation representing the physician community appointed by the speaker of the house and such original member shall serve three years;

(12) one person with a nationally respected reputation representing the scientific research community appointed by the president of the senate and such original member shall serve one year;

(13) one member of the executive branch of the state agencies appointed by the governor and such original member shall serve for two years;

(14) one member representing the blood and marrow transplant cen-

ter of Kansas appointed by the chief executive officer of via christi health and such original member shall serve three years; and

(15) the director of the midwest stem cell therapy center as an ex officio member of the board.

(b) The appointments to the advisory board shall be for terms of three years, except as provided for the original members in subsection (a). No member shall be appointed to the advisory board for more than three consecutive terms. Upon the expiration of the term of office of any member of the advisory board on or after the effective date of this act, and in any case of a vacancy existing on or after the effective date of this act, a successor shall be appointed by the appropriate entity pursuant to this section.

(c) The advisory board shall serve in an advisory role to the director of the midwest stem cell therapy center.

(d) Duties of members may include fundraising, public speaking and other public relation activities to advance public awareness of successful adult, cord blood and related stem cell therapeutic options.

(e) The governor shall appoint the chairperson of the advisory board and the chairperson may serve consecutive terms. The advisory board shall meet at least four times each year and at such other times as it deems appropriate, or upon call of the chairperson.

(f) All members of the advisory board shall serve without compensation.

Sec. 5. All funds and facilities of the midwest stem cell therapy center shall be dedicated to treatments and research with adult, cord blood and related stem cells and non-embryonic stem cells. No funds or facilities of the midwest stem cell therapy center shall involve embryonic stem cells or fetal tissue cells.

Sec. 6. As used in sections 1 through 5, and amendments thereto:

(a) "Adult, cord blood and related stem cells" are stem cells derived from postnatal tissue cells, umbilical cord blood and cord tissue including Wharton's jelly, amniotic fluid and placental tissue.

(b) "Embryonic stem cells" are stem cells derived from early stage human embryos, up to and including the blastocyst stage.

(c) "Facilities" include all equipment used by the midwest stem cell therapy center.

(d) "Fetal tissue cells" are cells harvested from aborted fetal tissue.

(e) "Non-embryonic stem cells" are stem cells such as iPS cells (induced pluripotent stem cells) generated from adult somatic cells or other non-embryonic tissue cells without any embryonic component.

Sec. 7. K.S.A. 2012 Supp. 65-1636 is hereby amended to read as follows: 65-1636. (a) Except as otherwise provided in this act, the sale and distribution of drugs shall be limited to pharmacies operating under registrations as required by this act, and the actual sale or distribution of

drugs shall be made by a pharmacist or other persons acting under the immediate personal direction and supervision of the pharmacist.

~~(b) The donation, acceptance, transfer, distribution or dispensing of any drug in compliance with the provisions of the cancer drug repository program established by K.S.A. 2012 Supp. 65-1664 through 65-1667, and amendments thereto, and any rules and regulations promulgated thereunder shall not constitute a violation of this section.~~

~~(e)(b)~~ The donation, acceptance, transfer, distribution or dispensing of any drug in compliance with the provisions of the utilization of unused medications act and any rules and regulations promulgated thereunder shall not constitute a violation of this section.

Sec. 8. K.S.A. 2012 Supp. 65-1669 is hereby amended to read as follows: 65-1669. As used in the utilization of unused medications act:

(a) “Adult care home” has the same meaning as such term is defined in K.S.A. 39-923, and amendments thereto.

(b) “Community mental health center” has the same meaning as such term is defined in K.S.A. 75-3307c, and amendments thereto.

(c) “Donating entities” means adult care homes, mail service pharmacies, *institutional drug rooms* and medical care facilities who elect to participate in the program.

(d) “Drug” has the same meaning as such term is defined in K.S.A. 65-1626, and amendments thereto.

(e) “Federally qualified health center” means a center which meets the requirements for federal funding under 42 U.S.C. § 1396d(1) of the public health service act, and amendments thereto, and which has been designated as a “federally qualified health center” by the federal government.

(f) “Indigent health care clinic” has the same meaning as such term is defined in K.S.A. 75-6102, and amendments thereto.

(g) *“Institutional drug room” has the meaning as such term is defined in K.S.A. 65-1626(bb), and amendments thereto.*

~~(g)(h)~~ “Mail service pharmacy” means a licensed Kansas pharmacy that ships, mails or delivers by any lawful means a lawfully dispensed medication in tamper-resistant packaging to residents of this state or another state.

~~(h)(i)~~ “Medical care facility” has the same meaning as such term is defined in K.S.A. 65-425, and amendments thereto.

~~(i)(j)~~ “Medically indigent” has the same meaning as such term is defined in K.S.A. 75-6102, and amendments thereto.

~~(j)(k)~~ “Medication” means a prescription drug or drug as defined by this section.

~~(k)(l)~~ “Mid-level practitioner” has the same meaning as such term is defined in K.S.A. 65-1626, and amendments thereto.

~~(l)~~(m) “Practitioner” has the same meaning as such term is defined in K.S.A. 65-1626, and amendments thereto.

~~(m)~~(n) “Prescription drug” means a drug which may be dispensed only upon prescription of a practitioner or mid-level practitioner authorized by law and which is approved for safety and effectiveness as a prescription drug under section 505 or 507 of the federal food, drug and cosmetic act ~~(52 Stat. 1040 (1938), 21 U.S.C.A. § 301), and amendments thereto.~~

~~(n)~~(o) “Qualifying center or clinic” means an indigent health care clinic, federally qualified health center or community mental health center.

(p) *“Samples of medications or injectables” means a unit of drug that is not intended to be sold and is intended to promote the sale of the drug.*

Sec. 9. K.S.A. 2012 Supp. 65-1670 is hereby amended to read as follows: 65-1670. (a) The board of pharmacy shall establish and implement a program consistent with public health and safety through which unused drugs, ~~other than drugs defined as controlled substances,~~ may be transferred from donating entities that elect to participate in the program for the purpose of distributing the unused medications to Kansas residents who are medically indigent.

(b) A qualifying center or clinic in consultation with a pharmacist shall establish procedures necessary to implement the program established by the utilization of unused medications act.

(c) The state board of pharmacy shall provide technical assistance to entities who may wish to participate in the program.

Sec. 10. K.S.A. 2012 Supp. 65-1671 is hereby amended to read as follows: 65-1671. The following criteria shall be used in accepting unused medications for use under the utilization of unused medications act:

(a) The medications shall have come from a controlled storage unit of a donating entity;

(b) only medications in their original or pharmacist sealed unit dose packaging or in tamper evident packaging, unit of use or sealed, unused injectables, *including samples of medications or injectables*, shall be accepted and dispensed pursuant to the utilization of unused medications act;

(c) expired medications shall not be accepted;

(d) a medication shall not be accepted or dispensed if the person accepting or dispensing the medication has reason to believe that the medication is adulterated;

(e) no controlled substances shall be accepted, ~~and~~, *unless the state board of pharmacy designates certain controlled substances as accepted medications in the adoption of rules and regulations pursuant to K.S.A. 65-1674, and amendments thereto; and*

(f) subject to the limitation specified in this section, unused medi-

cations dispensed for purposes of a medical assistance program or drug product donation program may be accepted and dispensed under the utilization of unused medications act.

Sec. 11. K.S.A. 2012 Supp. 65-1674 is hereby amended to read as follows: 65-1674. (a) The state board of pharmacy shall adopt rules and regulations by December 1, 2008, to implement the utilization of unused medications act. Such rules shall:

(1) Include standards and procedures for transfer, acceptance and safe storage of donated medications;

(2) include standards and procedures for inspecting donated medications to ensure that the medications are in compliance with the utilization of unused medications act and to ensure that, in the professional judgment of a pharmacist, the medications meet all federal and state standards for product integrity;

(3) establish standards *and procedures* for acceptance of unused medications from donating entities; ~~and~~

(4) *establish standards and procedures for designating certain controlled substances as accepted donated medications;*

(5) *establish standards and procedures for a qualifying center or clinic to prepare any donated medications for dispensing or administering; and*

(6) establish, in consultation with the department of health and environment and the *Kansas* department ~~on~~ for aging *and disability services*, any additional rules and regulations, and standards and procedures it deems appropriate or necessary to implement the provisions of the utilization of unused medications act.

(b) In accordance with the rules and regulations and procedures of the program established pursuant to this section, a resident of an adult care home, or the representative or guardian of a resident may donate unused medications, ~~other than prescription drugs defined as controlled substances,~~ for dispensation to medically indigent persons.

Sec. 12. K.S.A. 2012 Supp. 65-1636, 65-1664, 65-1665, 65-1666, 65-1667, 65-1669, 65-1670, 65-1671 and 65-1674 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 22, 2013.

CHAPTER 115

Substitute for HOUSE BILL No. 2024*

AN ACT enacting the Kansas roofing contractor registration act.

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

Section 1. Sections 1 through 18, and amendments thereto, shall be known and may be cited as the Kansas roofing registration act.

Sec. 2. As used in sections 1 through 18, and amendments thereto:

(a) (1) “Roofing contractor” means any person, including a subcontractor and nonresident contractor, who in the ordinary course of business:

(A) Engages in the business of commercial or residential roofing services for a fee; or

(B) offers to engage in or solicits roofing-related services, including construction, installation, renovation, repair, maintenance, alteration and waterproofing.

(2) Roofing contractor shall not mean:

(A) A person engaged in the demolition of a structure or the cleanup of construction waste and debris that contains roofing material; or

(B) a person working under the direct supervision of the roofing contractor and who is hired by such roofing contractor as an employee, day laborer, or contract laborer.

(b) “Nonresident contractor” means any contractor who:

(1) Has not established and maintained a place of business as a roofing contractor in this state within the preceding year;

(2) claims residency in another state; or

(3) has not submitted an income tax return as a resident of this state within the preceding year.

(c) “Person” means any individual, firm, partnership, association, corporation, limited liability company, or other group or combination thereof acting as a unit, unless the intent to give a more limited meaning is disclosed clearly by this act.

(d) “Attorney general” means the attorney general of the state of Kansas or the attorney general’s designee.

Sec. 3. (a) (1) No person shall engage in the business of or act in the capacity of a roofing contractor within this state without having a valid registration certificate as required by this act.

(2) No person may bring or maintain any claim, action, suit, or proceeding in any court of this state related to such person’s business or capacity as a roofing contractor without having a valid registration certificate as required by this act.

(b) (1) Any person who fails to obtain a valid registration certificate prior to acting as a roofing contractor as defined in this act, shall be liable for a civil penalty as provided in subsection (a) of K.S.A. 50-636, and

amendments thereto, which civil penalty shall be in addition to any other relief which may be granted or other penalty prescribed by law. The grant of powers to the attorney general in this act does not affect remedies available to consumers under other principles of law or equity.

(2) Any person who acts as a roofing contractor while such person's registration certificate as a roofing contractor is suspended or revoked shall be liable for a civil penalty as provided in subsection (a) of K.S.A. 50-636, and amendments thereto, which civil penalty shall be in addition to any other relief which may be granted or other penalty prescribed by law.

Sec. 4. (a) Subject to appropriations for this act, the attorney general is authorized to administer and implement the provisions of this act. The attorney general may administer and implement any provision of this act through use of the internet or other technology as deemed necessary or appropriate.

(b) The attorney general may create any forms necessary for the administration of this act.

(c) In accordance with the rules and regulations filing act, the attorney general is hereby authorized to adopt rules and regulations necessary to implement the provisions of this act. Such rules and regulations may include, but are not limited to, provisions concerning:

(1) Fees necessary to fund the expenses and operating costs incurred in the administration and enforcement of the provisions of this act.

(2) The acquisition of insurance, indemnity coverage or surety bonds in amounts determined by the attorney general.

(3) Any other matter deemed necessary by the attorney general to carry out, implement and enforce the provisions of this act.

Sec. 5. (a) (1) To obtain a roofing contractor registration certificate under this act, an applicant who is at least 18 years of age shall submit an application under oath containing:

(A) A statement of the applicant's experience and qualifications as a roofing contractor, if any.

(B) The applicant's name, physical address, business name and address, information on any other person who will be authorized to act as the business entity, and the applicant's phone number.

(C) A copy of the roofing contractor's certificate of liability insurance shall be filed with the application and shall be not less than \$500,000. Any insurance company issuing a liability policy to a roofing contractor pursuant to the provisions of this act shall be required to notify the attorney general in the event such liability policy is canceled for any reason or lapses for any reason.

(D) Proof satisfactory to the attorney general that the applicant has secured either workers' compensation coverage satisfactory under the

workers' compensation act or an affidavit of exemption or self-insurance as authorized pursuant to the workers' compensation act.

(E) Any other information deemed necessary in assisting the attorney general to register the person as a roofing contractor.

(2) The application shall contain statements that the applicant:

(A) Desires the issuance of a roofing contractor registration certificate.

(B) Will comply with the provisions of this act.

(C) Will comply with all federal and state laws and local ordinances.

(D) (i) Has or has not been registered or licensed as a roofing contractor in another state; and

(ii) whether any disciplinary action was taken against such registration or license or whether such registration or license is currently in good standing.

(3) If the applicant is not a resident of this state, then the nonresident applicant will appoint the secretary of state as legal agent for service of process or as otherwise provided in this act.

(b) The attorney general shall refuse to register any person if the attorney general determines:

(1) The application contains false, misleading, or incomplete information.

(2) The applicant fails or refuses to provide any information requested by the attorney general.

(3) The applicant fails or refuses to pay the required fees.

(4) The applicant is ineligible for registration due to a suspended or revoked registration in this state.

(5) The nonresident applicant has a revoked or suspended registration or license for roofing contractors required by law in another state.

(6) The applicant has failed to provide a current tax clearance certificate or letter from the Kansas department of revenue along with the filing of any application.

(c) (1) The attorney general shall notify the applicant in writing if the attorney general denies an application for a registration or renewal of a certificate, and shall provide the applicant an opportunity to respond to or cure any defect in the written application or renewal for a period of 10 days from the date of the written notification.

(2) Notification shall be deemed sufficient if mailed, via first class mail, to the address listed in the last application for registration or for renewal filed by the applicant.

(3) An applicant aggrieved by a decision of the attorney general denying a registration or renewal may appeal the decision as provided in the Kansas administrative procedure act. In the alternative, the applicant may reapply after the expiration of a 90-day waiting period, if the applicant is otherwise eligible under the provisions of this act.

(4) All application, renewal and reapplication fees shall not be refundable.

(d) The attorney general shall classify as not in good standing the registration certificate of any roofing contractor who fails to do any of the following:

(1) Maintain liability insurance coverage;

(2) maintain workers' compensation coverage satisfactory under the workers' compensation act, or provide an affidavit of exemption or self-insurance as authorized pursuant to the workers' compensation act;

(3) maintain an active status of a corporation or registration as a foreign corporation, a limited liability company or registration as a foreign limited liability company, a limited liability partnership registration or foreign limited liability partnership registration, or a limited partnership certificate or limited partnership or foreign limited partnership certificate of authority, with the office of the secretary of state;

(4) maintain or renew a roofing contractor registration as provided in this act;

(5) notify the attorney general for any act or omission specified in subsection (a) of section 13, and amendments thereto, or any other violation of this act;

(6) maintain any registration as required by law in another state while registered in this state as a nonresident roofing contractor; or

(7) file and pay all taxes when due in this state.

(e) The attorney general shall send a written notice to the person when such person's registration is not in good standing. Notification shall be deemed sufficient if mailed, via first class mail, to the address listed in the last registration or renewal form filed by the applicant. Any roofing contractor who has been notified by the attorney general that such person's registration is not in good standing shall cease soliciting or entering new roofing services and projects as of the date of such notification. The roofing contractor shall be allowed to complete roofing projects where actual physical work has begun prior to the date of issuance of the notice that such person's registration is not in good standing. If the roofing contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the attorney general within 30 days of the date of the notice, or if the roofing contractor solicits or enters into new roofing services contracts or projects while the roofing contractor's registration certificate is not in good standing, or while such registration certificate is suspended or revoked, the roofing contractor shall be in violation of the provisions of this act. Any registration certificate that is not in good standing shall be revoked 30 days from the date of notification to the roofing contractor that the registration is not in good standing. Notice of revocation shall be deemed sufficient if mailed, via first class mail, to the address listed in the last application, registration or renewal form filed by the applicant. The roofing contractor may reinstate such roofing contractor's registra-

tion certificate to good standing by paying the required fees provided in section 12, and amendments thereto, and complying with all other requirements for issuance of a registration in good standing.

Any person aggrieved by the decision of the attorney general to suspend or revoke a registration certificate pursuant to this section may appeal such decision as provided in the administrative procedure act.

Sec. 6. (a) There shall be a question on all application and renewal forms requiring the applicant to answer under oath whether or not the applicant has been convicted of a felony offense in this state, another state, or any other place, and the nature of that offense upon which a conviction was imposed.

(b) Conviction of an offense shall not disqualify a person from registration as a roofing contractor under this act, provided the applicant has truthfully disclosed the conviction and nature of the offense.

(c) When deemed appropriate, the attorney general may conduct a criminal history records search or background check on any applicant or registered roofing contractor and may investigate the information submitted on a roofing contractor application or renewal form, provided no adverse action may be taken against the person until the person has been notified and given an opportunity to respond in writing.

Sec. 7. The holder of a roofing contractor registration certificate may engage in the roofing business within this state pursuant to the provisions of this act, and subject to the following limitations:

(a) A roofing contractor's registration certificate number shall be valid and in good standing at the time of soliciting a project and during subsequent job performance;

(b) a roofing contractor's registration certificate number shall be submitted when applying for any permit issued by the state, or any of its political subdivisions, for commercial or residential roofing services or projects, if a permit is required by such authority, and shall be written upon each permit issued;

(c) a roofing contractor's registration certificate cannot be shared or used by any other individual or business entity, except that a business firm, partnership, association, corporation, limited liability company or other group or combination thereof acting as a unit may be granted a single roofing registration certificate number for use by designated roofing contractors acting as agents for the business entity when the application for registration certificate contained sufficient information on each member, partner, officer and agent, and the attorney general issued a single certificate number to such persons as a business unit;

(d) upon any change to the name, address, business entity or resident agent of a roofing contractor or upon adjudication by a court of competent jurisdiction for a violation of this act or an act or omission specified in

subsection (a) of section 13, and amendments thereto, the attorney general shall be notified in writing;

(e) a roofing contractor shall comply with all state laws and local ordinances; and

(f) a roofing contractor must pay taxes due in this state.

Sec. 8. (a) At the time of making application for a roofing contractor registration certificate pursuant to this act, the applicant shall pay to the attorney general a fee to be set by the attorney general, which shall not exceed \$500 for the annual registration certificate.

(b) There is hereby established in the state treasury the roofing contractor registration fund to be administered by the attorney general. All moneys received by the attorney general 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 roofing contractor registration fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the attorney general and the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee. All moneys credited to the roofing contractor registration fee fund shall be expended for the administration of the duties, functions and operating expenses of the roofing contractor registration act.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the roofing contractor registration fee fund established in subsection (a) interest earnings based on:

(1) The average daily balance of money in the roofing contractor registration fee fund for the preceding month; and

(2) the net earnings rate of the pooled money investment fund portfolio for the preceding month.

(d) The fee to be submitted with an application for a roofing contractor registration certificate may be prorated as set by the attorney general. Unless prorated at the time of initial registration, fees shall be paid in full at the time an application for a registration certificate is filed and such registration certificate shall expire on June 30 of each year.

(e) An annual renewal fee for renewal of a roofing contractor registration certificate shall be set by the attorney general. Such renewal fee shall not exceed \$500.

Sec. 9. (a) The roofing contractor registration act shall not apply to:

(1) An actual owner of commercial, residential or farm property who physically performs, or has employees who perform, roofing services including, construction, installation, renovation, repair, maintenance, alteration, waterproofing or removal of materials or structures on such owner's own dwelling or another structure located on the residential or farm prop-

erty owned by such person without the assistance of any registered roofing contractor;

(2) any authorized employee, representative or representatives of the United States government, the state of Kansas, or any county, municipality, or other political subdivision of this state;

(3) any person who furnishes any fabricated or finished product, material, or article of merchandise which is not incorporated into or attached to real property by such person so as to become affixed thereto;

(4) any person employed by a manufactured home and modular home manufacturer while performing services and work for the manufactured home and modular home manufacturer;

(5) any person registered as a home inspector pursuant to K.S.A. 58-4501 et seq., and amendments thereto, while performing functions pursuant to that act;

(6) any person employed by a manufactured home dealer while acting within the scope of that license;

(7) any person employed as a manufactured home installer while acting within the scope of that license; and

(8) any person who engages in providing roofing services that on each and every undertaking or project during any fiscal year bear an aggregate price, including labor, materials and all other items, that is quoted, bid, offered, agreed, contracted, billed, collected and paid at less than \$2,000. This exemption does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that the person is a roofing contractor or that the person is qualified to engage in the business of a roofing contractor.

(b) Any administrative or governing body with authority to enter into public contracts shall require individual roofing contractor registration for purposes of such persons submitting or entering into any bid or contract.

Sec. 10. Within 60 calendar days from the date of application, the attorney general shall either issue or deny the roofing contractor registration certificate. No registration certificate shall be issued to an applicant until the attorney general receives all documentation and fees necessary to obtain a registration certificate. The registration certificate issued on an original application entitles the person to act as a roofing contractor within this state, subject to the limitations of this act, until the expiration of the then current fiscal year ending June 30, except that an initial registration certificate issued in May or June is valid until June 30 of the subsequent year.

Sec. 11. Not later than 10 days after the date of a change in a roofing contractor's name, address or legal service agent, or upon a registered roofing contractor's ceasing business as a roofing contractor, the person shall notify the attorney general of the change on a form provided by the

attorney general. A change of name or address shall be accompanied by a fee set by the attorney general not to exceed \$25. No person shall change such person's name under an active registration certificate if the change is associated with a change in the legal status of the business entity other than a change in marital status. Doing business under a new business name or a change in legal status of a business requires issuance of a new registration certificate. When a registered roofing contractor ceases to be active as a roofing contractor, the contractor shall notify the attorney general within 10 days and the attorney general shall suspend the registration certificate of such contractor as soon as practical after receiving the notification.

Sec. 12. (a) (1) Any roofing contractor registration certificate issued under this act may be renewed for each successive fiscal year by obtaining from the attorney general a certificate of renewal. To obtain a certificate of renewal, the person shall file with the attorney general a renewal application by June 30 and pay the renewal fee. The application for renewal shall require statements under oath that the applicant has or has not been convicted of any felony offense, and the nature of such offense, since issuance of the prior registration certificate, and whether or not the applicant has been adjudicated by a court of competent jurisdiction for any violation of this act or any act or omission specified in subsection (a) of section 13, and amendments thereto.

(2) The applicant shall include with the renewal application a copy of the certificate of liability insurance, proof of workers' compensation coverage, unless exempt or self-insured under the workers' compensation act, and, if applicable, a copy of the current registration certificate required by law for roofing contractors and a current tax clearance certificate or letter from the Kansas department of revenue.

(b) The attorney general shall refuse to renew a roofing contractor's registration certificate for any reason stated in subsection (b) of section 5, and amendments thereto. The attorney general shall notify the applicant in writing if the attorney general denies the renewal as provided in subsection (c) of section 5, and amendments thereto.

(c) If any roofing contractor fails to file a renewal application by the June 30 deadline, that contractor's registration certificate shall be deemed not to be in good standing. A roofing contractor has a 30-day grace period after June 30 to renew such registration certificate without a late fee. The late fee shall be set by the attorney general but shall not exceed \$300. If the certificate is not renewed before July 31, the certificate shall be revoked.

(d) (1) A roofing contractor desiring to renew a registration certificate that has been suspended for any cause provided in this act prior to the June 30 annual renewal date shall be assessed a fee equal to twice the

amount of the fee established by subsection (c) of section 8, and amendments thereto.

(2) The attorney general shall assess a reinstatement fee in an amount to be set by the attorney general not to exceed \$500 plus the fee established by section 8, and amendments thereto, for any registration certificate that has been revoked for any cause provided in this act.

(3) A roofing contractor submitting an application for a registration certificate after suspension or revocation of that contractor's registration certificate must be otherwise eligible for registration under this act.

(e) The attorney general shall include a registration status notation in a roofing contractor's record if the status of registration changes from active and valid to not in good standing, denied, suspended or revoked.

Sec. 13. (a) No roofing contractor or any person providing services as a roofing contractor shall:

(1) Abandon a roofing contract without legal grounds after a deposit of money or other consideration has been paid;

(2) divert any funds or property entrusted to a roofing contractor;

(3) engage in any fraudulent or deceptive acts or practices or misrepresentation of products, services or qualifications as a roofing contractor;

(4) make a false or misleading statement in an application for a roofing contractor registration certificate or renewal application or in soliciting a contract for roofing services;

(5) violate any judgment or order by a court of competent jurisdiction against the roofing contractor for a violation of the provisions of this act;

(6) engage in work without a valid registration certificate as required for roofing contractors pursuant to this act or performing roofing services during any period when the roofing contractor's registration certificate is denied, suspended or revoked;

(7) engage in roofing services without obtaining a proper permit as may be required by any state or local authority;

(8) fail to comply with any tax laws authorized by the state or any of its political subdivisions;

(9) damage or injure any person or property while performing roofing services under a valid roofing contractor registration certificate for which the roofing contractor's liability insurance or workers' compensation coverage was inadequate; or

(10) fail to comply with any provision of this act or any rule and regulation adopted thereunder.

(b) Any person may file a duly verified complaint with the attorney general alleging one or more violations of subsection (a). The complaint shall be on a form approved by the attorney general and shall set forth the alleged act or omission stated in subsection (a), and a statement of sufficient facts upon which a reasonable person could conclude that the act or omission specified in subsection (a) has been committed. Nothing

in this section shall be construed to require the complainant to first file a complaint with the attorney general before seeking relief or remedies allowed by law.

(c) A complaint received by the attorney general as provided in this section may be investigated by the attorney general or referred to any county or district attorney for appropriate disposition or investigation. The attorney general is hereby authorized to:

(1) Make investigations and examinations of the registrant's operations, books and records as the attorney general deems necessary for the protection of the public and control access to any documents and records of the licensee or registrant under examination or investigation;

(2) charge reasonable costs of investigation, examination and administration of this act, to be paid by the applicant, licensee or registrant;

(3) exchange any information regarding the administration of this act with any agency of the United States or any state or political subdivision thereof which regulates the licensee or registrant or administers statutes, rules and regulations or programs related to the roofing business, and to enter into information-sharing arrangements with other governmental agencies or associations representing governmental agencies which are deemed necessary or beneficial to the administration of this act;

(4) disclose to any person or entity that an applicant's, licensee's or registrant's application, license or registration certificate has been denied, suspended, revoked or refused renewal;

(5) require or permit any person to file a written statement, under oath or otherwise as the attorney general may direct, setting forth all the facts and circumstances concerning any apparent violation of this act, or any rule and regulation promulgated thereunder or any order issued pursuant to this act;

(6) receive, as a condition in settlement of any investigation or examination, a payment designated for the roofing contractor registration fee fund as directed by the attorney general;

(7) refer such evidence as may be available concerning any violation of this act or of any rule and regulation or order hereunder to the proper county or district attorney, who may in the attorney general's discretion, with or without such a referral, institute the appropriate criminal proceedings under this act;

(8) establish relationships or contracts with any other government programs which require the licensing or registration of roofing contractors or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, registrants or other persons subject to this act and to take such other actions as may be reasonably necessary to facilitate cooperation between such governmental entities or agencies and industry trade associations. The attorney general shall regularly report violations of law, as well as enforcement actions and

other relevant information to any multi-state or nationwide licensing system and registry; and

(9) require any registrant to file with any such roofing contractor licensing system or registry in the form prescribed by the attorney general or the attorney general's designee.

(d) For the purpose of any examination, investigation or proceeding under this act, the attorney general or any officer designated by the attorney general may administer oaths and affirmations, subpoena witnesses, compel such witnesses' attendance, adduce evidence and require the production of any matter which is relevant to the examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of relevant information or items.

(e) In case of refusal to obey a subpoena or court order issued to any person, any court of competent jurisdiction, upon application by the attorney general, may issue to that person an order requiring the person to appear before the attorney general, or the officer designated by the attorney general, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(f) No person is excused from attending and testifying or from producing any document or record before the attorney general or in obedience to the subpoena of the attorney general or in any proceeding instituted by the attorney general, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction or matter concerning which such person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 14. (a) (1) Every applicant for a roofing contractor's registration certificate who is a nonresident contractor, may apply for a registration certificate by signing and filing the application, appointing the secretary of state as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor for construction projects performed in this state. Such appointment shall be evidence of the roofing contractor's consent that any process against the contractor which is served upon the secretary of state

shall be of the same legal force and effect as if served upon the contractor personally within this state.

(2) Registered foreign corporations, registered foreign limited liability companies, foreign limited liability partnerships and foreign limited partnerships which are authorized to do business in this state and which have a current registered agent and registered address on file in the office of the secretary of state shall not be required to appoint the secretary of state as agent for service of process under this section.

(b) Within 10 days after service of the summons upon the secretary of state, notice of such service with the summons and complaint in the action shall be sent to the defendant roofing contractor at the defendant contractor's last known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons.

(c) The secretary of state shall keep a record of all process served upon the secretary of state under this section, showing the day and hour of service. Whenever service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

Sec. 15. (a) When applying for any permit required by the state or any of its political subdivisions for roofing services or jobs, a roofing contractor shall supply the permit-issuing official the roofing contractor's registration certificate number issued pursuant to this act. That official shall enter a roofing contractor's registration certificate number on the permit.

(b) Although exempt from the registration requirements of this act, any person performing as a roofing contractor on such person's own property shall, when applying for a permit required for the project, supply the permit-issuing official any roofing contractor registration certificate number, as soon as available, of each roofing subcontractor engaged in roofing services and doing work covered by the permit, if any. That official shall enter each roofing contractor registration certificate number so supplied before inspection of the job.

(c) A roofing contractor shall display such contractor's roofing contractor registration certificate number issued pursuant to this act on each commercial vehicle used for roofing services and upon every business sign, card, correspondence and contract used to solicit and conduct roofing services in this state.

Sec. 16. (a) Upon request, the attorney general shall verify a roofing contractor registration certificate number to city, county and state enforcement officials and to the public.

(b) The attorney general shall establish a system for the public to confirm roofing contractor registration certificates. Such system shall in-

clude a listing of valid registration certificates and such other information collected pursuant to this act, and amendments thereto, as the attorney general may determine is appropriate. In addition, the system may include a notation for any conviction of a criminal violation in this state, another state, or the United States when disclosed by a criminal history records search on the individual roofing contractor. Disclosure of any information through use of the roofing contractor registration certificate system or information maintained by the attorney general shall not be deemed to be an endorsement of any roofing contractor or determination of any facts, qualifications, information or reputation of any roofing contractor by the attorney general, the state, or any of their respective agents, officers, employees or assigns.

Sec. 17. This act shall be construed to be in addition to, and not in lieu of, any required licensure of persons for certain professions and trades in this state, and further, this act shall not be deemed to conflict with or affect the authority of any state or local agency, board or commission whose duty and authority is to administer or enforce any law or ordinance or to establish, administer or enforce any policy, rule, qualification or standard for any trade or profession.

Sec. 18. (a) Any violation of this act shall be deemed to be a deceptive or unconscionable act or practice under the provisions of the Kansas consumer protection act.

(b) This act shall be part of and supplemental to the Kansas consumer protection act.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 22, 2013.

CHAPTER 116

HOUSE BILL No. 2319*

AN ACT creating the coalition of innovative districts act.

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

Section 1. The provisions of sections 1 through 10, and amendments thereto, shall be known and may be cited as the coalition of innovative districts act.

Sec. 2. As used in sections 1 through 10, and amendments thereto:

(a) "Board of education" means the locally elected board of education of a school district.

(b) "Public innovative district" means a school district that has been

approved to operate as a public innovative district pursuant to section 3, and amendments thereto.

(c) “Coalition” means the coalition of innovative districts established pursuant to section 4, and amendments thereto.

(d) “Completion percentage” means the percentage of high school graduates of a public innovative district that have enlisted in military service or completed a postsecondary educational certificate program or degree program as determined by the national student clearinghouse, or other postsecondary educational program completion database utilized by such public innovative district.

(e) “School district” means a unified school district organized and operated under the laws of this state.

(f) “School year” means the 12-month period ending June 30.

(g) “State board” means the state board of education.

Sec. 3. (a) Except as provided in section 5, and amendments thereto, the board of education of any school district may apply to the state board for a grant of authority to operate such school district as a public innovative district. The application shall be submitted in the form and manner prescribed by the state board, and shall be submitted not later than December 1 of the school year preceding the school year in which the school district intends to operate as a public innovative district.

(b) The application shall include the following:

(1) A description of the educational programs of the public innovative district;

(2) a description of the interest and support for partnerships between the public innovative district, parents and the community;

(3) the specific goals and the measurable pupil outcomes to be obtained by operating as a public innovative district; and

(4) an explanation of how pupil performance in achieving the specified outcomes will be measured, evaluated and reported.

(c) (1) Within 90 days from the date such application is submitted, the state board shall review the application to determine compliance with this section, and shall approve or deny such application on or before the conclusion of such 90-day period. If the application is determined to be in compliance with this section, the state board shall approve such application and grant the school district authority to operate as a public innovative district. Notification of such approval shall be sent to the board of education of such school district within 10 days after such decision.

(2) If the state board determines such application is not in compliance with either this section, or section 5, and amendments thereto, the state board shall deny such application. Notification of such denial shall be sent to the board of education of such school district within 10 days after such decision and shall specify the reasons therefor. Within 30 days from the date such notification is sent, the board of education of such school district

may submit a request to the state board for reconsideration of the application and may submit an amended application with such request. The state board shall act on the request for reconsideration within 60 days of receipt of such request.

(d) A public innovative district shall:

(1) Not charge tuition for any of the pupils residing within the public innovative district;

(2) participate in all Kansas math and reading assessments applicable to such public innovative district, or an alternative assessment program for measuring student progress as determined by the board of education;

(3) abide by all financial and auditing requirements that are applicable to school districts, except that a public innovative district may use generally accepted accounting principles;

(4) comply with all applicable health, safety and access laws; and

(5) comply with all statements set forth in the application submitted pursuant to subsection (a).

(e) (1) Except as otherwise provided in sections 1 through 10, and amendments thereto, or as required by the board of education of the public innovative district, a public innovative district shall be exempt from all laws and rules and regulations that are applicable to school districts.

(2) A public innovative district shall be subject to the special education for exceptional children act, the virtual school act, the school district finance and quality performance act, the provisions of K.S.A. 72-8801 et seq., and amendments thereto, all laws governing the issuance of general obligation bonds by school districts, the provisions of K.S.A. 74-4901 et seq., and amendments thereto, and all laws governing the election of members of the board of education, the open meetings act as provided in K.S.A. 75-4317 et seq., and amendments thereto, and the open records act as provided in K.S.A. 45-215 et seq., and amendments thereto.

Sec. 4. (a) There is hereby established the coalition of innovative districts, which shall consist of each school district granted authority to operate as a public innovative district pursuant to section 3, and amendments thereto.

(b) The duties and functions of the coalition set forth in the provisions of sections 1 through 10, and amendments thereto, shall be carried out by the coalition board, which shall consist of one representative of each public innovative district who shall be designated by the board of education of such public innovative district.

(c) The chairperson of the coalition board shall be appointed by the governor, the chairperson of the senate committee on education and the chairperson of the house of representatives committee on education whose decision shall be unanimous. The chairperson shall serve for a term of five years. In the event of a vacancy in the position of chairperson, a successor shall be appointed pursuant to this subsection.

(d) The coalition board may meet at such times and places as determined by the coalition board. Any action by the coalition board shall be taken only upon approval by a majority of the members.

(e) The coalition board may organize itself into subcommittees.

(f) The coalition board shall report annually to the governor and the legislature regarding pupil performance in public innovative districts, recommendations for amendments to laws and rules and regulations pertaining to school districts and any other information regarding the operation of public innovative districts during the immediately preceding school year.

Sec. 5. (a) Until such time as two or more public innovative districts have been granted authority to operate as public innovative districts pursuant to section 3, and amendments thereto, any board of education of a school district desiring to operate as a public innovative district shall submit a request for approval to operate as a public innovative district to the governor, the chairperson of the senate committee on education and the chairperson of the house of representatives committee on education and have such request approved by a majority of the three persons prior to submitting an application to the state board under section 3, and amendments thereto. The request for approval shall include such information as is required to be included on an application for authority to operate as a public innovative district under section 3, and amendments thereto.

(b) Upon the approval of the first two public innovative districts, the board of education of a school district desiring to operate as a public innovative district shall submit a request for approval to operate as a public innovative district to the coalition board and have such request approved by the coalition board prior to submitting any application to the state board under section 3, and amendments thereto. The coalition board, in its sole discretion, shall approve or deny the request. As part of its review of such request, the coalition board may make recommendations to the requesting school district to modify the request, and may consider any such modifications prior to making a final decision.

(c) The request for approval required by subsection (b) shall include such information as is required to be included on an application for authority to operate as a public innovative district under section 3, and amendments thereto. Copies of the request for approval shall be submitted to each public innovative district that is a member of the coalition. Within 30 days after receipt of the request for approval by the last member to receive such request, the coalition board shall meet to approve or deny the request. Notification of the approval or denial of a request shall be sent to the board of education of the requesting school district within 10 days after such decision. If the request is denied, the notification shall specify the reasons therefor. Within 30 days from the date a notification of denial is sent, the board of education of the requesting school district

may submit a request to the coalition board for reconsideration of the request for approval and may submit an amended request for approval with the request for reconsideration. The coalition board shall act on the request for reconsideration within 30 days of receipt of such request.

(d) No more than 10% of the school districts in the state shall operate as public innovative districts at any one time. Any request for approval submitted at such time shall be denied by the coalition board.

Sec. 6. (a) The authority to operate as a public innovative district shall be effective for a period of five school years. At least 90 days prior to the expiration of such five-year period, the board of education of a public innovative district may submit an application for renewal of its authority to operate as a public innovative district. Such renewal application shall be submitted in such form and manner as prescribed by the state board.

(b) A renewal application submitted pursuant to this section shall include:

(1) Evidence that such public innovative district has met the standards on the math and reading state assessments, or the alternative assessment adopted by the board of education, during the period of operation as a public innovative district;

(2) evidence that such public innovative district has shown improvement in its completion percentage during the period of operation as a public innovative district;

(3) demonstrated progress that such public innovative district is achieving the goals and outcomes described in its application for authority to operate as a public innovative district; and

(4) a description of compliance with the provisions of sections 1 through 10, and amendments thereto.

(c) (1) Within 60 days after such renewal application is submitted, the state board shall review the renewal application to determine compliance with this section. If the renewal application is in compliance with the provisions of this section, the state board shall grant the renewal of the authority to operate as a public innovative district for a subsequent five-year period and notify the board of education of such public innovative district within 10 days after such decision.

(2) If the state board determines the renewal application is not in compliance with this section, the state board shall hold a hearing on the issues in controversy. Representatives of the public innovative district shall be provided the opportunity to present information refuting the basis upon which the noncompliance is premised. At least 30 days' notice shall be provided to the board of education of the public innovative district prior to the hearing. Within 60 days after the hearing, the state board shall determine whether to not renew the grant of authority, renew the grant of authority contingent upon compliance with specified conditions or renew the grant of authority without conditions. Notification of such

decision shall be sent to the board of education of the public innovative district and shall specify the reasons therefor.

(3) If a grant of authority is not renewed, the board of education of such school district may apply for a grant of authority to operate as a public innovative district in accordance with the provisions of sections 1 through 10, and amendments thereto.

Sec. 7. (a) If at any time a public innovative district fails to meet any of the renewal criteria set forth in subsection (b) of section 6, and amendments thereto, for two or more consecutive school years, then:

(1) Such public innovative district may submit a petition to the state board for a release of the grant of authority to operate as a public innovative district; or

(2) the coalition board may submit a petition to the state board requesting that such public innovative district have its grant of authority to operate as a public innovative district revoked.

(b) If a petition is submitted to the state board pursuant to subsection (a)(1), then the state board shall grant such petition and release such public innovative district from the grant of authority to operate as a public innovative district. Such release shall be effective for the school year immediately succeeding the grant of the petition.

(c) If a petition is submitted to the state board pursuant to subsection (a)(2), then the state board shall hold a hearing on the issues in controversy. Representatives of the public innovative district shall be provided the opportunity to present information refuting the basis upon which the petition is premised. At least 30 days' notice shall be provided to the board of education of the public innovative district prior to the hearing. Within 60 days after the hearing, the state board shall determine whether to grant or deny the petition. Notification of such decision shall be sent to the board of education of the public innovative district and shall specify the reasons therefor. If the petition is granted, the authority to operate as a public innovative district shall be revoked commencing with the school year immediately succeeding the grant of the petition.

Sec. 8. The members of the coalition, represented by the superintendent of each public innovative district, shall meet at least once a month to discuss the educational programs of the public innovative districts and the success or failure thereof. Such meetings shall be conducted in the spirit of cooperation and the sharing of educational program concepts that are either being implemented or being considered for implementation.

Sec. 9. The state board shall provide, upon request, any board of education with technical advice and assistance regarding the preparation of an application for a grant of authority to operate a public innovative district.

Sec. 10. The state board shall adopt such rules and regulations as

necessary for the implementation and administration of the provisions of sections 1 through 10, and amendments thereto.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 22, 2013.

CHAPTER 117

SENATE BILL No. 88

AN ACT concerning crimes, punishment and criminal procedure; relating to certain defendants; children's advocacy center assessment fee; amending K.S.A. 20-370 and repealing the existing section.

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

Section 1. K.S.A. 20-370 is hereby amended to read as follows: 20-370. (a) ~~On and after July 1, 2013, any defendant convicted of a crime under chapters 34, 35 or 36 of article 21 of the Kansas Statutes Annotated chapter 21 of the Kansas Statutes Annotated, and amendments thereto, in which a minor is a victim, shall pay an assessment fee in the amount of \$100 commencing on and after June 30, 2004, \$400 to the clerk of the district court. If it appears to the satisfaction of the court that payment of the assessment fee will impose manifest hardship on the defendant, the court may waive payment of all or part of the assessment fee.~~ All moneys received pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the children's advocacy center fund established in subsection (b).

(b) There is hereby established the children's advocacy center fund in the state treasury which shall be administered by the attorney general. All expenditures from the children's advocacy center fund shall be for operating expenditures of children's advocacy centers in the state that are eligible for funding pursuant to law. All expenditures from the children's advocacy center 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 the attorney general's designee.

Sec. 2. K.S.A. 20-370 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 16, 2013.

CHAPTER 118

Substitute for HOUSE BILL No. 2017

AN ACT concerning criminal procedure; relating to appeals from municipal court; appeals from a district magistrate judge; use of tracking devices by law enforcement; search warrants; sexually violent crimes; law enforcement reports on the presence of pornographic materials; amending K.S.A. 12-4601, 22-2503 and 22-2506 and K.S.A. 2012 Supp. 22-2502, 22-3609 and 22-3609a and repealing the existing sections.

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

Section 1. K.S.A. 12-4601 is hereby amended to read as follows: 12-4601. An appeal may be taken to the district court in the county in which said municipal court is located:

- (a) By the accused person in all cases; and
- (b) By the city upon questions of law.

The appeal shall stay all further proceedings upon the judgment appealed from. *No appeal shall be filed until after the sentence has been imposed.*

Sec. 2. K.S.A. 2012 Supp. 22-2502 is hereby amended to read as follows: 22-2502. (a) A search warrant shall be issued only upon the oral or written statement, including those conveyed or received by electronic communication, of any person under oath or affirmation which states facts sufficient to show probable cause that a crime has been ~~or~~, is being *or is about to be* committed and which particularly describes a person, place or means of conveyance to be searched and things to be seized. Any statement which is made orally shall be either taken down by a certified shorthand reporter, sworn to under oath and made part of the application for a search warrant, or recorded before the magistrate from whom the search warrant is requested and sworn to under oath. Any statement orally made shall be reduced to writing as soon thereafter as possible. If the magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the magistrate may issue a search warrant for:

- (1) The *search or* seizure of the following:
 - ~~(1)(A)~~ Any ~~things~~ *thing* which ~~have~~ *has* been used in the commission of a crime, or any contraband or any property which constitutes or may be considered a part of the evidence, fruits or instrumentalities of a crime under the laws of this state, any other state or of the United States. The term “fruits” as used in this act shall be interpreted to include any prop-

erty into which the thing or things unlawfully taken or possessed may have been converted;

~~(2)~~(B) any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state;

~~(3)~~(C) any human fetus or human corpse;

~~(4)~~(D) any person for whom a valid felony arrest warrant has been issued in this state or in another jurisdiction;

~~(5)~~~~(A)~~(E) (i) any information concerning the user of an electronic communication service; any information concerning the location of electronic communications systems, including, but not limited to, towers transmitting cellular signals involved in any wire communication; and any other information made through an electronic communications system;

~~(B)~~(ii) the jurisdiction granted in this paragraph shall extend to information held by entities registered to do business in the state of Kansas, submitting to the jurisdiction thereof, and entities primarily located outside the state of Kansas if the jurisdiction in which the entity is primarily located recognizes the authority of the magistrate to issue the search warrant; or

(2) *the installation, maintenance and use of a tracking device.*

(b)(1) *The search warrant under subsection (a)(2) shall authorize the installation and use of the tracking device to track and collect tracking data relating to a person or property for a specified period of time, not to exceed 30 days from the date of the installation of the device.*

(2) *The search warrant under subsection (a)(2) may authorize the retrieval of the tracking data recorded by the tracking device during the specified period of time for authorized use of such tracking device within a reasonable time after the expiration of such warrant, for good cause shown.*

(3) *The magistrate may, for good cause shown, grant one or more extensions of a search warrant under subsection (a)(2) for the use of a tracking device, not to exceed 30 days each.*

~~(A)~~(c) Before ruling on a request for a search warrant, the magistrate may require the affiant to appear personally and may examine under oath the affiant and any witnesses that the affiant may produce. Such proceeding shall be taken down by a certified shorthand reporter or recording equipment and made part of the application for a search warrant.

~~(e)~~(d) Affidavits or sworn testimony in support of the probable cause requirement of this section *or search warrants for tracking devices* shall not be made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the defendant or the defendant's counsel for such disposition as either may desire.

~~(d)~~(e) As used in this section: (1) "Electronic communication" means

the use of electronic equipment to send or transfer a copy of an original document; ~~and~~

(2) “electronic communication service” and “electronic communication system” have the meaning as defined in K.S.A. 22-2514, and amendments thereto;

(3) “tracking data” means information gathered or recorded by a tracking device; and

(4) “tracking device” means an electronic or mechanical device that permits a person to remotely determine or track the position or movement of a person or object. “Tracking device” includes, but is not limited to, a device that stores geographic data for subsequent access or analysis and a device that allows for the real-time monitoring of movement.

~~(e)~~(f) Nothing in this section shall be construed as requiring a search warrant for cellular location information in an emergency situation pursuant to K.S.A. 22-4615, and amendments thereto.

Sec. 3. K.S.A. 22-2503 is hereby amended to read as follows: 22-2503. (a) *Except as provided in subsection (b)*, search warrants issued by a district magistrate judge may be executed only within the judicial district in which ~~said~~ the judge resides or within the judicial district to which ~~said~~ the judge has been assigned pursuant to K.S.A. 20-319, and amendments thereto.

(b) *Search warrants issued pursuant to subsection (a)(2) of K.S.A. 22-2502, and amendments thereto:*

(1) *That are issued by a district judge may be executed anywhere within the state; and*

(2) *shall be valid during the time period specified by the warrant regardless of whether the tracking device or the subject person or property leaves the issuing jurisdiction.*

(c) *As used in this section, “tracking data” and “tracking device” have the same meanings as defined in K.S.A. 22-2502, and amendments thereto.*

Sec. 4. K.S.A. 22-2506 is hereby amended to read as follows: 22-2506.

(a) A search warrant shall be executed within ~~ninety-six~~ 96 hours from the time of issuance. If the warrant is executed the duplicate copy shall be left with any person from whom any things are seized or if no person is available the copy shall be left at the place from which the things were seized. Any warrant not executed within such time shall be void and shall be returned to the court of the magistrate issuing the same as “not executed.”

(b) (1) *A search warrant for a tracking device issued pursuant to subsection (a)(2) of K.S.A. 22-2502, and amendments thereto, shall be sealed by the court and no copy left or served except as discovery in a criminal prosecution.*

(2) *The law enforcement officer executing a search warrant issued pursuant to subsection (a)(2) of K.S.A. 22-2502, and amendments thereto,*

shall complete the installation of the tracking device within 15 days from the date of issuance. Such officer shall record on such warrant the exact date and time such tracking device was installed and the entire period during which such tracking device was used.

(3) (A) *A tracking device shall be deactivated and removed as soon as practicable after the search warrant has expired. If removal of such tracking device is not possible, such tracking device shall be deactivated and shall not be reactivated without an additional warrant or extension of the original warrant and the search warrant return shall state the reasons removal has not been completed.*

(B) *A tracking device which has been deactivated may be accessed after the authorized warrant has expired solely for the purpose of collecting or retrieving tracking data obtained during the period specified by the search warrant.*

(c) *As used in this section:*

(1) *“Deactivate” means to discontinue the ability of a tracking device to determine or track the position or movement of a person or object; and*

(2) *“tracking data” and “tracking device” have the same meanings as defined in K.S.A. 22-2502, and amendments thereto.*

Sec. 5. K.S.A. 2012 Supp. 22-3609 is hereby amended to read as follows: 22-3609. (1) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas or any findings of contempt. The appeal shall be assigned by the chief judge to a district judge. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. *No appeal shall be filed until after the sentence has been imposed.* No appeal shall be taken more than 14 days after the date of the judgment appealed from ~~the sentence is imposed.~~

(3) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal.

(4) Except as provided herein, the trial of municipal appeal cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to

the defendant or such defendant's counsel. 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 time requirement would cause undue hardship or prejudice to the defendant. A jury in a municipal appeal case shall consist of six members. All appeals taken by a defendant from a municipal judge in contempt findings, cigarette or tobacco infraction or traffic infraction cases shall be tried by the court.

(5) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416, and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

Sec. 6. K.S.A. 2012 Supp. 22-3609a is hereby amended to read as follows: 22-3609a. (1) A defendant shall have the right to appeal from any judgment of a district magistrate judge. The chief judge shall be responsible for assigning a district judge for any such appeal. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to a district judge shall be taken by filing a notice of appeal with the clerk of the court. *No appeal shall be filed until after the sentence has been imposed.* No appeal shall be taken more than 14 days after the date of the judgment appealed from ~~the sentence is imposed.~~

(3) The clerk of the district court shall deliver the complaint, warrant and any appearance bond to the district judge to whom such appeal is assigned. The case shall be tried de novo before the assigned district judge.

(4) No advance payment of a docket fee shall be required when the appeal is taken.

(5) All appeals taken by a defendant from a district magistrate judge in misdemeanor cases shall be tried by the court unless a jury trial is requested in writing by the defendant. All appeals taken by a defendant from a district magistrate judge in traffic infraction and cigarette or tobacco infraction cases shall be to the court.

(6) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (c) of K.S.A. 22-2909, and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

New Sec. 7. (a) As used in this section:

(1) "Nudity" means the showing, unclothed or with less than a fully opaque covering, of the human male or female genitals, pubic area, buttocks or female breast below a point immediately above the top of the areola.

(2) "Pornographic materials" means sexual devices or books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video presentations, computer-generated images or pictures, slides

or other visual representations, whether made or produced by electronic, mechanical or other means, which depict, describe or simulate sexually explicit conduct or nudity.

(3) “Sexually explicit conduct” means acts of masturbation, sexual intercourse, sodomy, sadomasochistic abuse or physical contact with a person’s clothed or unclothed genitals, pubic area or buttocks or with a human female’s breast.

(4) “Sexually violent crime” means the same as in K.S.A. 22-4902, and amendments thereto.

(b) The Kansas bureau of investigation will work with the office of the attorney general and with state and local law enforcement to identify a process to uniformly report data to the central repository enabling the production of a report generated at least annually to identify the total number of sexually violent crimes reported and the number of such crimes where pornographic materials are seized or documented as evidence. This process shall be in place within one year of the implementation of a capable central repository system.

(c) Reports of materials found pursuant to the provisions of subsection (b) shall be used for statistical purposes only.

(d) Upon implementation of a central repository system, the Kansas bureau of investigation shall:

(1) Make the necessary changes to the Kansas standard offense report and the Kansas incident based reporting system handbook; and

(2) promulgate rules and regulations concerning the training for law enforcement agencies to implement the provisions of this section.

(e) Nothing in this section shall be construed to expand the scope of the officer’s search.

(f) The provisions of this section are subject to appropriations.

Sec. 8. K.S.A. 12-4601, 22-2503 and 22-2506 and K.S.A. 2012 Supp. 22-2502, 22-3609 and 22-3609a are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 16, 2013.

CHAPTER 119

HOUSE BILL No. 2253
(Amended by Chapter 133)

AN ACT concerning abortion; relating to the funding of abortion services; relating to prenatally and postnatally diagnosed conditions; relating to restrictions on late-term abortions; relating to the woman's-right-to-know act; amending K.S.A. 2012 Supp. 40-2246, 65-6701, 65-6703, 65-6709, 65-6710, 76-3308, 79-32,117, 79-32,138, 79-32,182b, 79-32,195, 79-32,261 and 79-3606 and repealing the existing sections.

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

New Section 1. As used in sections 1 through 8, and amendments thereto:

(a) "Abortion" has the same meaning as such term is defined in K.S.A. 65-6701, and amendments thereto.

(b) "Health benefit plan" means any hospital or medical expense policy, health, hospital or medical services corporation contract, and a plan provided by a municipal group-funded pool, or a health maintenance organization contract offered by any employer or any certificate issued under any such policy, contract or plan.

(c) "Health care entity" means an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization or any other health care facility or organization.

(d) "School district" means any public school district organized under the laws of this state.

(e) "State agency" has the same meaning as such term is defined in K.S.A. 75-3701, and amendments thereto.

New Sec. 2. (a) The legislature hereby finds and declares the following:

(1) The life of each human being begins at fertilization;
(2) unborn children have interests in life, health and well-being that should be protected; and

(3) the parents of unborn children have protectable interests in the life, health and well-being of the unborn children of such parents.

(b) On and after July 1, 2013, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges and immunities available to other persons, citizens and residents of this state, subject only to the constitution of the United States, and decisional interpretations thereof by the United States supreme court and specific provisions to the contrary in the Kansas constitution and the Kansas Statutes Annotated.

(c) As used in this section:

(1) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(2) "Unborn children" or "unborn child" shall include all unborn children or the offspring of human beings from the moment of fertilization until birth at every stage of biological development.

(d) Nothing in this section shall be construed as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.

New Sec. 3. Except to the extent required by federal law:

(a) No moneys appropriated from the state general fund or from any special revenue fund shall be expended for any abortion;

(b) no tax credit shall be allowed against any income tax, premium or privilege tax liability and no exemption shall be granted from sales or compensating use tax for that portion of such amounts paid or incurred for an abortion, or that portion of such amounts paid or incurred for a health benefit plan, including premium assistance, for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 2012 Supp. 40-2,190, and amendments thereto;

(c) in the case of any tax-preferred trust or account, the purpose of which is to pay medical expenses of the account beneficiary, any amount paid or distributed from such an account for an abortion shall be included in the gross income of such beneficiary; and

(d) no health care services provided by any state agency, or any employee of a state agency while acting within the scope of such employee's employment, shall include abortion, nor shall money appropriated from the state general fund or from any special revenue fund be used to pay for the lease or operation of any facility in which abortions are performed.

New Sec. 4. No school district, employee or agent thereof, or educational service provider contracting with such school district shall provide abortion services. No school district shall permit any person or entity to offer, sponsor or otherwise furnish in any manner any course materials or instruction relating to human sexuality or sexually transmitted diseases if such person or entity is an abortion services provider, or an employee, agent or volunteer of an abortion services provider.

New Sec. 5. Nothing in sections 1 through 8, and amendments thereto, shall repeal, amend or have any effect on any other state law to the extent such law imposes any limitation on the use of funds for abortion, more restrictive than the limitations set forth in sections 1 through 8, and amendments thereto.

New Sec. 6. Nothing in sections 1 through 8, and amendments thereto, shall be construed:

(a) To require any state agency or municipality to provide or pay for any abortion; or

(b) as creating or recognizing a right to an abortion.

New Sec. 7. No state agency shall discriminate against any individual or institutional health care entity on the basis that such health care entity does not provide, pay for or refer for abortions.

New Sec. 8. The limitations set forth in sections 1 through 8, and amendments thereto, shall not apply to an abortion which is necessary to preserve the life of the pregnant woman.

New Sec. 9. (a) The secretary of the department of health and environment may authorize and oversee certain activities, including the awarding of grants, contracts or cooperative agreements to eligible entities to:

(1) Collect, synthesize and disseminate current evidence-based information relating to Down syndrome or other prenatally or postnatally diagnosed conditions; and

(2) coordinate the provision of, and access to, new or existing supportive services for women and the spouses of such women who receive a positive diagnosis of Down syndrome or other prenatally or postnatally diagnosed conditions for their child, including, but not limited to:

(A) The establishment of a resource telephone hotline or website accessible to women and the spouses of such women who receive a positive diagnosis of Down syndrome or other prenatally or postnatally diagnosed conditions for their child;

(B) the development of outreach programs to new and expecting parents to provide them with up-to-date information on the range of outcomes for individuals living with the diagnosed condition, including physical, developmental, educational and psychosocial outcomes;

(C) the development of local peer support programs to effectively serve women and the spouses of such women who receive a positive diagnosis of Down syndrome or other prenatally or postnatally diagnosed conditions for their child;

(D) the establishment of a network of local registries of families willing to adopt newborns with Down syndrome or other prenatally or postnatally diagnosed conditions, and links to adoption agencies willing to place babies with Down syndrome or other prenatally or postnatally diagnosed conditions with families willing to adopt; and

(E) the establishment of awareness and education programs for health care providers who provide, interpret or inform parents of the results of prenatal tests for Down syndrome or other prenatally or postnatally diagnosed conditions to patients.

(b) A grantee under this section shall make the following available to health care providers of parents who receive a prenatal or postnatal diagnosis for their child:

(1) Up-to-date, evidence-based, written information concerning the range of outcomes for individuals living with the diagnosed condition, including physical, developmental, educational and psychosocial outcomes;

(2) contact information regarding support services, including information hotlines and websites specific to Down syndrome or other pre-

nately or postnatally diagnosed conditions, resource centers or clearing-houses, local peer support groups and other education and support programs.

(c) Information provided under this subsection shall be culturally and linguistically appropriate as needed by women and the spouses of such women who receive a positive diagnosis for Down syndrome or other prenatally or postnatally diagnosed conditions for their child, and approved by the secretary.

(d) In distributing funds under this section, the secretary shall place an emphasis on funding partnerships between health care professional groups and disability advocacy organizations.

(e) On or before January 12, 2015, the secretary shall prepare and submit a report to the governor and the legislature on the grants, contracts and cooperative agreements made under this section and the effectiveness of the programs supported by such grants, contracts and cooperative agreements.

(f) As used in this section:

(1) "Down syndrome" means a chromosomal disorder caused by an error in cell division that results in the presence of an extra whole or partial copy of chromosome 21.

(2) "Eligible entity" means the state, or any political subdivision thereof, or any other entity with appropriate expertise in prenatally and postnatally diagnosed conditions, as determined by the secretary.

(3) "Health care provider" shall have the same meaning as that term is defined in K.S.A. 40-3401, and amendments thereto.

(4) "Postnatally diagnosed condition" means any health condition identified during the 12-month period beginning at birth.

(5) "Prenatally diagnosed condition" means any fetal health condition identified by prenatal genetic testing or prenatal screening procedures.

(6) "Prenatal test" means diagnostic or screening tests offered to pregnant women seeking routine prenatal care that are administered on a required or recommended basis by a health care provider based on medical history, family background, ethnic background, previous test results or other risk factors.

(7) "Secretary" means the secretary of the department of health and environment.

New Sec. 10. (a) No person shall perform or induce an abortion or attempt to perform or induce an abortion with knowledge that the pregnant woman is seeking the abortion solely on account of the sex of the unborn child.

(b) (1) A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion, 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;

(C) injunctive relief; and

(D) reasonable attorney fees.

(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. 2012 Supp. 21-5302, 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) 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.

(f) If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(g) For purposes of this section, the term "abortion" has the same meaning as such term is defined in K.S.A. 65-6701, and amendments thereto.

Sec. 11. K.S.A. 2012 Supp. 40-2246 is hereby amended to read as follows: 40-2246. (a) A credit against the taxes otherwise due under the Kansas income tax act shall be allowed to an employer for amounts paid during the taxable year for purposes of this act on behalf of an eligible employee as defined in K.S.A. 40-2239, and amendments thereto, to provide health insurance or care and amounts contributed to health savings accounts of eligible covered employees, *except that for taxable years commencing after December 31, 2013, no credit shall be allowed pursuant to this section for that portion of any amounts paid by an employer for healthcare expenditures, a health benefit plan, as defined in section 1, and amendments thereto, or amounts contributed to health savings accounts for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 40-2,190, and amendments thereto.*

(b) (1) For employers that have established a small employer health benefit plan after December 31, 1999, but prior to January 1, 2005, the amount of the credit allowed by subsection (a) shall be \$35 per month

per eligible covered employee or 50% of the total amount paid by the employer during the taxable year, whichever is less, for the first two years of participation. In the third year, the credit shall be equal to 75% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fourth year, the credit shall be equal to 50% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fifth year, the credit shall be equal to 25% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. For the sixth and subsequent years, no credit shall be allowed.

(2) For employers that have established a small employer health benefit plan or made contributions to a health savings account of an eligible covered employee after December 31, 2004, the amount of credit allowed by subsection (a) shall be \$70 per month per eligible covered employee for the first 12 months of participation, \$50 per month per eligible covered employee for the next 12 months of participation and \$35 per eligible covered employee for the next 12 months of participation. After 36 months of participation, no credit shall be allowed.

(c) If the credit allowed by this section is claimed, the amount of any deduction allowable under the Kansas income tax act for expenses described in this section shall be reduced by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with law. If the credit allowed by this section exceeds the taxes imposed under the Kansas income tax act for the taxable year, that portion of the credit which exceeds those taxes shall be refunded to the taxpayer.

(d) Any amount of expenses paid by an employer under this act shall not be included as income to the employee for purposes of the Kansas income tax act. If such expenses have been included in federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Kansas income tax act.

(e) The secretary of revenue shall promulgate rules and regulations to carry out the provisions of this section.

(f) This section shall apply to all taxable years commencing after December 31, 1999.

(g) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

Sec. 12. K.S.A. 2012 Supp. 65-6701 is hereby amended to read as follows: 65-6701. As used in ~~this act~~ K.S.A. 65-6701 through 65-6721, 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 functions only*. The term “*bodily function*” does not include mental or emotional functions.

(c) “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) licensed to practice professional or practical nursing; (3) the following persons licensed to practice behavioral sciences: Licensed psychologists, licensed master’s level psychologists, licensed clinical psychotherapists, licensed social workers, licensed specialist clinical social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors; (4) a licensed physician assistant; or ~~(9)~~ (5) 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.

~~(e)~~(d) “Department” means the department of health and environment.

(e) “Fertilization” means the fusion of a human spermatozoon with a human ovum.

~~(d)~~(f) “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period.

~~(e)~~(g) “Medical emergency” means ~~that a condition which, on the basis of the physician’s good faith clinical judgment, that, in reasonable medical judgment,~~ so complicates the medical condition of ~~a~~ the pregnant woman as to necessitate the immediate abortion of her pregnancy ~~without first determining gestational age to avert her the death of the woman 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)~~(h) “Minor” means a person less than 18 years of age.

~~(g)~~(i) “Physician” means a person licensed to practice medicine and surgery in this state.

~~(h)~~(j) “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the mother’s body.

~~(i)~~(k) “Qualified person” means an agent of the physician who is a psychologist, licensed social worker, ~~registered licensed~~ professional counselor, *licensed marriage and family therapist*, *licensed master’s level psychologist*, *licensed clinical psychotherapist*, registered nurse or physician.

~~(j)~~(l) “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)~~(m) “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.

Sec. 13. K.S.A. 2012 Supp. 65-6703 is hereby amended to read as follows: 65-6703. (a) No person shall perform or induce, *or attempt to perform or induce* an abortion when the 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, *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 condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct that 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 sec-

retary 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 *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 *physical* 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. 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 unborn child is 22 or more weeks, prior to performing *or inducing, or attempting to perform or induce* an abortion upon the woman the physician shall determine if the 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 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 an unborn child is 22 or more weeks, and determines that the 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 an unborn child is 22 or more weeks, and determines that the 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 *physical* 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, 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 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, 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.

(5) The physician shall retain the medical records required to be kept under paragraphs (1) and (2) of this subsection (c) for not less than 10 years and shall retain a copy of the written reports required under paragraphs (3) and (4) of this subsection (c) 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 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 *physical* impairment of a major bodily function of the pregnant woman.

(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. 2012 Supp. 21-5302, 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 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.

(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.

(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. 14. K.S.A. 2012 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 per-

form 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 *risk of premature birth in future pregnancies, risk of breast cancer and 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 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 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) a continuation of the pregnancy will cause a substantial and irreversible *physical* 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 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 *and a listing of websites for national perinatal assistance, including information regarding which entities provide such services free of charge;*

- (7) the medical risks associated with carrying 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 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 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;

(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; *and*

(6) *by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks from fertilization or older who undergo pre-natal surgery.*

(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 total number of certifications shall 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.* 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~~. *The sign shall include the address for the pregnancy resources website published and maintained by the department of health and environment, and the following text:*

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. *It is unlawful for anyone to make you have an abortion against your will, even if you are a minor. The father of your child must provide support for the child, even if he has offered to pay for an abortion. If you decide not to have an abortion, you may qualify for financial help for pregnancy, childbirth and newborn care. If you qualify, medicaid will pay or help pay the cost of doctor, clinic, hospital and other related medical expenses, including childbirth delivery services and care for your newborn baby. Many agencies are willing to provide assistance so that you may carry your child to term, and to assist you after your child's birth.*

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) Any private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed that has a website shall publish an easily identifiable link on the homepage of such website that directly links to the department of health and environment's website that provides informed consent materials under the woman's-right-to-know act. Such link shall read: "The Kansas Department of Health and Environment maintains a website containing objective, nonjudgmental, scientifically accurate information about the development of the unborn child, as well as video of sonogram images of the unborn child at various stages of development. The Kansas Department of Health and Environment's website can be reached by clicking here."

~~(m)~~ 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 unborn child is diagnosed as having: (A) A severe anomaly; or (B) an illness, disease or defect which is invariably fatal.

Sec. 15. K.S.A. 2012 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 services 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 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, *and* 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 postpartum 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 unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of an unborn child at two-week gestational increments, and any relevant information on the possibility of the unborn child’s survival. Any such pictures or drawings shall contain the dimensions of the unborn child and shall be realistic. The material shall include ~~the statement~~ *following statements: (A) That by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain; (B) that there is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to*

be a response to pain; (C) that anesthesia is routinely administered to unborn children who are 20 weeks from fertilization or older who undergo prenatal surgery; (D) that less than 5% of all natural pregnancies end in spontaneous miscarriage after detection of cardiac activity, and a fetal heartbeat is, therefore, a key medical indicator that an unborn child is likely to achieve the capacity for live birth; and (E) 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 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, including risk of premature birth in future pregnancies, risk of breast cancer, risks to the woman's reproductive health and the medical risks associated with carrying an unborn child to term.

(3) The printed materials shall, at a minimum, contain the following text:

Your doctor is required to tell you about the nature of the physical and emotional risks of both the abortion procedure and carrying a child to term. The doctor must tell you how long you have been pregnant and must give you a chance to ask questions and discuss your decision about the pregnancy carefully and privately in your own language.

In order to determine the gestational age of the unborn child, the doctor may use ultrasound equipment preparatory to the performance of an abortion. You have the right to view the ultrasound image of the unborn child at no additional expense, and you have the right to receive a picture of the unborn child.

A directory of services is also available. By calling or visiting the agencies and offices in the directory you can find out about alternatives to abortion, assistance to make an adoption plan for your baby or locate public and private agencies that offer medical and financial help during pregnancy, during childbirth and while you are raising your child.

Furthermore, you should know that: (A) It is unlawful for any individual to coerce you to undergo an abortion. Coercion is the use of express or implied threats of violence or intimidation to compel a person to act against such person's will; (B) abortion terminates the life of a whole, separate, unique, living human being; (C) any physician who fails to provide informed consent prior to performing an abortion may be guilty of unprofessional conduct and liable for damages; (D) you are not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired; (E) the father of your child is legally responsible to assist in the support of the child, even in instances where the father has offered to pay for an abortion; and (F) the law permits adoptive parents to pay the costs of prenatal care, childbirth and neonatal care.

Many public and private agencies exist to provide counseling and in-

formation on available services. You are strongly urged to seek assistance from such agencies in order to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on alternatives to abortion, including adoption, and resources available to postpartum mothers. The law requires that your physician, or the physician's agent, provide this information.

Pregnancy begins at fertilization with the union of a man's sperm and a woman's egg to form a single-cell embryo. This brand new being contains the original copy of a new individual's complete genetic code. Gender, eye color and other traits are determined at fertilization.

Most significant developmental milestones occur long before birth during the first eight weeks following fertilization when most body parts and all body systems appear and begin to function. The main divisions of the body, such as the head, chest, abdomen, pelvis, arms and legs are established by about four weeks after fertilization. Eight weeks after fertilization, except for the small size, the developing human's overall appearance and many internal structures closely resemble the newborn.

Pregnancy is not just a time for growing all the parts of the body. It is also a time of preparation for survival after birth. Starting more than 30 weeks before birth, many common daily activities seen in children and adults begin in the womb. These activities include, but are not limited to, hiccups, touching the face, breathing motions, urination, right- or left-handedness, thumb-sucking, swallowing, yawning, jaw movement, reflexes, REM sleep, hearing, taste and sensation.

Unless otherwise noted, all prenatal ages in the rest of these materials are referenced from the start of the last normal menstrual period. This age is two weeks greater than the age since fertilization.

By five weeks, development of the brain, the spinal cord and the heart is well underway. The heart begins beating at five weeks and one day, and is visible by ultrasound almost immediately. By six weeks, the heart is pumping the unborn child's own blood to such unborn child's brain and body. All four chambers of the heart are present, and more than one million heartbeats have occurred. The head, chest and abdominal cavities have formed and the beginnings of the arms and legs are easily seen. At 6½ weeks, rapid brain development continues with the appearance of the cerebral hemispheres. At 7½ weeks, the unborn child reflexively turns away in response to light touch on the face. The fingers also begin to form on the hand.

By 8½ weeks, the bones of the jaw and collarbone begin to harden. Brainwaves have been measured and recorded by this point in gestation. By nine weeks, the hands move, the neck turns and hiccups begin. Girls also now have ovaries and boys have testes. The unborn child's heart is nearly fully formed, and the heart rate peaks at about 170 beats per minute and will gradually slow down until birth. Electrical recordings of the

heart at 9½ weeks are very similar to the EKG tracing of the unborn child.

By 10 weeks, intermittent breathing motions begin, and the kidneys begin to produce and release urine. All the fingers and toes are free and fully formed, and several hundred muscles are now present. The hands and feet move frequently, and most unborn children show the first signs of right- or left-handedness. Pain receptors in the skin, the sensory nerves connecting them to the spinal cord, and the nerve tracts in the spinal cord that will carry pain impulses to the brain are all present by this time. Experts estimate the 10-week unborn child possesses approximately 90% of the 4,500 body parts found in adults. This means approximately 4,000 permanent body parts are present just eight weeks after fertilization.

By 11 weeks, the head moves forward and back, the jaw actively opens and closes and the unborn child periodically sighs and stretches. The face, palms of the hands and soles of the feet are sensitive to light touch. The unborn child begins thumb-sucking and swallowing amniotic fluid. The uterus is now present, and girls' ovaries now contain reproductive cells that will give rise to eggs later in life.

At 12 weeks, fingerprints start forming, while fingernails and toenails begin to grow. The bones are hardening in many locations. The heartbeat can be detected with a hand-held doppler fetal monitor, or external heart rate monitor. By 13 weeks the lips and nose are fully formed and the unborn child can make complex facial expressions.

At 14 weeks, taste buds are present all over the mouth and tongue. The unborn child now produces a wide variety of hormones. Also, the arms reach final proportion to body size. By 15 weeks, the entire unborn child, except for parts of the scalp, responds to light touch, and tooth development is underway.

At 16 weeks, a pregnant woman may begin to feel the unborn child move. The unborn child also begins making several digestive enzymes. Around 17 weeks, blood cell formation moves to its permanent location inside the bone marrow, and the unborn child begins storing energy in the form of body fat.

By 18 weeks, the formation of the breathing passages, called the bronchial tree, is complete. The unborn child will release stress hormones in response to being poked with a needle. By 19 weeks, the unborn child's heart has beaten more than 20 million times.

By 20 weeks, nearly all organs and structures of the unborn child have been formed. The larynx, or voice box, moves in a way similar to movement seen during crying after birth. The skin has developed sweat glands and is covered by a greasy white substance called vernix, which protects the skin from the long exposure to amniotic fluid. At 21 weeks, breathing patterns, body movements and the heart rate begin to follow daily cycles called circadian rhythms.

By 22 weeks, the cochlea, the organ of hearing, reaches adult size, and

the unborn child begins hearing and responding to various sounds. All the skin layers and structures are now complete. The unborn child reacts to stimuli that would be recognized as painful if applied to an adult human. By 22 weeks, some infants can live outside the womb with specialized medical care, and survival rates have been reported as high as 40% in some medical centers. Between 20 and 23 weeks, rapid eye movements begin, which are similar to the REM sleep pattern seen when children and adults have dreams.

By 24 weeks, more than 30 million heartbeats have occurred. Survival rates for infants born at 24 weeks have been reported as high as 81%. By 25 weeks, breathing motions may occur up to 44 times per minute.

By 26 weeks, sudden, loud noises trigger a blink-startle response in the unborn child and may increase body movement, the heart rate and swallowing. The lungs begin to produce a substance necessary for breathing after birth. The survival rate of infants born at 26 weeks has been reported as high as 95%.

By 28 weeks, the sense of smell is functioning and the eyes produce tears. Nearly all infants born between this point and full term survive. By 29 weeks, pupils of the eyes react to light. By 31 weeks, the heart has beat more than 40 million times, and wrinkles in the skin disappear as more fat deposits are formed.

By 32 weeks, breathing movements occur up to 40% of the time. By 34 weeks true alveoli, or air “pocket” cells, begin developing in the lungs. At 36 weeks, scalp hair is silky and lies against the head. By 37 weeks, the unborn child has a firm hand grip, and the heart has beat more than 50 million times. The unborn child initiates labor, ideally around 40 weeks, leading to childbirth.

By state law, no person shall perform or induce an abortion when the unborn child is viable or pain-capable unless such person is a physician and has a documented referral. The physician who performs or induces an abortion when the unborn child is viable must have a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion. Both physicians must determine that the 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 physical 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.

What about adoption?² Women or couples facing an untimely pregnancy who choose not to take on the full responsibilities of parenthood have another option, which is adoption. Counseling and support services are a key part of adoption and are available from a variety of adoption agencies and parent support groups across the state. A list of adoption agencies is available. There are several ways to make a plan for adoption,

including through a child placement agency or through a private attorney. Although fully anonymous adoptions are available, some degree of openness in adoption is more common, such as permitting the birth mother to choose the adoptive parents. A father only has the right to consent to an adoption or refuse consent and raise the child if he provides support for the mother during the last six months of the pregnancy.

The father of a child has a legal responsibility to provide for the support, educational, medical and other needs of the child. In Kansas, that responsibility includes child support payments to the child's mother or legal guardian. A child has rights of inheritance from the father and may be eligible through him for benefits such as life insurance, social security, pension, veteran's or disability benefits. Further, the child benefits from knowing the father's medical history and any potential health problems that can be passed genetically. A father's and mother's rights are equal regarding access, care and custody.

Paternity can be established in Kansas by two methods: (A) The father and mother, at the time of birth, can sign forms provided by the hospital acknowledging paternity and the father's name is added to the birth certificate; or (B) a legal action can be brought in a court of law to determine paternity and establish a child support order. Issues of paternity affect your legal rights and the rights of the child.

The decision regarding your pregnancy is one of the most important decisions you will ever make. There are lists of state, county and local health and social service agencies and organizations available to assist you. You are encouraged to contact these groups if you need more information so you can make an informed decision.

(4) 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)~~(5) 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 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~~ *may* be published in digital video disc format *or in the latest video technology available*. 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. 16. K.S.A. 2012 Supp. 76-3308 is hereby amended to read as follows: 76-3308. (a) The authority shall have all the powers necessary to carry out the purposes and provisions of this act, including, without limitation, the following powers to:

- (1) Have the duties, privileges, immunities, rights, liabilities and disabilities of a body corporate and a political instrumentality of the state;
- (2) have perpetual existence and succession;
- (3) adopt, have and use a seal and to alter the same at its pleasure;
- (4) sue and be sued in its own name;
- (5) make and execute contracts, guarantees or any other instruments and agreements necessary or convenient for the exercise of its powers and functions including, without limitation, to make and execute contracts with hospitals or other health care businesses to operate and manage any or all of the hospital facilities or operations and to incur liabilities and secure the obligations of any entity or individual;
- (6) borrow money and to issue bonds evidencing the same and pledge all or any part of the authority's assets therefor;
- (7) purchase, lease, trade, exchange or otherwise acquire, maintain, hold, improve, mortgage, sell, lease and dispose of personal property, whether tangible or intangible, and any interest therein; and to purchase, lease, trade, exchange or otherwise acquire real property or any interest therein, and to maintain, hold, improve, mortgage, lease and otherwise transfer such real property, so long as such transactions do not conflict with the mission of the authority as specified in this act;
- (8) incur or assume indebtedness to, and enter into contracts with the Kansas development finance authority, which is authorized to borrow money and provide financing for the authority;
- (9) develop policies and procedures generally applicable to the procurement of goods, services and construction, based upon sound business practices;
- (10) contract for and to accept any gifts, grants and loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, or any other source, or any combination thereof, and to comply with the provisions of the terms and conditions thereof;
- (11) acquire space, equipment, services, supplies and insurance necessary to carry out the purposes of this act;
- (12) deposit any moneys of the authority in any banking institution within or without the state or in any depository authorized to receive such deposits, one or more persons to act as custodians of the moneys of the authority, to give surety bonds in such amounts in form and for such purposes as the board requires;
- (13) procure such insurance, participate in such insurance plans or provide such self insurance or both as it deems necessary or convenient to carry out the purposes and provisions of this act; the purchase of insurance, participation in an insurance plan or creation of a self-insurance

fund by the authority shall not be deemed as a waiver or relinquishment of any sovereign immunity to which the authority or its officers, directors, employees or agents are otherwise entitled;

(14) appoint, supervise and set the salary and compensation of a president of the authority who shall be appointed by and serve at the pleasure of the board;

(15) fix, revise, charge and collect rates, rentals, fees and other charges for the services or facilities furnished by or on behalf of the authority, and to establish policies and procedures regarding any such service rendered for the use, occupancy or operation of any such facility; such charges and policies and procedures not to be subject to supervision or regulation by any commission, board, bureau or agency of the state; and

(16) do any and all things necessary or convenient to carry out the authority's purposes and exercise the powers given in this act.

(b) The authority may create, own in whole or in part, or otherwise acquire or dispose of any entity organized for a purpose related to or in support of the mission of the authority.

(c) The authority may participate in joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations, insurers or other entities to facilitate any activities or programs consistent with the public purpose and intent of this act.

(d) The authority may create a nonprofit entity or entities for the purpose of soliciting, accepting and administering grants, outright gifts and bequests, endowment gifts and bequests and gifts and bequests in trust which entity or entities shall not engage in trust business.

(e) In carrying out any activities authorized by this act, the authority may provide appropriate assistance, including the making of loans and providing time of employees, to corporations, partnerships, associations, joint ventures or other entities, whether or not such corporations, partnerships, associations, joint ventures or other entities are owned or controlled in whole or in part, directly or indirectly, by the authority.

(f) Effective with the transfer date, all moneys of the authority shall be deposited in one or more banks or trust companies in one or more special accounts. All banks and trust companies are authorized to give security for such deposits if required by the authority. The moneys in such accounts shall be paid out on a warrant or other orders of the treasurer of the authority or any such other person or persons as the authority may authorize to execute such warrants or orders.

(g) Notwithstanding any provision of law to the contrary, the authority, effective with the transfer date, may invest the authority's operating funds in any obligations or securities as authorized by the board. The board shall adopt written investment guidelines.

(h) The authority is authorized to negotiate contracts with one or more qualified parties to provide collection services. The selection of a collection services provider shall be based on responses to a request for

proposals from qualified professional firms and shall be administered in accordance with policies adopted by the board.

(i) Notwithstanding any provision of law to the contrary, no abortion shall be performed, except in the event of a medical emergency, in any medical facility, hospital or clinic owned, leased or operated by the authority. The provisions of this subsection are not applicable to any member of the physician faculty of the university of Kansas school of medicine *when such abortion is performed outside the scope of such member's employment* on property not owned, leased or operated by the authority. As used in this subsection, "medical emergency" means ~~a pregnant woman's medical condition that, on the basis of a physician's good faith clinical judgment, necessitates an immediate abortion to avert the woman's death or to avert a serious risk of substantial and irreversible impairment of a major bodily function~~ *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 to avert the death of the woman. 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.*

Sec. 17. K.S.A. 2012 Supp. 79-32,117 is hereby amended to read as follows: 79-32,117. (a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax. This paragraph shall not apply to taxes imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto, for privilege tax year 1995, and all such years thereafter.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the de-

duction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments thereto.

(vii) The amount of any charitable contribution made to the extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto.

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,204, and amendments thereto.

(ix) The amount of any ad valorem taxes and assessments paid and the amount of any costs incurred for habitat management or construction and maintenance of improvements on real property, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203, and amendments thereto.

(x) Amounts received as nonqualified withdrawals, as defined by K.S.A. 2012 Supp. 75-643, and amendments thereto, if, at the time of contribution to a family postsecondary education savings account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, or if such amounts are not already included in the federal adjusted gross income.

(xi) The amount of any contribution made to the same extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 2012 Supp. 74-50,154, and amendments thereto.

(xii) For taxable years commencing after December 31, 2004, amounts received as withdrawals not in accordance with the provisions of K.S.A. 2012 Supp. 74-50,204, and amendments thereto, if, at the time of contribution to an individual development account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xiii) of subsection (c), or if such amounts are not already included in the federal adjusted gross income.

(xiii) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,217 through 79-32,220 or 79-32,222, and amendments thereto.

(xiv) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,221, and amendments thereto.

(xv) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,223 through 79-32,226, 79-32,228 through 79-32,231, 79-32,233 through 79-32,236, 79-32,238 through 79-32,241, 79-32,245 through 79-32,248 or 79-32,251 through 79-32,254, and amendments thereto.

(xvi) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250 or 79-32,255, and amendments thereto.

(xvii) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,256, and amendments thereto.

(xviii) For taxable years commencing after December 31, 2006, the amount of any ad valorem or property taxes and assessments paid to a state other than Kansas or local government located in a state other than Kansas by a taxpayer who resides in a state other than Kansas, when the law of such state does not allow a resident of Kansas who earns income in such other state to claim a deduction for ad valorem or property taxes or assessments paid to a political subdivision of the state of Kansas in determining taxable income for income tax purposes in such other state, to the extent that such taxes and assessments are claimed as an itemized deduction for federal income tax purposes.

(xix) For all taxable years beginning after December 31, 2012, the amount of any: (1) Loss from business as determined under the federal internal revenue code and reported from schedule C and on line 12 of the taxpayer's form 1040 federal individual income tax return; (2) loss from rental real estate, royalties, partnerships, S corporations, estates, trusts, residual interest in real estate mortgage investment conduits and

net farm rental as determined under the federal internal revenue code and reported from schedule E and on line 17 of the taxpayer's form 1040 federal individual income tax return; and (3) farm loss as determined under the federal internal revenue code and reported from schedule F and on line 18 of the taxpayer's form 1040 federal income tax return; all to the extent deducted or subtracted in determining the taxpayer's federal adjusted gross income. For purposes of this subsection, references to the federal form 1040 and federal schedule C, schedule E, and schedule F, shall be to such form and schedules as they existed for tax year 2011, and as revised thereafter by the internal revenue service.

(xx) For all taxable years beginning after December 31, 2012, the amount of any deduction for self-employment taxes under section 164(f) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxi) For all taxable years beginning after December 31, 2012, the amount of any deduction for pension, profit sharing, and annuity plans of self-employed individuals under section 62(a)(6) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxii) For all taxable years beginning after December 31, 2012, the amount of any deduction for health insurance under section 162(l) of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxiii) For all taxable years beginning after December 31, 2012, the amount of any deduction for domestic production activities under section 199 of the federal internal revenue code as in effect on January 1, 2012, and amendments thereto, in determining the federal adjusted gross income of an individual taxpayer.

(xxiv) *For taxable years commencing after December 31, 2013, that portion of the amount of any expenditure deduction claimed in determining federal adjusted gross income for expenses paid for medical care of the taxpayer or the taxpayer's spouse or dependents when such expenses were paid or incurred for an abortion, or for a health benefit plan, as defined in section 1, and amendments thereto, for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 2012 Supp. 40-2,190, and amendments thereto, to the extent that such taxes and assessments are claimed as an itemized deduction for federal income tax purposes.*

(xxv) *For taxable years commencing after December 31, 2013, that portion of the amount of any expenditure deduction claimed in determining federal adjusted gross income for expenses paid by a taxpayer for health care when such expenses were paid or incurred for abortion cov-*

erage, a health benefit plan, as defined in section 1, and amendments thereto, when such expenses were paid or incurred for abortion coverage or amounts contributed to health savings accounts for such taxpayer's employees for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 2012 Supp. 40-2,190, and amendments thereto, to the extent that such taxes and assessments are claimed as a deduction for federal income tax purposes.

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expenses directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retirement benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

(viii) Amounts received by retired railroad employees as a supple-

mental annuity under the provisions of 45 U.S.C. §§ 228b (a) and 228c (a)(1) et seq.

(ix) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. § 280 C. For taxable years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. § 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249, and amendments thereto.

(xiii) For taxable years beginning after December 31, 2004, amounts contributed to and the amount of income earned on contributions deposited to an individual development account under K.S.A. 2012 Supp. 74-50,201 et seq., and amendments thereto.

(xiv) For all taxable years commencing after December 31, 1996, that portion of any income of a bank organized under the laws of this state or any other state, a national banking association organized under the laws of the United States, an association organized under the savings and loan code of this state or any other state, or a federal savings association organized under the laws of the United States, for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholders as dividends of the corporation. For all taxable years beginning after December 31, 2012, the amount of modification under this subsection shall exclude the portion of income or loss reported on schedule E and included on line 17 of the taxpayer's form 1040 federal individual income tax return.

(xv) For all taxable years beginning after December 31, 2006, amounts not exceeding \$3,000, or \$6,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program or a qualified tuition program established and maintained by another state or agency or instrumentality thereof pursuant to section 529 of the internal revenue code of 1986, as amended, for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. The terms and phrases used in this paragraph shall have

the meaning respectively ascribed thereto by the provisions of K.S.A. 2012 Supp. 75-643, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

(xvi) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are or were members of the armed forces of the United States, including service in the Kansas army and air national guard, as a recruitment, sign up or retention bonus received by such taxpayer as an incentive to join, enlist or remain in the armed services of the United States, including service in the Kansas army and air national guard, and amounts received for repayment of educational or student loans incurred by or obligated to such taxpayer and received by such taxpayer as a result of such taxpayer's service in the armed forces of the United States, including service in the Kansas army and air national guard.

(xvii) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are eligible members of the Kansas army and air national guard as a reimbursement pursuant to K.S.A. 48-281, and amendments thereto, and amounts received for death benefits pursuant to K.S.A. 48-282, and amendments thereto, or pursuant to section 1 or section 2 of chapter 207 of the 2005 Session Laws of Kansas, and amendments thereto, to the extent that such death benefits are included in federal adjusted gross income of the taxpayer.

(xviii) For the taxable year beginning after December 31, 2006, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$50,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly; and for all taxable years beginning after December 31, 2007, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$75,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly.

(xix) Amounts received by retired employees of Washburn university as retirement and pension benefits under the university's retirement plan.

(xx) For all taxable years beginning after December 31, 2012, the amount of any: (1) Net profit from business as determined under the federal internal revenue code and reported from schedule C and on line 12 of the taxpayer's form 1040 federal individual income tax return; (2) net income from rental real estate, royalties, partnerships, S corporations, estates, trusts, residual interest in real estate mortgage investment conduits and net farm rental as determined under the federal internal revenue code and reported from schedule E and on line 17 of the taxpayer's form 1040 federal individual income tax return; and (3) net farm profit as determined under the federal internal revenue code and reported from schedule F and on line 18 of the taxpayer's form 1040 federal income tax

return; all to the extent included in the taxpayer's federal adjusted gross income. For purposes of this subsection, references to the federal form 1040 and federal schedule C, schedule E, and schedule F, shall be to such form and schedules as they existed for tax year 2011 and as revised thereafter by the internal revenue service.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.

Sec. 18. K.S.A. 2012 Supp. 79-32,138 is hereby amended to read as follows: 79-32,138. (a) Kansas taxable income of a corporation taxable under this act shall be the corporation's federal taxable income for the taxable year with the modifications specified in this section.

(b) There shall be added to federal taxable income: (i) The same modifications as are set forth in subsection (b) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals, except subsections (b)(xix), (b)(xx), (b)(xxi), (b)(xxii) and (b)(xxiii).

(ii) The amount of all depreciation deductions claimed for any property upon which the deduction allowed by K.S.A. 2012 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto, is claimed.

(iii) The amount of any charitable contribution deduction claimed for any contribution or gift to or for the use of any racially segregated educational institution.

(iv) *For taxable years commencing December 31, 2013, that portion of the amount of any expenditure deduction claimed in determining federal adjusted gross income for expenses paid by a taxpayer for health care when such expenses were paid or incurred for abortion coverage, a health benefit plan, as defined in section 1, and amendments thereto, when such expenses were paid or incurred for abortion coverage or amounts contributed to health savings accounts for such taxpayer's employees for the purchase of an optional rider for coverage of abortion in accordance with K.S.A. 2012 Supp. 40-2,190, and amendments thereto.*

(c) There shall be subtracted from federal taxable income: (i) The same modifications as are set forth in subsection (c) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals, except subsection (c)(xx).

(ii) The federal income tax liability for any taxable year commencing prior to December 31, 1971, for which a Kansas return was filed after

reduction for all credits thereon, except credits for payments on estimates of federal income tax, credits for gasoline and lubricating oil tax, and for foreign tax credits if, on the Kansas income tax return for such prior year, the federal income tax deduction was computed on the basis of the federal income tax paid in such prior year, rather than as accrued. Notwithstanding the foregoing, the deduction for federal income tax liability for any year shall not exceed that portion of the total federal income tax liability for such year which bears the same ratio to the total federal income tax liability for such year as the Kansas taxable income, as computed before any deductions for federal income taxes and after application of subsections (d) and (e) of this section as existing for such year, bears to the federal taxable income for the same year.

(iii) An amount for the amortization deduction allowed pursuant to K.S.A. 2012 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto.

(iv) For all taxable years commencing after December 31, 1987, the amount included in federal taxable income pursuant to the provisions of section 78 of the internal revenue code.

(v) For all taxable years commencing after December 31, 1987, 80% of dividends from corporations incorporated outside of the United States or the District of Columbia which are included in federal taxable income.

(d) If any corporation derives all of its income from sources within Kansas in any taxable year commencing after December 31, 1979, its Kansas taxable income shall be the sum resulting after application of subsections (a) through (c) hereof. Otherwise, such corporation's Kansas taxable income in any such taxable year, after excluding any refunds of federal income tax and before the deduction of federal income taxes provided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-3271 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any refund of federal income tax as determined under paragraph (iv) of subsection (b) of K.S.A. 79-32,117, and amendments thereto, and minus the deduction for federal income taxes as provided by subsection (c)(ii) shall be such corporation's Kansas taxable income.

(e) A corporation may make an election with respect to its first taxable year commencing after December 31, 1982, whereby no addition modifications as provided for in subsection (b)(ii) of K.S.A. 79-32,138, and amendments thereto, and subtraction modifications as provided for in subsection (c)(iii) of K.S.A. 79-32,138, and amendments thereto, as those subsections existed prior to their amendment by this act, shall be required to be made for such taxable year.

Sec. 19. K.S.A. 2012 Supp. 79-32,182b is hereby amended to read as follows: 79-32,182b. (a) For all taxable years commencing after December 31, 2000, a credit shall be allowed against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer for expendi-

tures in research and development activities conducted within this state in an amount equal to 61/2% of the amount by which the amount expended for such activities in the taxable year of the taxpayer exceeds the taxpayer's average of the actual expenditures for such purposes made in such taxable year and the next preceding two taxable years.

(b) In any one taxable year, the amount of such credit allowable for deduction from the taxpayer's tax liability shall not exceed 25% of the total amount of such credit plus any applicable carry forward amount. The amount by which that portion of the credit allowed by subsections (a) and (b) to be claimed in any one taxable year exceeds the taxpayer's tax liability in such year may be carried forward until the total amount of the credit is used.

(c) As used in this section, the term "expenditures in research and development activities" means expenditures made for such purposes, other than expenditures of moneys made available to the taxpayer pursuant to federal or state law, which are treated as expenses allowable for deduction under the provisions of the federal internal revenue code of 1986, ~~and amendments thereto~~ *as amended, except that for taxable years commencing after December 31, 2013, expenditures in research and development activities shall not include any expenditures for the performance of any abortion, as defined in K.S.A. 65-6701, and amendments thereto.*

(d) For tax year 2013 and all tax years thereafter, the income tax credit provided by this section shall only be available to taxpayers subject to the income tax on corporations imposed pursuant to subsection (c) of K.S.A. 79-32,110, and amendments thereto, and shall be applied only against such taxpayer's corporate income tax liability.

Sec. 20. K.S.A. 2012 Supp. 79-32,195 is hereby amended to read as follows: 79-32,195. As used in this act, the following words and phrases shall have the meanings ascribed to them herein: (a) "Business firm" means any business entity authorized to do business in the state of Kansas which is subject to the state income tax imposed by the provisions of the Kansas income tax act, any individual subject to the state income tax imposed by the provisions of the Kansas income tax act, any national banking association, state bank, trust company or savings and loan association paying an annual tax on its net income pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto*, or any insurance company paying the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto;

(b) "Community services" means:

(1) The conduct of activities which meet a demonstrated community need and which are designed to achieve improved educational and social services for Kansas children and their families, and which are coordinated with communities including, but not limited to, social and human services

organizations that address the causes of poverty through programs and services that assist low income persons in the areas of employment, food, housing, emergency assistance and health care;

(2) crime prevention; and

(3) health care services.

(c) “Crime prevention” means any nongovernmental activity which aids in the prevention of crime.

(d) “Community service organization” means any organization performing community services in Kansas and which:

(1) Has obtained a ruling from the internal revenue service of the United States department of the treasury that such organization is exempt from income taxation under the provisions of section 501(c)(3) of the federal internal revenue code; or

(2) is incorporated in the state of Kansas or another state as a non-stock, nonprofit corporation; or

(3) has been designated as a community development corporation by the United States government under the provisions of title VII of the economic opportunity act of 1964; or

(4) is chartered by the United States congress.

(e) “Contributions” shall mean and include the donation of cash, services or property other than used clothing in an amount or value of \$250 or more. Stocks and bonds contributed shall be valued at the stock market price on the date of transfer. Services contributed shall be valued at the standard billing rate for not-for-profit clients. Personal property items contributed shall be valued at the lesser of its fair market value or cost to the donor and may be inclusive of costs incurred in making the contribution, but shall not include sales tax. Contributions of real estate are allowable for credit only when title thereto is in fee simple absolute and is clear of any encumbrances. The amount of credit allowable shall be based upon the lesser of two current independent appraisals conducted by state licensed appraisers.

(f) “Health care services” shall include, but not be limited to, the following: Services provided by local health departments, city, county or district hospitals, city or county nursing homes, or other residential institutions, preventive health care services offered by a community service organization including immunizations, prenatal care, the postponement of entry into nursing homes by home health care services, and community based services for persons with a disability, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, services provided by rural health clinics, integration of health care services, home health services and services provided by rural health networks, *except that for taxable years commencing after December 31, 2013, health care services shall not include any service involving the performance of any abortion, as defined in K.S.A. 65-6701, and amendments thereto.*

(g) “Rural community” means any city having a population of fewer than 15,000 located in a county that is not part of a standard metropolitan statistical area as defined by the United States department of commerce or its successor agency. However, any such city located in a county defined as a standard metropolitan statistical area shall be deemed a rural community if a substantial number of persons in such county derive their income from agriculture and, in any county where there is only one city within the county which has a population of more than 15,000 and which classifies as a standard metropolitan statistical area, all other cities in that county having a population of less than 15,000 shall be deemed a rural community.

Sec. 21. K.S.A. 2012 Supp. 79-32,261 is hereby amended to read as follows: 79-32,261. (a) On and after July 1, 2008, any taxpayer who contributes in the manner prescribed by this section to a community college located in Kansas for capital improvements, to a technical college for deferred maintenance or the purchase of technology or equipment or to a postsecondary educational institution located in Kansas for deferred maintenance, shall be allowed a credit against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto*. The tax credit allowed by this section is applicable for the tax year 2008 for any contributions made on and after July 1, 2008, and for the tax years 2009, 2010, 2011 and 2012 for any contributions made during the entire tax year. The amount of the credit allowed by this section shall not exceed 60% of the total amount contributed during the taxable year by the taxpayer to a community college or a technical college located in Kansas for such purposes. The amount of the credit allowed by this section shall not exceed 50% of the total amount contributed during the taxable year by the taxpayer to a postsecondary educational institution for such purposes. If the amount of the credit allowed by this section for a taxpayer who contributes to a community college or a technical college exceeds the taxpayer’s income tax liability imposed by the Kansas income tax act, such excess amount shall be refunded to the taxpayer. If the amount of the tax credit for a taxpayer who contributes to a postsecondary educational institution exceeds the taxpayer’s income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer’s income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the third taxable year succeeding the taxable year in which the contribution is made. Prior to the issuance of any tax credits pursuant to this section, the structure of

the process in which contributions received by a community college, a technical college or a postsecondary educational institution qualify as tax credits allowed and issued pursuant to this section shall be developed by a community college, a technical college and a postsecondary educational institution in consultation with the secretary of revenue and the foundation or endowment association of any such community college, technical college or postsecondary educational institution in a manner that complies with requirements specified in the federal internal revenue code of 1986, as amended, so that contributions qualify as charitable contributions allowable as deductions from federal adjusted gross income.

(b) (1) Upon receipt of any such contributions to a community college made pursuant to the provisions of this section, the treasurer of the community college shall deposit such contributions to the credit of the capital outlay fund of such community college established as provided by K.S.A. 71-501a, and amendments thereto. Expenditures from such fund shall be made for the purposes described in subsection (a) of K.S.A. 71-501, and amendments thereto, except that expenditures shall not be made from such fund for new construction or the acquisition of real property for use as building sites or for educational programs.

(2) Upon receipt of any such contributions to a technical college made pursuant to the provisions of this section, such contributions shall be deposited to the credit of a deferred maintenance fund or a technology and equipment fund established by the technical college which received the contribution. Expenditures from such fund shall be made only for the purpose as provided in this subsection.

(3) Upon receipt of any such contributions to a postsecondary educational institution made pursuant to the provisions of this section, such contributions shall be deposited to the credit of the appropriate deferred maintenance support fund of the postsecondary educational institution which received the contribution. Expenditures from such fund shall be made only for the purposes designated for such fund pursuant to law.

(c) (1) In no event shall the total amount of credits allowed under this section for taxpayers who contribute to any one such community college or technical college exceed the following amounts: For the tax year 2008, an amount not to exceed \$78,125; for the tax year 2009, an amount not to exceed \$156,250; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$208,233.33.

(2) In no event shall the total of credits allowed under this section for taxpayers who contribute to postsecondary educational institutions exceed the following amounts: For the tax year 2008, an amount not to exceed \$5,625,000; for the tax year 2009, an amount not to exceed \$11,250,000; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$15,000,000. Except as otherwise provided, the allocation of such tax credits for each individual state educational institution shall be determined by the state board of regents in consultation with the secre-

tary of revenue and the university foundation or endowment association of each postsecondary educational institution, and such determination shall be completed prior to the issuance of any tax credits pursuant to this section. Not more than 40% of the total of credits allowed under this section shall be allocated to any one postsecondary educational institution unless all such postsecondary educational institutions approve an allocation to any one such postsecondary educational institution which exceeds 40% of the total of such credits allowed under this section.

(d) As used in this section: (1) “Community college” means a community college established under the provisions of the community college act;

(2) “deferred maintenance” means the maintenance, repair, reconstruction or rehabilitation of a building located at a technical college or a postsecondary educational institution which has been deferred, any utility systems relating to such building, any life-safety upgrades to such building and any improvements necessary to be made to such building in order to comply with the requirements of the Americans with disabilities act or other federal or state law, *except that for taxable years commencing after December 31, 2013, deferred maintenance shall not include any maintenance, repair, reconstruction or rehabilitation of any building in which any abortion, as defined in K.S.A. 65-6701, and amendments thereto, is performed;*

(3) “postsecondary educational institution” means the university of Kansas, Kansas state university of agriculture and applied science, Wichita state university, Emporia state university, Pittsburg state university, Fort Hays state university and Washburn university of Topeka; and

(4) “technical college” means a technical college as designated pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475 and 72-4477, and amendments thereto.

(e) Any taxpayer not subject to Kansas income, privilege or premiums tax who contributes to a community college, technical college or postsecondary educational institution, hereinafter designated the transferor, may sell, assign, convey or otherwise transfer tax credits allowed and earned pursuant to this section. The sale price of a tax credit shall be at least 50% of the full value of the credit. Such credit shall be deemed to be allowed and earned by any such taxpayer which is only disqualified therefrom by reason of not being subject to such Kansas taxes. The taxpayer acquiring earned credits, hereinafter designated the transferee, may use the amount of the acquired credits to offset up to 100% of the taxpayer’s income, privilege or premiums tax liability for the taxable year in which such acquisition was made. Such credits may be sold or transferred only one time and, if sold or transferred, shall be transferred in the tax year such credit is earned or the two successive tax years. A transferred credit shall be claimed in the year purchased. The transferor shall enter into a written agreement with the transferee establishing the terms and

conditions of the sale or transfer and shall perfect such transfer by notifying the secretary of revenue in writing within 30 calendar days following the effective date of the transfer, subject to the review and approval or denial of such transfer by the secretary of revenue. The transferor and transferee shall provide any information pertaining to the sale or transfer as may be required by the secretary of revenue to administer and carry out the provisions of this section. The amount received by the transferor of such tax credit shall be taxable as income of the transferor, and the excess of the value of such credit over the amount paid by the transferee for such credit shall be taxable as income of the transferee.

(f) The secretary of revenue shall submit an annual report to the legislature to assist the legislature in the evaluation of the utilization of any credits claimed pursuant to this act, including information specific as to each community college, technical college or postsecondary educational institution. Such report shall be due on or before the first day of the legislative session following the tax year in which the credits were claimed.

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

Sec. 22. K.S.A. 2012 Supp. 79-3606 is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301, and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817, and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02, and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and amendments thereto, drycleaning and laundry services taxed pursuant to K.S.A. 65-34,150, and amendments thereto, and gross receipts from regulated sports contests taxed pursuant to the Kansas professional regulated sports act, and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service

are used or proposed to be used in such business; or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school, a public or private nonprofit educational institution, state correctional institution including a privately constructed correctional institution contracted for state use and ownership, which would be exempt from taxation under the provisions of this act if purchased directly by such hospital or public hospital authority, school, educational institution or a state correctional institution; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or district described in subsection (s), the total cost of which is paid from funds of such political subdivision or district and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision or district. Nothing in this subsection or in the provisions of K.S.A. 12-3418, and amendments thereto, shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or any such district. As used in this subsection, K.S.A. 12-3418 and 79-3640, and amendments thereto, "funds of a political subdivision" shall mean general tax revenues, the proceeds of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used for the purpose of constructing, equipping, reconstructing, repairing, enlarging, furnishing or remodeling facilities which are to be leased to the donor. When any political subdivision of the state, district described in subsection (s), public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school, public or private nonprofit educational institution, state correctional institution including a privately constructed correctional institution contracted

for state use and ownership shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision, district described in subsection (s), hospital or public hospital authority, school, educational institution or department of corrections concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, district described in subsection (s), hospital or public hospital authority, school, educational institution or the contractor contracting with the department of corrections for a correctional institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(e) all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly

by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the government of the United States, its agencies or instrumentalities concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(f) tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce;

(g) sales of aircraft including remanufactured and modified aircraft sold to persons using directly or through an authorized agent such aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of such foreign government and all sales of aircraft for use outside of the United States and sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft;

(h) all rentals of nonsectarian textbooks by public or private elementary or secondary schools;

(i) the lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

(j) meals served without charge or food used in the preparation of such meals to employees of any restaurant, eating house, dining car, hotel,

drugstore or other place where meals or drinks are regularly sold to the public if such employees' duties are related to the furnishing or sale of such meals or drinks;

(k) any motor vehicle, semitrailer or pole trailer, as such terms are defined by K.S.A. 8-126, and amendments thereto, or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle, semitrailer, pole trailer or aircraft is not to be registered or based in this state and which vehicle, semitrailer, pole trailer or aircraft will not remain in this state more than 10 days;

(l) all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603, and amendments thereto;

(m) all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

(o) all sales of animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber or fur, or the production of offspring for use for any such purpose or purposes;

(p) all sales of drugs dispensed pursuant to a prescription order by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto. As used in this subsection, "drug" means a compound, substance or preparation and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages, recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary, and supplement to any of

them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or intended to affect the structure or any function of the body, *except that for taxable years commencing after December 31, 2013, this subsection shall not apply to any sales of drugs used in the performance or induction of an abortion, as defined in K.S.A. 65-6701, and amendments thereto;*

(q) all sales of insulin dispensed by a person licensed by the state board of pharmacy to a person for treatment of diabetes at the direction of a person licensed to practice medicine by the board of healing arts;

(r) all sales of oxygen delivery equipment, kidney dialysis equipment, enteral feeding systems, prosthetic devices and mobility enhancing equipment prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry, and in addition to such sales, all sales of hearing aids, as defined by subsection (c) of K.S.A. 74-5807, and amendments thereto, and repair and replacement parts therefor, including batteries, by a person licensed in the practice of dispensing and fitting hearing aids pursuant to the provisions of K.S.A. 74-5808, and amendments thereto. For the purposes of this subsection: (1) "Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include durable medical equipment, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; is not generally used by persons with normal mobility; and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer; and (2) "prosthetic device" means a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction or support a weak or deformed portion of the body;

(s) except as provided in K.S.A. 2012 Supp. 82a-2101, and amendments thereto, all sales of tangible personal property or services purchased directly or indirectly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 et seq., and amendments thereto, by a rural water district organized or operating under the authority of K.S.A. 82a-612, and amendments thereto, or by a water supply district organized or operating under the authority of K.S.A. 19-3501 et seq., 19-3522 et seq., or 19-3545, and amendments thereto, which property or services are used in the construction activities, operation or maintenance of the district;

(t) all sales of farm machinery and equipment or aquaculture machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection the term "farm machinery and equipment or aquaculture machinery and equipment" shall include a work-site utility vehicle, as defined in K.S.A. 8-126, and amendments

thereto, and is equipped with a bed or cargo box for hauling materials, and shall also include machinery and equipment used in the operation of Christmas tree farming but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126, and amendments thereto. "Farm machinery and equipment" includes precision farming equipment that is portable or is installed or purchased to be installed on farm machinery and equipment. "Precision farming equipment" includes the following items used only in computer-assisted farming, ranching or aquaculture production operations: Soil testing sensors, yield monitors, computers, monitors, software, global positioning and mapping systems, guiding systems, modems, data communications equipment and any necessary mounting hardware, wiring and antennas. Each purchaser of farm machinery and equipment or aquaculture machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery and equipment or aquaculture machinery and equipment purchased will be used only in farming, ranching or aquaculture production. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

(u) all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days;

(v) all sales of tangible personal property to any contractor for use in preparing meals for delivery to homebound elderly persons over 60 years of age and to homebound disabled persons or to be served at a group-sitting at a location outside of the home to otherwise homebound elderly persons over 60 years of age and to otherwise homebound disabled persons, as all or part of any food service project funded in whole or in part by government or as part of a private nonprofit food service project available to all such elderly or disabled persons residing within an area of service designated by the private nonprofit organization, and all sales of tangible personal property for use in preparing meals for consumption by indigent or homeless individuals whether or not such meals are consumed at a place designated for such purpose, and all sales of food products by or on behalf of any such contractor or organization for any such purpose;

(w) all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes: (1) To residential premises for noncommercial use by the occupant of such premises; (2) for agricultural use and also, for such use, all sales of propane gas; (3) for use in the severing of oil; and (4) to any property which is exempt from property taxation pursuant to K.S.A. 79-201b, *Second* through *Sixth*. As used in this paragraph, "severing" shall have the meaning ascribed thereto by subsection (k) of K.S.A. 79-4216, and amendments thereto. For all sales of natural gas, electricity and heat delivered through mains, lines or pipes pursuant to

the provisions of subsection (w)(1) and (w)(2), the provisions of this subsection shall expire on December 31, 2005;

(x) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises occurring prior to January 1, 2006;

(y) all sales of materials and services used in the repairing, servicing, altering, maintaining, manufacturing, remanufacturing, or modification of railroad rolling stock for use in interstate or foreign commerce under authority of the laws of the United States;

(z) all sales of tangible personal property and services purchased directly by a port authority or by a contractor therefor as provided by the provisions of K.S.A. 12-3418, and amendments thereto;

(aa) all sales of materials and services applied to equipment which is transported into the state from without the state for repair, service, alteration, maintenance, remanufacture or modification and which is subsequently transported outside the state for use in the transmission of liquids or natural gas by means of pipeline in interstate or foreign commerce under authority of the laws of the United States;

(bb) all sales of used mobile homes or manufactured homes. As used in this subsection: (1) "Mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202, and amendments thereto; and (2) "sales of used mobile homes or manufactured homes" means sales other than the original retail sale thereof;

(cc) all sales of tangible personal property or services purchased prior to January 1, 2012, except as otherwise provided, for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115, and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business, and all sales of tangible personal property or services purchased on or after January 1, 2012, for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business which meets the requirements established in K.S.A. 74-50,115(e), and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such business or retail business, such person shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials, machinery and equipment for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the owner of the business or retail business a sworn statement, on a form to

be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. As used in this subsection, "business" and "retail business" have the meanings respectively ascribed thereto by K.S.A. 74-50,114, and amendments thereto. Project exemption certificates that have been previously issued under this subsection by the department of revenue pursuant to K.S.A. 74-50,115, and amendments thereto, but not including K.S.A. 74-50,115(e), and amendments thereto, prior to January 1, 2012, and have not expired will be effective for the term of the project or two years from the effective date of the certificate, whichever occurs earlier. Project exemption certificates that are submitted to the department of revenue prior to January 1, 2012, and are found to qualify will be issued a project exemption certificate that will be effective for a two-year period or for the term of the project, whichever occurs earlier;

(dd) all sales of tangible personal property purchased with food stamps issued by the United States department of agriculture;

(ee) all sales of lottery tickets and shares made as part of a lottery operated by the state of Kansas;

(ff) on and after July 1, 1988, all sales of new mobile homes or manufactured homes to the extent of 40% of the gross receipts, determined without regard to any trade-in allowance, received from such sale. As used in this subsection, "mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202, and amendments thereto;

(gg) all sales of tangible personal property purchased in accordance with vouchers issued pursuant to the federal special supplemental food program for women, infants and children;

(hh) all sales of medical supplies and equipment, including durable medical equipment, purchased directly by a nonprofit skilled nursing home or nonprofit intermediate nursing care home, as defined by K.S.A. 39-923, and amendments thereto, for the purpose of providing medical services to residents thereof. This exemption shall not apply to tangible personal property customarily used for human habitation purposes. As used in this subsection, "durable medical equipment" means equipment including repair and replacement parts for such equipment, which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness

or injury and is not worn in or on the body, but does not include mobility enhancing equipment as defined in subsection (r), oxygen delivery equipment, kidney dialysis equipment or enteral feeding systems;

(ii) all sales of tangible personal property purchased directly by a non-profit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(jj) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly on behalf of a community-based facility for people with intellectual disability or mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b, and amendments thereto, and all sales of tangible personal property or services purchased by contractors during the time period from July, 2003, through June, 2006, for the purpose of constructing, equipping, maintaining or furnishing a new facility for a community-based facility for people with intellectual disability or mental health center located in Riverton, Cherokee County, Kansas, which would have been eligible for sales tax exemption pursuant to this subsection if purchased directly by such facility or center. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(kk) (1) (A) all sales of machinery and equipment which are used in this state as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility;

(B) all sales of installation, repair and maintenance services performed on such machinery and equipment; and

(C) all sales of repair and replacement parts and accessories purchased for such machinery and equipment.

(2) For purposes of this subsection:

(A) “Integrated production operation” means an integrated series of operations engaged in at a manufacturing or processing plant or facility to process, transform or convert tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Integrated production operations shall include: (i) Production line operations, including packaging operations; (ii) preproduction operations to handle, store and treat raw materials; (iii) post production handling, storage, warehousing and distribution operations; and (iv) waste, pollution and environmental control operations, if any;

(B) “production line” means the assemblage of machinery and equipment at a manufacturing or processing plant or facility where the actual transformation or processing of tangible personal property occurs;

(C) “manufacturing or processing plant or facility” means a single,

fixed location owned or controlled by a manufacturing or processing business that consists of one or more structures or buildings in a contiguous area where integrated production operations are conducted to manufacture or process tangible personal property to be ultimately sold at retail. Such term shall not include any facility primarily operated for the purpose of conveying or assisting in the conveyance of natural gas, electricity, oil or water. A business may operate one or more manufacturing or processing plants or facilities at different locations to manufacture or process a single product of tangible personal property to be ultimately sold at retail;

(D) “manufacturing or processing business” means a business that utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or processing operation or an agricultural commodity processing operation. (i) Industrial manufacturing or processing operations include, by way of illustration but not of limitation, the fabrication of automobiles, airplanes, machinery or transportation equipment, the fabrication of metal, plastic, wood, or paper products, electricity power generation, water treatment, petroleum refining, chemical production, wholesale bottling, newspaper printing, ready mixed concrete production, and the remanufacturing of used parts for wholesale or retail sale. Such processing operations shall include operations at an oil well, gas well, mine or other excavation site where the oil, gas, minerals, coal, clay, stone, sand or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated or prepared before its transmission to a refinery or before any other wholesale or retail distribution. (ii) Agricultural commodity processing operations include, by way of illustration but not of limitation, meat packing, poultry slaughtering and dressing, processing and packaging farm and dairy products in sealed containers for wholesale and retail distribution, feed grinding, grain milling, frozen food processing, and grain handling, cleaning, blending, fumigation, drying and aeration operations engaged in by grain elevators or other grain storage facilities. (iii) Manufacturing or processing businesses do not include, by way of illustration but not of limitation, nonindustrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business, such as retailers who bake, cook or prepare food products in the regular course of their retail trade, grocery stores, meat lockers and meat markets that butcher or dress livestock or poultry in the regular course of their retail trade, contractors who alter, service, repair or improve real property, and retail businesses that clean, service or refurbish and repair tangible personal property for its owner;

(E) “repair and replacement parts and accessories” means all parts and accessories for exempt machinery and equipment, including, but not

limited to, dies, jigs, molds, patterns and safety devices that are attached to exempt machinery or that are otherwise used in production, and parts and accessories that require periodic replacement such as belts, drill bits, grinding wheels, grinding balls, cutting bars, saws, refractory brick and other refractory items for exempt kiln equipment used in production operations;

(F) “primary” or “primarily” mean more than 50% of the time.

(3) For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used:

(A) To receive, transport, convey, handle, treat or store raw materials in preparation of its placement on the production line;

(B) to transport, convey, handle or store the property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution operation of the final product that occurs at the plant or facility;

(C) to act upon, effect, promote or otherwise facilitate a physical change to the property undergoing manufacturing or processing;

(D) to guide, control or direct the movement of property undergoing manufacturing or processing;

(E) to test or measure raw materials, the property undergoing manufacturing or processing or the finished product, as a necessary part of the manufacturer’s integrated production operations;

(F) to plan, manage, control or record the receipt and flow of inventories of raw materials, consumables and component parts, the flow of the property undergoing manufacturing or processing and the management of inventories of the finished product;

(G) to produce energy for, lubricate, control the operating of or otherwise enable the functioning of other production machinery and equipment and the continuation of production operations;

(H) to package the property being manufactured or processed in a container or wrapping in which such property is normally sold or transported;

(I) to transmit or transport electricity, coke, gas, water, steam or similar substances used in production operations from the point of generation, if produced by the manufacturer or processor at the plant site, to that manufacturer’s production operation; or, if purchased or delivered from off-site, from the point where the substance enters the site of the plant or facility to that manufacturer’s production operations;

(J) to cool, heat, filter, refine or otherwise treat water, steam, acid, oil, solvents or other substances that are used in production operations;

(K) to provide and control an environment required to maintain certain levels of air quality, humidity or temperature in special and limited areas of the plant or facility, where such regulation of temperature or humidity is part of and essential to the production process;

(L) to treat, transport or store waste or other byproducts of production operations at the plant or facility; or

(M) to control pollution at the plant or facility where the pollution is produced by the manufacturing or processing operation.

(4) The following machinery, equipment and materials shall be deemed to be exempt even though it may not otherwise qualify as machinery and equipment used as an integral or essential part of an integrated production operation: (A) Computers and related peripheral equipment that are utilized by a manufacturing or processing business for engineering of the finished product or for research and development or product design; (B) machinery and equipment that is utilized by a manufacturing or processing business to manufacture or rebuild tangible personal property that is used in manufacturing or processing operations, including tools, dies, molds, forms and other parts of qualifying machinery and equipment; (C) portable plants for aggregate concrete, bulk cement and asphalt including cement mixing drums to be attached to a motor vehicle; (D) industrial fixtures, devices, support facilities and special foundations necessary for manufacturing and production operations, and materials and other tangible personal property sold for the purpose of fabricating such fixtures, devices, facilities and foundations. An exemption certificate for such purchases shall be signed by the manufacturer or processor. If the fabricator purchases such material, the fabricator shall also sign the exemption certificate; and (E) a manufacturing or processing business' laboratory equipment that is not located at the plant or facility, but that would otherwise qualify for exemption under subsection (3)(E).

(5) "Machinery and equipment used as an integral or essential part of an integrated production operation" shall not include:

(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;

(B) machinery, equipment and tools used primarily in maintaining and repairing any type of machinery and equipment or the building and plant;

(C) transportation, transmission and distribution equipment not primarily used in a production, warehousing or material handling operation at the plant or facility, including the means of conveyance of natural gas, electricity, oil or water, and equipment related thereto, located outside the plant or facility;

(D) office machines and equipment including computers and related peripheral equipment not used directly and primarily to control or measure the manufacturing process;

(E) furniture and other furnishings;

(F) buildings, other than exempt machinery and equipment that is

permanently affixed to or becomes a physical part of the building, and any other part of real estate that is not otherwise exempt;

(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;

(H) machinery and equipment used for general plant heating, cooling and lighting;

(I) motor vehicles that are registered for operation on public highways; or

(J) employee apparel, except safety and protective apparel that is purchased by an employer and furnished gratuitously to employees who are involved in production or research activities.

(6) Subsections (3) and (5) shall not be construed as exclusive listings of the machinery and equipment that qualify or do not qualify as an integral or essential part of an integrated production operation. When machinery or equipment is used as an integral or essential part of production operations part of the time and for nonproduction purpose at other times, the primary use of the machinery or equipment shall determine whether or not such machinery or equipment qualifies for exemption.

(7) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this subsection;

(ll) all sales of educational materials purchased for distribution to the public at no charge by a nonprofit corporation organized for the purpose of encouraging, fostering and conducting programs for the improvement of public health, *except that for taxable years commencing after December 31, 2013, this subsection shall not apply to any sales of such materials purchased by a nonprofit corporation which performs any abortion, as defined in K.S.A. 65-6701, and amendments thereto;*

(mm) all sales of seeds and tree seedlings; fertilizers, insecticides, herbicides, germicides, pesticides and fungicides; and services, purchased and used for the purpose of producing plants in order to prevent soil erosion on land devoted to agricultural use;

(nn) except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof;

(oo) all sales of tangible personal property purchased by a community action group or agency for the exclusive purpose of repairing or weatherizing housing occupied by low income individuals;

(pp) all sales of drill bits and explosives actually utilized in the exploration and production of oil or gas;

(qq) all sales of tangible personal property and services purchased by a nonprofit museum or historical society or any combination thereof, including a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space by providing edu-

cational information, exhibits and experiences, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(rr) all sales of tangible personal property which will admit the purchaser thereof to any annual event sponsored by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, *except that for taxable years commencing after December 31, 2013, this subsection shall not apply to any sales of such tangible personal property purchased by a nonprofit organization which performs any abortion, as defined in K.S.A. 65-6701, and amendments thereto;*

(ss) all sales of tangible personal property and services purchased by a public broadcasting station licensed by the federal communications commission as a noncommercial educational television or radio station;

(tt) all sales of tangible personal property and services purchased by or on behalf of a not-for-profit corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the sole purpose of constructing a Kansas Korean War memorial;

(uu) all sales of tangible personal property and services purchased by or on behalf of any rural volunteer fire-fighting organization for use exclusively in the performance of its duties and functions;

(vv) all sales of tangible personal property purchased by any of the following organizations which are exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the following purposes, and all sales of any such property by or on behalf of any such organization for any such purpose:

(1) The American Heart Association, Kansas Affiliate, Inc. for the purposes of providing education, training, certification in emergency cardiac care, research and other related services to reduce disability and death from cardiovascular diseases and stroke;

(2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of advocacy for persons with mental illness and to education, research and support for their families;

(3) the Kansas Mental Illness Awareness Council for the purposes of advocacy for persons who are mentally ill and to education, research and support for them and their families;

(4) the American Diabetes Association Kansas Affiliate, Inc. for the purpose of eliminating diabetes through medical research, public education focusing on disease prevention and education, patient education including information on coping with diabetes, and professional education and training;

(5) the American Lung Association of Kansas, Inc. for the purpose of eliminating all lung diseases through medical research, public education including information on coping with lung diseases, professional educa-

tion and training related to lung disease and other related services to reduce the incidence of disability and death due to lung disease;

(6) the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers;

(7) the Kansas chapters of the Parkinson's disease association for the purpose of eliminating Parkinson's disease through medical research and public and professional education related to such disease;

(8) the National Kidney Foundation of Kansas and Western Missouri for the purpose of eliminating kidney disease through medical research and public and private education related to such disease;

(9) the heartstrings community foundation for the purpose of providing training, employment and activities for adults with developmental disabilities;

(10) the Cystic Fibrosis Foundation, Heart of America Chapter, for the purposes of assuring the development of the means to cure and control cystic fibrosis and improving the quality of life for those with the disease;

(11) the spina bifida association of Kansas for the purpose of providing financial, educational and practical aid to families and individuals with spina bifida. Such aid includes, but is not limited to, funding for medical devices, counseling and medical educational opportunities;

(12) the CHWC, Inc., for the purpose of rebuilding urban core neighborhoods through the construction of new homes, acquiring and renovating existing homes and other related activities, and promoting economic development in such neighborhoods;

(13) the cross-lines cooperative council for the purpose of providing social services to low income individuals and families;

(14) the Dreams Work, Inc., for the purpose of providing young adult day services to individuals with developmental disabilities and assisting families in avoiding institutional or nursing home care for a developmentally disabled member of their family;

(15) the KSDS, Inc., for the purpose of promoting the independence and inclusion of people with disabilities as fully participating and contributing members of their communities and society through the training and providing of guide and service dogs to people with disabilities, and providing disability education and awareness to the general public;

(16) the lyme association of greater Kansas City, Inc., for the purpose of providing support to persons with lyme disease and public education relating to the prevention, treatment and cure of lyme disease;

(17) the Dream Factory, Inc., for the purpose of granting the dreams of children with critical and chronic illnesses;

(18) the Ottawa Suzuki Strings, Inc., for the purpose of providing students and families with education and resources necessary to enable

each child to develop fine character and musical ability to the fullest potential;

(19) the International Association of Lions Clubs for the purpose of creating and fostering a spirit of understanding among all people for humanitarian needs by providing voluntary services through community involvement and international cooperation;

(20) the Johnson county young matrons, inc., for the purpose of promoting a positive future for members of the community through volunteerism, financial support and education through the efforts of an all volunteer organization;

(21) the American Cancer Society, Inc., for the purpose of eliminating cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer, through research, education, advocacy and service;

(22) the community services of Shawnee, inc., for the purpose of providing food and clothing to those in need;

(23) the angel babies association, for the purpose of providing assistance, support and items of necessity to teenage mothers and their babies; and

(24) the Kansas fairgrounds foundation for the purpose of the preservation, renovation and beautification of the Kansas state fairgrounds;

(ww) all sales of tangible personal property purchased by the Habitat for Humanity for the exclusive use of being incorporated within a housing project constructed by such organization;

(xx) all sales of tangible personal property and services purchased by a nonprofit zoo which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, or on behalf of such zoo by an entity itself exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986 contracted with to operate such zoo and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit zoo or the entity operating such zoo. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo. When any nonprofit zoo shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made,

and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the nonprofit zoo concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the nonprofit zoo concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(yy) all sales of tangible personal property and services purchased by a parent-teacher association or organization, and all sales of tangible personal property by or on behalf of such association or organization;

(zz) all sales of machinery and equipment purchased by over-the-air, free access radio or television station which is used directly and primarily for the purpose of producing a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. For purposes of this subsection, machinery and equipment shall include, but not be limited to, that required by rules and regulations of the federal communications commission, and all sales of electricity which are essential or necessary for the purpose of producing a broadcast signal or is such that the failure of the electricity would cause broadcasting to cease;

(aaa) all sales of tangible personal property and services purchased by a religious organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and used exclusively for religious purposes, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization which would be exempt from taxation under the provisions of this section if purchased

directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 1998, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(bbb) all sales of food for human consumption by an organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, pursuant to a food distribution program which offers such food at a price below cost in exchange for the performance of community service by the purchaser thereof;

(ccc) on and after July 1, 1999, all sales of tangible personal property and services purchased by a primary care clinic or health center the primary purpose of which is to provide services to medically underserved individuals and families, and which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center which would be exempt from taxation under the provisions of this section if purchased directly by such clinic or center, *except that for taxable years commencing after December 31, 2013, this subsection shall not apply to any sales of such tangible personal property and services purchased by a primary care clinic or health center which performs any abortion, as defined in K.S.A. 65-6701, and amendments thereto.* Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center. When any such clinic or center shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such clinic or center concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such clinic or

center concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ddd) on and after January 1, 1999, and before January 1, 2000, all sales of materials and services purchased by any class II or III railroad as classified by the federal surface transportation board for the construction, renovation, repair or replacement of class II or III railroad track and facilities used directly in interstate commerce. In the event any such track or facility for which materials and services were purchased sales tax exempt is not operational for five years succeeding the allowance of such exemption, the total amount of sales tax which would have been payable except for the operation of this subsection shall be recouped in accordance with rules and regulations adopted for such purpose by the secretary of revenue;

(eee) on and after January 1, 1999, and before January 1, 2001, all sales of materials and services purchased for the original construction, reconstruction, repair or replacement of grain storage facilities, including railroad sidings providing access thereto;

(fff) all sales of material handling equipment, racking systems and other related machinery and equipment that is used for the handling, movement or storage of tangible personal property in a warehouse or distribution facility in this state; all sales of installation, repair and maintenance services performed on such machinery and equipment; and all sales of repair and replacement parts for such machinery and equipment. For purposes of this subsection, a warehouse or distribution facility means a single, fixed location that consists of buildings or structures in a contiguous area where storage or distribution operations are conducted that are separate and apart from the business' retail operations, if any, and which do not otherwise qualify for exemption as occurring at a manufacturing or processing plant or facility. Material handling and storage equipment shall include aeration, dust control, cleaning, handling and other such equipment that is used in a public grain warehouse or other commercial grain storage facility, whether used for grain handling, grain storage, grain refining or processing, or other grain treatment operation;

(ggg) all sales of tangible personal property and services purchased by or on behalf of the Kansas Academy of Science which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal in-

ternal revenue code of 1986, and used solely by such academy for the preparation, publication and dissemination of education materials;

(hhh) all sales of tangible personal property and services purchased by or on behalf of all domestic violence shelters that are member agencies of the Kansas coalition against sexual and domestic violence;

(iii) all sales of personal property and services purchased by an organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such personal property and services are used by any such organization in the collection, storage and distribution of food products to nonprofit organizations which distribute such food products to persons pursuant to a food distribution program on a charitable basis without fee or charge, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities used for the collection and storage of such food products for any such organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in such facilities or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in such facilities reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment

thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 2005, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(jjj) all sales of dietary supplements dispensed pursuant to a prescription order by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto. As used in this subsection, "dietary supplement" means any product, other than tobacco, intended to supplement the diet that: (1) Contains one or more of the following dietary ingredients: A vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract or combination of any such ingredient; (2) is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion, in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and (3) is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 C.F.R. § 101.36;

(lll) all sales of tangible personal property and services purchased by special olympics Kansas, inc. for the purpose of providing year-round sports training and athletic competition in a variety of olympic-type sports for individuals with intellectual disabilities by giving them continuing opportunities to develop physical fitness, demonstrate courage, experience joy and participate in a sharing of gifts, skills and friendship with their families, other special olympics athletes and the community, and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization;

(mmm) all sales of tangible personal property purchased by or on behalf of the Marillac Center, Inc., which is exempt from federal income

taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing psycho-social-biological and special education services to children, and all sales of any such property by or on behalf of such organization for such purpose;

(nnn) all sales of tangible personal property and services purchased by the West Sedgwick County-Sunrise Rotary Club and Sunrise Charitable Fund for the purpose of constructing a boundless playground which is an integrated, barrier free and developmentally advantageous play environment for children of all abilities and disabilities;

(ooo) all sales of tangible personal property by or on behalf of a public library serving the general public and supported in whole or in part with tax money or a not-for-profit organization whose purpose is to raise funds for or provide services or other benefits to any such public library;

(ppp) all sales of tangible personal property and services purchased by or on behalf of a homeless shelter which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal income tax code of 1986, and used by any such homeless shelter to provide emergency and transitional housing for individuals and families experiencing homelessness, and all sales of any such property by or on behalf of any such homeless shelter for any such purpose;

(qqq) all sales of tangible personal property and services purchased by TLC for children and families, inc., hereinafter referred to as TLC, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing emergency shelter and treatment for abused and neglected children as well as meeting additional critical needs for children, juveniles and family, and all sales of any such property by or on behalf of TLC for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for TLC for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by TLC. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for TLC. When TLC contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to TLC a sworn statement, on a form to be provided by the

director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, TLC shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(rrr) all sales of tangible personal property and services purchased by any county law library maintained pursuant to law and sales of tangible personal property and services purchased by an organization which would have been exempt from taxation under the provisions of this subsection if purchased directly by the county law library for the purpose of providing legal resources to attorneys, judges, students and the general public, and all sales of any such property by or on behalf of any such county law library;

(sss) all sales of tangible personal property and services purchased by catholic charities or youthville, hereinafter referred to as charitable family providers, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing emergency shelter and treatment for abused and neglected children as well as meeting additional critical needs for children, juveniles and family, and all sales of any such property by or on behalf of charitable family providers for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for charitable family providers for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by charitable family providers. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, re-

pairing, enlarging, furnishing or remodeling such facilities for charitable family providers. When charitable family providers contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to charitable family providers a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, charitable family providers shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ttt) all sales of tangible personal property or services purchased by a contractor for a project for the purpose of restoring, constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility owned by a nonprofit museum which has been granted an exemption pursuant to subsection (qq), which such home or facility is located in a city which has been designated as a qualified hometown pursuant to the provisions of K.S.A. 75-5071 et seq., and amendments thereto, and which such project is related to the purposes of K.S.A. 75-5071 et seq., and amendments thereto, and which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit museum. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the restoring, constructing, equipping, reconstruct-

ing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility for any such nonprofit museum. When any such nonprofit museum shall contract for the purpose of restoring, constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project, the contractor shall furnish to such nonprofit museum a sworn statement on a form to be provided by the director of taxation that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in a home or facility or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such nonprofit museum shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(uuu) all sales of tangible personal property and services purchased by Kansas children's service league, hereinafter referred to as KCSL, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing for the prevention and treatment of child abuse and maltreatment as well as meeting additional critical needs for children, juveniles and family, and all sales of any such property by or on behalf of KCSL for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for KCSL for any such purpose which would be exempt from taxation under the

provisions of this section if purchased directly by KCSL. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for KCSL. When KCSL contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to KCSL a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, KCSL shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(vvv) all sales of tangible personal property or services, including the renting and leasing of tangible personal property or services, purchased by Jazz in the Woods, Inc., a Kansas corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing Jazz in the Woods, an event benefiting children-in-need and other nonprofit charities assisting such children, and all sales of any such property by or on behalf of such organization for such purpose;

(www) all sales of tangible personal property purchased by or on behalf of the Frontenac Education Foundation, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal

revenue code, for the purpose of providing education support for students, and all sales of any such property by or on behalf of such organization for such purpose;

(xxx) all sales of personal property and services purchased by the booth theatre foundation, inc., an organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such personal property and services are used by any such organization in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling of the booth theatre, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling the booth theatre for such organization, which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in such facilities or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in such facilities reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax

otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after January 1, 2007, but prior to the effective date of this act upon the gross receipts received from any sale which would have been exempted by the provisions of this subsection had such sale occurred after the effective date of this act shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(yyy) all sales of tangible personal property and services purchased by TLC charities foundation, inc., hereinafter referred to as TLC charities, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of encouraging private philanthropy to further the vision, values, and goals of TLC for children and families, inc.; and all sales of such property and services by or on behalf of TLC charities for any such purpose and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the operation of services for TLC charities for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by TLC charities. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities for TLC charities. When TLC charities contracts for the purpose of constructing, maintaining, repairing, enlarging, furnishing or remodeling such facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to TLC charities a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other

project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be incorporated into the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, TLC charities shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(zzz) all sales of tangible personal property purchased by the rotary club of shawnee foundation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as amended, used for the purpose of providing contributions to community service organizations and scholarships;

(aaaa) all sales of personal property and services purchased by or on behalf of victory in the valley, inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing a cancer support group and services for persons with cancer, and all sales of any such property by or on behalf of any such organization for any such purpose;

(bbbb) all sales of entry or participation fees, charges or tickets by Guadalupe health foundation, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for such organization's annual fundraising event which purpose is to provide health care services for uninsured workers;

(cccc) all sales of tangible personal property or services purchased by or on behalf of wayside waifs, inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of providing such organization's annual fundraiser, an event whose purpose is to support the care of homeless and abandoned animals, animal adoption efforts, education programs for children and efforts to reduce animal over-population and animal welfare services, and all sales of any such property, including entry or participation fees or charges, by or on behalf of such organization for such purpose;

(dddd) all sales of tangible personal property or services purchased by or on behalf of Goodwill Industries or Easter Seals of Kansas, Inc., both of which are exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of

providing education, training and employment opportunities for people with disabilities and other barriers to employment;

(eeee) all sales of tangible personal property or services purchased by or on behalf of All American Beef Battalion, Inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, for the purpose of educating, promoting and participating as a contact group through the beef cattle industry in order to carry out such projects that provide support and morale to members of the United States armed forces and military services;

(ffff) all sales of tangible personal property and services purchased by sheltered living, inc., which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and which such property and services are used for the purpose of providing residential and day services for people with developmental disabilities or intellectual disability, or both, and all sales of any such property by or on behalf of sheltered living, inc., for any such purpose; and all sales of tangible personal property or services purchased by a contractor for the purpose of rehabilitating, constructing, maintaining, repairing, enlarging, furnishing or remodeling homes and facilities for sheltered living, inc., for any such purpose which would be exempt from taxation under the provisions of this section if purchased directly by sheltered living, inc. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, maintaining, repairing, enlarging, furnishing or remodeling such homes and facilities for sheltered living, inc. When sheltered living, inc., contracts for the purpose of rehabilitating, constructing, maintaining, repairing, enlarging, furnishing or remodeling such homes and facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to sheltered living, inc., a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such cer-

tificate was issued, sheltered living, inc., shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto; and

(gggg) all sales of game birds for which the primary purpose is use in hunting.

New Sec. 23. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 24. K.S.A. 2012 Supp. 40-2246, 65-6701, 65-6703, 65-6709, 65-6710, 76-3308, 79-32,117, 79-32,138, 79-32,182b, 79-32,195, 79-32,261 and 79-3606 are hereby repealed.

Sec. 25. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 19, 2013.

CHAPTER 120

Senate Substitute for HOUSE BILL No. 2034
(Amended by Chapter 133)

AN ACT concerning crimes, punishment and criminal procedure; relating to human trafficking; human trafficking advisory board; establishing the human trafficking victim assistance fund; creating the crime of commercial sexual exploitation of a child; relating to selling sexual relations, promoting sexual relations, buying sexual relations; children in need of care; staff secure facilities; amending K.S.A. 22-2530 and K.S.A. 2012 Supp. 12-4106, 12-4120, 12-4516, 21-5301, 21-5302, 21-5303, 21-5401, 21-5502, 21-6419, 21-6420, 21-6421, 21-6614, 21-6626, 21-6627, 21-6806, 21-6815, 22-2515, 22-3601, 22-3717, 22-3901, 22-4902, 22-4906, 38-2202, 38-2231, 38-2232, 38-2242, 38-2243, 38-2255, 38-2312, 38-2361, 41-311, 41-2601, 60-4104 and 68-2255 and repealing the existing sections.

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

New Section 1. The attorney general, in consultation with other appropriate state agencies, is authorized to coordinate training regarding human trafficking for law enforcement agencies throughout Kansas.

New Sec. 2. (a) The human trafficking advisory board established by

the attorney general is hereby designated the official human trafficking advisory board for the state of Kansas.

- (b) The board shall include representatives from:
- (1) The office of the governor;
 - (2) the attorney general's office;
 - (3) the department of labor;
 - (4) the department for children and families;
 - (5) the department of health and environment;
 - (6) the juvenile justice authority;
 - (7) the Kansas association of chiefs of police;
 - (8) the Kansas sheriffs' association;
 - (9) the highway patrol;
 - (10) the Kansas bureau of investigation;
 - (11) local law enforcement agencies;
 - (12) the legislature;
 - (13) nongovernmental organizations focused on human trafficking issues, organizations representing diverse communities disproportionately affected by human trafficking and organizations focused on child services and runaway services;
 - (14) academic researchers who are dedicated to the subject of human trafficking;
 - (15) any other federal, state, or local government entity deemed necessary by the attorney general; and
 - (16) any other private sector or nongovernmental organization deemed necessary by the attorney general.

New Sec. 3. There is hereby established in the state treasury the human trafficking victim assistance fund. All moneys credited to such fund shall be used to pay for the training authorized by section 1, and amendments thereto, and to support care, treatment and other services for victims of human trafficking and commercial sexual exploitation of a child. 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 attorney general or the attorney general's designee.

New Sec. 4. (a) Commercial sexual exploitation of a child is knowingly:

- (1) Giving, receiving, offering or agreeing to give, or offering or agreeing to receive anything of value to perform any of the following acts:
 - (A) Procuring, recruiting, inducing, soliciting, hiring or otherwise obtaining any person younger than 18 years of age to engage in sexual intercourse, sodomy or manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another; or
 - (B) Procuring, recruiting, inducing, soliciting, hiring or otherwise ob-

taining a patron where there is an exchange of value, for any person younger than 18 years of age to engage in sexual intercourse, sodomy or manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the patron, the offender or another;

(2) establishing, owning, maintaining or managing any property, whether real or personal, where sexual relations are being sold or offered for sale by a person younger than 18 years of age, or participating in the establishment, ownership, maintenance or management thereof;

(3) permitting any property, whether real or personal, partially or wholly owned or controlled by the defendant to be used as a place where sexual relations are being sold or offered for sale by a person who is younger than 18 years of age; or

(4) procuring transportation for, paying for the transportation of or transporting any person younger than 18 years of age within this state with the intent of causing, assisting or promoting that person's engaging in selling sexual relations.

(b) (1) Commercial sexual exploitation of a child is a:

(A) Severity level 5, person felony, except as provided in subsections (b)(1)(B) and (b)(2); and

(B) severity level 2, person felony when committed by a person who has, prior to the commission of the crime, been convicted of a violation of this section, except as provided in subsection (b)(2).

(2) Commercial sexual exploitation of a child or attempt, conspiracy or criminal solicitation to commit commercial sexual exploitation of a child 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.

(3) In addition to any other sentence imposed, a person convicted under subsection (b)(1)(A) shall be fined not less than \$2,500 nor more than \$5,000. In addition to any other sentence imposed, a person convicted under subsection (b)(1)(B) or subsection (b)(2) shall be fined not less than \$5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by section 3, and amendments thereto.

(4) In addition to any other sentence imposed, for any conviction under this section, the court may order the person convicted to enter into and complete a suitable educational and treatment program regarding commercial sexual exploitation of a child.

(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 K.S.A. 2012 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of commercial sexual exploitation of a child pursuant to this section;

(2) subsection (c) of K.S.A. 2012 Supp. 21-5302, and amendments

thereto, shall not apply to a violation of conspiracy to commit the crime of commercial sexual exploitation of a child pursuant to this section; and

(3) subsection (d) of K.S.A. 2012 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of commercial sexual exploitation of a child pursuant to this section.

(d) This section shall be part of and supplemental to the Kansas criminal code.

New Sec. 5. (a) Whenever a child is in custody, as defined in K.S.A. 2012 Supp. 38-2202, and amendments thereto, and such child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2012 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by section 4, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto, the court shall refer the child to the secretary of the department for children and families for an assessment to determine safety, placement and treatment needs for the child. The secretary shall use a research-based assessment tool to assess such needs and shall make appropriate recommendations to the court.

(b) When any law enforcement officer takes into custody any child as provided in subsection (b)(3) of K.S.A. 2012 Supp. 38-2231, and amendments thereto, the law enforcement officer shall contact the department for children and families to begin an assessment to determine safety, placement and treatment needs for the child. The secretary of the department for children and families shall use a rapid response team to begin such assessment for appropriate and timely placement.

(c) This section shall be part of and supplemental to the revised Kansas code for care of children.

(d) This section shall take effect on and after January 1, 2014.

New Sec. 6. (a) A staff secure facility shall:

(1) Not include construction features designed to physically restrict the movements and activities of residents, but shall have a design, structure, interior and exterior environment, and furnishings to promote a safe, comfortable and therapeutic environment for the residents;

(2) implement written policies and procedures that include the use of a combination of supervision, inspection and accountability to promote safe and orderly operations;

(3) rely on locked entrances and delayed-exit mechanisms to secure the facility, and implement reasonable rules restricting entrance to and egress from the facility;

(4) implement written policies and procedures for 24-hour-a-day staff observation of all facility entrances and exits;

(5) implement written policies and procedures for the screening and searching of both residents and visitors;

(6) implement written policies and procedures for knowing the whereabouts of all residents at all times and for handling runaways and unauthorized absences; and

(7) implement written policies and procedures for determining when the movements and activities of individual residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

(b) A staff secure facility shall provide the following services to children placed in such facility:

- (1) Case management;
- (2) life skills training;
- (3) health care;
- (4) mental health counseling;
- (5) substance abuse screening and treatment; and
- (6) any other appropriate services.

(c) Service providers in a staff secure facility shall be trained to counsel and assist victims of human trafficking and sexual exploitation.

(d) The person responsible for 24-hour-a-day staff observation of all facility entrances and exits shall be a retired or off-duty law enforcement officer.

(1) As used in this subsection, “retired law enforcement officer” means any former member of any duly organized federal, state, county or municipal law enforcement organization who by virtue of office or public employment was vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extended to all crimes or was limited to specific crimes.

(2) As used in this subsection, “off-duty law enforcement officer” means any off-duty member of any duly organized federal, state, county or municipal law enforcement organization 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.

(e) If the staff secure facility is on the same premises as that of another licensed facility, the living unit of the staff secure facility shall be maintained in a separate, self-contained unit. No staff secure facility shall be in a city or county jail.

(f) The secretary of health and environment, in consultation with the attorney general, shall promulgate rules and regulations to implement the provisions of this section on or before January 1, 2014.

(g) This section shall be part of and supplemental to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 7. (a) A notice offering help to victims of human trafficking

shall be accessible on the official website of the attorney general, the official website of the department for children and families and the official website of the department of labor, and may be posted in a prominent and accessible location in workplaces.

(b) The notice shall provide such information as the attorney general determines appropriate to help and support victims of human trafficking, including, but not limited to, information regarding the national human trafficking resource center (NHTRC) hotline as follows:

“If you or someone you know is being forced to engage in any activity and cannot leave — whether it is commercial sex, housework, farm work or any other activity — call the toll-free National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services. The toll-free hotline is:

- Available 24 hours a day, 7 days a week
- Operated by a nonprofit, nongovernmental organization
- Anonymous and confidential
- Accessible in 170 languages
- Able to provide help, referral to services, training, and general information.”

(c) The notice described in this section shall be made available in English, Spanish, and, if requested by an employer, another language.

(d) The secretary of labor, in consultation with the attorney general, shall develop and implement an education plan to raise awareness among Kansas employers about the problem of human trafficking, about the hotline described in this section, and about other resources that may be available to employers, employees, and potential victims of human trafficking. On or before February 1, 2014, the secretary shall report to the standing committees on judiciary in the senate and the house of representatives, respectively, on the progress achieved in developing and implementing the notice requirement and education plan required by this section.

Sec. 8. K.S.A. 2012 Supp. 12-4106 is hereby amended to read as follows: 12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt in the same manner and to the same extent as a judge of the district court.

(b) The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: Grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post trial motions; and discharge accused persons.

(c) The municipal judge shall maintain a docket in which every cause commenced before such municipal judge shall be entered. Such docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case.

(d) The municipal judge shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

(e) The municipal judge shall ensure that information concerning dispositions of city ordinance violations that result in convictions comparable to convictions for class A and B misdemeanors under Kansas criminal statutes is forwarded to the Kansas bureau of investigation central repository. This information shall be transmitted, on a form or in a format approved by the attorney general, within 30 days of final disposition.

(f) In all cases alleging a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 or 8-1567 or K.S.A. 2012 Supp. 8-1025, and amendments thereto, the municipal court judge shall ensure that the municipal court reports the filing and disposition of such case to the Kansas bureau of investigation central repository, and, on and after July 1, 2013, reports the filing and disposition of such case electronically to the Kansas bureau of investigation central repository.

(g) In all cases in which a fine is imposed for a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 or 8-1567 or K.S.A. 2012 Supp. 8-1025 or 21-6421, and amendments thereto, the municipal court judge shall ensure that the municipal court remits the appropriate amount of such fine to the state treasurer as provided in K.S.A. 2012 Supp. 12-4120, and amendments thereto.

Sec. 9. K.S.A. 2012 Supp. 12-4120 is hereby amended to read as follows: 12-4120. (a) On and after July 1, 2012, the amount of \$250 from each fine imposed for a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-1567 or 8-2,144 or K.S.A. 2012 Supp. 8-1025, and amendments thereto, shall be remitted by the judge or clerk of the municipal court 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 credit the entire amount to the community corrections supervision fund established by K.S.A. 2012 Supp. 75-52,113, and amendments thereto.

(b) *On and after July 1, 2013, the amount of \$2,500 from each fine imposed for a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 2012 Supp. 21-6421, and amendments thereto, shall be remitted by the judge or clerk of the municipal court 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 credit the entire amount to the human trafficking victim assistance fund established by section 3, and amendments thereto.

Sec. 10. K.S.A. 2012 Supp. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in ~~subsection (b), (c) and (d)~~ *subsections (b), (c), (d) and (e)*, any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

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

(2) Except as provided in ~~subsection (b), (c) and (d)~~ *subsections (b), (c), (d) and (e)*, 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) Any person convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One 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; and

(2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, "coercion" means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

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

(1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 2012 Supp. 21-5406, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

~~(1)~~ (A) ~~The~~ Defendant's full name;

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

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

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

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

~~(6)~~ (F) ~~the~~ identity of the convicting court, arresting law enforcement agency or diverting authority.

(2) 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.

(3) 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 prisoner review board.

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

(1) The petitioner has not been convicted of a felony in the past two

years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

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

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

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

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

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

(A) In any application for 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~~ *for children and families*;

(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. 2012 Supp. 75-7c01 et seq., and amendments thereto;

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

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

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

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

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

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of ~~social and rehabilitation services~~ *the department for children and families*, 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 for children and families~~ 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. 11. K.S.A. 2012 Supp. 21-5301 is hereby amended to read as follows: 21-5301. (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 nondrug 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 K.S.A. 2012 Supp. 21-5426, 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, as defined in K.S.A. 2012 Supp. 21-5421, and amendments thereto;

(C) illegal use of weapons of mass destruction, as defined in K.S.A. 2012 Supp. 21-5422, and amendments thereto;

(D) rape, as defined in subsection (a)(3) of K.S.A. 2012 Supp. 21-5503, 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 K.S.A. 2012 Supp. 21-5506, 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 K.S.A. 2012 Supp. 21-5504, and amendments thereto, if the offender is 18 years of age or older;

(G) ~~promoting prostitution, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age~~ *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age*; or

(H) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of K.S.A. 2012 Supp. 21-5510, 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. 2012 Supp. 21-5703, 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. 12. K.S.A. 2012 Supp. 21-5302 is hereby amended to read as follows: 21-5302. (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 is immaterial to the criminal liability of a person charged with conspiracy that any other person with whom the defendant conspired lacked the actual intent to commit the underlying crime provided that the defendant believed the other person did have the actual intent to commit the underlying crime.

(c) 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.

(d) (1) Conspiracy to commit an off-grid felony shall be ranked at nondrug 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 se-

verity 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 K.S.A. 2012 Supp. 21-5426, 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, as defined in K.S.A. 2012 Supp. 21-5421, and amendments thereto;

(C) illegal use of weapons of mass destruction, as defined in K.S.A. 2012 Supp. 21-5422, and amendments thereto;

(D) rape, as defined in subsection (a)(3) of K.S.A. 2012 Supp. 21-5503, 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 K.S.A. 2012 Supp. 21-5506, 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 K.S.A. 2012 Supp. 21-5504, and amendments thereto, if the offender is 18 years of age or older;

(G) ~~promoting prostitution, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age~~ *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age*; or

(H) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of K.S.A. 2012 Supp. 21-5510, and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age.

(e) 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.

(f) A conspiracy to commit a misdemeanor is a class C misdemeanor.

Sec. 13. K.S.A. 2012 Supp. 21-5303 is hereby amended to read as follows: 21-5303. (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 non-drug 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 K.S.A. 2012 Supp. 21-5426, 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, as defined in K.S.A. 2012 Supp. 21-5421, and amendments thereto;

(C) illegal use of weapons of mass destruction, as defined in K.S.A. 2012 Supp. 21-5422, and amendments thereto;

(D) rape, as defined in subsection (a)(3) of K.S.A. 2012 Supp. 21-5503, 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 K.S.A. 2012 Supp. 21-5506, 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 K.S.A. 2012 Supp. 21-5504, and amendments thereto, if the offender is 18 years of age or older;

~~(G) promoting prostitution, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age~~ *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;* or

(H) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of K.S.A. 2012 Supp. 21-5510, 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. 14. K.S.A. 2012 Supp. 21-5401 is hereby amended to read as follows: 21-5401. (a) Capital murder is the:

(1) Intentional and premeditated killing of any person in the commission of kidnapping, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5408, and amendments thereto, or aggravated kidnapping, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5408, and amendments thereto,

when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for ransom;

(2) intentional and premeditated killing of any person pursuant to a contract or agreement to kill such person or being a party to the contract or agreement pursuant to which such person is killed;

(3) intentional and premeditated killing of any person by an inmate or prisoner confined in a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;

(4) intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, such crime: Rape, as defined in K.S.A. 2012 Supp. 21-5503, and amendments thereto, criminal sodomy, as defined in subsections (a)(3) or (a)(4) of K.S.A. 2012 Supp. 21-5504, and amendments thereto, or aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto, or any attempt thereof, as defined in K.S.A. 2012 Supp. 21-5301, and amendments thereto;

(5) intentional and premeditated killing of a law enforcement officer;

(6) intentional and premeditated killing of more than one person as a 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; or

(7) intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5408, and amendments thereto, or aggravated kidnapping, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5408, and amendments thereto, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with intent that the child commit or submit to a sex offense.

(b) For purposes of this section, “sex offense” means rape, as defined in K.S.A. 2012 Supp. 21-5503, and amendments thereto, aggravated indecent liberties with a child, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5506, and amendments thereto, aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto, ~~prostitution~~ *selling sexual relations*, as defined in K.S.A. 2012 Supp. 21-6419, and amendments thereto, promoting ~~prostitution~~ *the sale of sexual relations*, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto*, or sexual exploitation of a child, as defined in K.S.A. 2012 Supp. 21-5510, and amendments thereto.

(c) Capital murder is an off-grid person felony.

Sec. 15. K.S.A. 2012 Supp. 21-5502 is hereby amended to read as

follows: 21-5502. (a) The provisions of this section shall apply only in a prosecution for:

(1) Rape, as defined by ~~in~~ K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(4) criminal sodomy, as defined in subsections (a)(3) and (a)(4) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(5) aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(6) aggravated indecent solicitation of a child, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(7) sexual exploitation of a child, as defined in K.S.A. 2012 Supp. 21-5510, and amendments thereto;

(8) aggravated sexual battery, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5505, and amendments thereto;

(9) incest, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5604, and amendments thereto;

(10) aggravated incest, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5604, and amendments thereto;

(11) indecent solicitation of a child, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(12) aggravated assault, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5412, and amendments thereto, with intent to commit any crime specified above;

(13) sexual battery, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5505, and amendments thereto;

(14) unlawful voluntary sexual relations, as defined in K.S.A. 2012 Supp. 21-5507, and amendments thereto;

(15) aggravated *human* trafficking, as defined in subsections ~~(b)(1)(B) and (b)(2) and (b)(4)~~ of K.S.A. 2012 Supp. 21-5426, and amendments thereto;

(16) *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto;*

~~(16)~~ (17) electronic solicitation, as defined in K.S.A. 2012 Supp. 21-5509, and amendments thereto; or

~~(17)~~ (18) attempt, as defined in K.S.A. 2012 Supp. 21-5301, and amendments thereto, or conspiracy, as defined in K.S.A. 2012 Supp. 21-5302, and amendments thereto, to commit any crime specified above.

(b) Except as provided in subsection (c), in any prosecution to which this section applies, evidence of the complaining witness' previous sexual conduct with any person including the defendant shall not be admissible, and no reference shall be made thereto in any proceeding before the

court, except under the following conditions: The defendant shall make a written motion to the court to admit evidence or testimony concerning the previous sexual conduct of the complaining witness. The motion shall be made at least seven days before the commencement of the proceeding unless that requirement is waived by the court. The motion shall state the nature of such evidence or testimony and its relevancy and shall be accompanied by an affidavit in which an offer of proof of the previous sexual conduct of the complaining witness is stated. The motion, affidavits and any supporting or responding documents of the motion shall not be made available for examination without a written order of the court except that such motion, affidavits and supporting and responding documents or testimony when requested shall be made available to the defendant or the defendant's counsel and to the prosecutor. The defendant, defendant's counsel and prosecutor shall be prohibited from disclosing any matters relating to the motion, affidavits and any supporting or responding documents of the motion. The court shall conduct a hearing on the motion in camera. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the previous sexual conduct of the complaining witness is relevant and is not otherwise inadmissible as evidence, the court may make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. The defendant may then offer evidence and question witnesses in accordance with the order of the court.

(c) In any prosecution for a crime designated in subsection (a), the prosecutor may introduce evidence concerning any previous sexual conduct of the complaining witness, and the complaining witness may testify as to any such previous sexual conduct. If such evidence or testimony is introduced, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence or testimony introduced by the prosecutor or given by the complaining witness.

(d) As used in this section, "complaining witness" means the alleged victim of any crime designated in subsection (a), the prosecution of which is subject to this section.

Sec. 16. K.S.A. 2012 Supp. 21-6419 is hereby amended to read as follows: 21-6419. (a) ~~Prostitution~~ *Selling sexual relations* is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

- (1) Sexual intercourse;
- (2) sodomy; or
- (3) manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another.

(b) ~~Prostitution~~ *Selling sexual relations* is a class B nonperson misdemeanor.

(c) *It shall be an affirmative defense to any prosecution under this section that the defendant committed the violation of this section because such defendant was subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2012 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by section 4, and amendments thereto.*

Sec. 17. K.S.A. 2012 Supp. 21-6420 is hereby amended to read as follows: 21-6420. (a) Promoting ~~prostitution~~ *the sale of sexual relations* is knowingly:

(1) Establishing, owning, maintaining or managing a ~~house of prostitution~~ *any property, whether real or personal, where sexual relations are being sold or offered for sale by a person who is 18 years of age or older*, or participating in the establishment, ownership, maintenance or management thereof;

(2) permitting any ~~place~~ *property, whether real or personal*, partially or wholly owned or controlled by the defendant to be used as a ~~house of prostitution~~ *place where sexual relations are being sold or offered for sale by a person who is 18 years of age or older*;

(3) procuring a ~~prostitute for a house of prostitution~~ *person selling sexual relations who is 18 years of age or older for a place where sexual relations are being sold or offered for sale*;

(4) inducing another ~~to become a prostitute~~ *who is 18 years of age or older to become a person who sells sexual relations*;

(5) soliciting a patron for a ~~prostitute or for a house of prostitution~~ *a person 18 years of age or older who is selling sexual relations or for a place where sexual relations are being sold or offered for sale*;

(6) procuring a ~~prostitute~~ *person 18 years of age or older who is selling sexual relations* for a patron;

(7) procuring transportation for, paying for the transportation of, or transporting a person *18 years of age or older* within this state with the intention of assisting or promoting that person's engaging in ~~prostitution~~ *the sale of sexual relations*; or

(8) being employed to perform any act which is prohibited by this section.

(b) (1) Promoting ~~prostitution~~ *the sale of sexual relations* is a:

(A) ~~Class A person misdemeanor when the prostitute is 16 or more years of age~~ *Severity level 9, person felony*, except as provided in subsection (b)(1)(B); and

(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~~ *a violation of this section, or any prior version of this section*; and

~~(C) severity level 6, person felony when the prostitute is under 16 years of age, except as provided in subsection (b)(2).~~

~~(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 K.S.A. 2012 Supp. 21-5301, 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 K.S.A. 2012 Supp. 21-5302, 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 K.S.A. 2012 Supp. 21-5303, 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).~~

(2) In addition to any other sentence imposed, a person convicted under subsection (b)(1)(A) shall be fined not less than \$2,500 nor more than \$5,000. In addition to any other sentence imposed, a person convicted under subsection (b)(1)(B) shall be fined not less than \$5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by section 3, and amendments thereto.

Sec. 18. K.S.A. 2012 Supp. 21-6421 is hereby amended to read as follows: 21-6421. (a) ~~Patronizing a prostitute~~ *Buying sexual relations* is knowingly:

(1) ~~Entering or remaining in a house of prostitution~~ *place where sexual relations are being sold or offered for sale with intent to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act with a prostitute person selling sexual relations who is 18 years of age or older;* or

(2) ~~hiring a prostitute~~ *person selling sexual relations who is 18 years of age or older to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act.*

~~(b) Patronizing a prostitute is a class C misdemeanor~~

~~(b) (1) Buying sexual relations is a:~~

~~(A) Class A person misdemeanor, except as provided in subsection (b)(1)(B); and~~

~~(B) severity level 9, person felony when committed by a person who~~

has, prior to the commission of the crime, been convicted of a violation of this section, or any prior version of this section.

(2) In addition to any other sentence imposed, a person convicted under subsection (b)(1)(A) shall be fined \$2,500. In addition to any other sentence imposed, a person convicted under subsection (b)(1)(B) shall be fined not less than \$5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by section 3, and amendments thereto.

(3) In addition to any other sentence imposed, for any conviction under this section, the court may order the person convicted to enter into and complete a suitable educational and treatment program regarding commercial sexual exploitation.

(c) (1) 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.

(2) The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this section 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.

Sec. 19. K.S.A. 2012 Supp. 21-6614 is hereby amended to read as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d) ~~and~~, (e) *and* (f), 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 for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d) ~~and~~, (e) *and* (f), 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) Any person convicted of prostitution, as defined in K.S.A. 21-3512, prior to its repeal, convicted of a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement

in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) *One or more years have elapsed since the person satisfied the sentence imposed or 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; and*

(2) *such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, "coercion" means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.*

~~(b)~~ (c) *Except as provided in subsections ~~(e)~~, ~~(d)~~ and (e) and (f), 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, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:*

(1) *Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2012 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;*

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

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

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

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

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

amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

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

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

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

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

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2012 Supp. 21-5510, and amendments thereto;

(7) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2012 Supp. 21-5604, and amendments thereto;

(8) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2012 Supp. 21-5601, and amendments thereto;

(9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2012 Supp. 21-5602, and amendments thereto;

(10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2012 Supp. 21-5401, and amendments thereto;

(11) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2012 Supp. 21-5402, and amendments thereto;

(12) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2012 Supp. 21-5403, and amendments thereto;

(13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2012 Supp. 21-5404, and amendments thereto;

(14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2012 Supp. 21-5405, and amendments thereto;

(15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2012 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2012 Supp. 21-5505, and amendments thereto;

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

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

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

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

(A) Defendant's full name;

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

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

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

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

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

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after April 12, 2012, through June 30, 2013, the supreme court may impose a charge, not to exceed \$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 prisoner review board.

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

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

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

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

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

~~(4)~~ (i) 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. 2012 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 *for children and families*;

(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. 2012 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.

~~(j)~~ (j) 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.

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

~~(l)~~ (l) 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~~ *the department for children and families*, 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~~ *for children and families* 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;

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

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

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

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

†(m) The provisions of subsection ~~(k)(17)~~(l)(17) shall apply to records created prior to, on and after July 1, 2011.

Sec. 20. K.S.A. 2012 Supp. 21-6626 is hereby amended to read as follows: 21-6626. (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)(2)(A) through ~~(c)(2)(H)~~ or (c)(2)(J) or (c)(2)(L); and (B) prior to the conviction of the felony under subparagraph (A), has been convicted of two or more sexually violent crimes;

(2) “Sexually violent crime” means:

(A) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2012 Supp. 21-5503, 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 K.S.A. 2012 Supp. 21-5506, 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) or (a)(4) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(D) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2012 Supp. 21-5504, 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 K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(F) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2012 Supp. 21-5510, and amendments thereto;

(G) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2012 Supp. 21-5505, and amendments thereto;

(H) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2012 Supp. 21-5604, and amendments thereto;

(I) *aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5426, and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;*

(J) *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto;*

~~(K)~~ (K) 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;

~~(L)~~ (L) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012

Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section; or

~~(K)~~ (M) 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. 21. K.S.A. 2012 Supp. 21-6627 is hereby amended to read as follows: 21-6627. (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 *subsection (b) of K.S.A. 2012 Supp. 21-5426*, and amendments thereto, if the victim is less than 14 years of age;

(B) rape, as defined in subsection (a)(3) of K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(C) aggravated indecent liberties with a child, as defined in subsection (b)(3) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(D) aggravated criminal sodomy, as defined in subsection (b)(1) or (b)(2) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

~~(E) promoting prostitution, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, if the prostitute is less than 14 years of age~~
commercial sexual exploitation of a child, as defined in section 4, and amendments thereto, if the victim is less than 14 years of age;

(F) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of K.S.A. 2012 Supp. 21-5510, and amendments thereto, if the child is less than 14 years of age; and

(G) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 2012 Supp. 21-5301, 21-5302 or 21-5303, 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 K.S.A. 2012 Supp. 21-6626, 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 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 K.S.A. 2012 Supp. 21-5507, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as K.S.A. 2012 Supp. 21-5507, 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 K.S.A. 2012 Supp. 21-6626, 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,

article 68 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and, subject to the provisions of K.S.A. 2012 Supp. 21-6818, 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 K.S.A. 2012 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, shall not apply to any defendant sentenced pursuant to this section.

Sec. 22. K.S.A. 2012 Supp. 21-6806 is hereby amended to read as follows: 21-6806. (a) Sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of the primary sentence for good time as authorized by K.S.A. 2012 Supp. 21-6821, and amendments thereto.

(b) The sentencing court shall pronounce sentence in all felony cases.

(c) Violations of K.S.A. 2012 Supp. 21-5401, 21-5402, 21-5421, 21-5422 and 21-5901, and amendments thereto, are off-grid crimes for the purpose of sentencing. Except as otherwise provided by K.S.A. 2012 Supp. 21-6617, 21-6618, 21-6619, 21-6622, 21-6624, 21-6625, 21-6628 and 21-6629, and amendments thereto, the sentence shall be imprisonment for life and shall not be subject to statutory provisions for suspended sentence, community service or probation.

(d) As identified in K.S.A. 2012 Supp. 21-5426, 21-5503, 21-5504, 21-5506, 21-5510 and ~~21-6420~~ *section 4*, and amendments thereto, if the offender is 18 years of age or older and the victim is under 14 years of age, such violations are off-grid crimes for the purposes of sentencing. Except as provided in K.S.A. 2012 Supp. 21-6626, and amendments thereto, the sentence shall be imprisonment for life pursuant to K.S.A. 2012 Supp. 21-6627, and amendments thereto.

Sec. 23. K.S.A. 2012 Supp. 21-6815 is hereby amended to read as follows: 21-6815. (a) Except as provided in subsection (b), the sentencing judge shall impose the presumptive sentence provided by the sentencing

guidelines unless the judge finds substantial and compelling reasons to impose a departure sentence. 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.

(b) Subject to the provisions of subsection (b) of K.S.A. 2012 Supp. 21-6817, and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.

(c) (1) Subject to the provisions of subsections (c)(3) and (e), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor may be considered when it is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of subsection (c)(3), the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim or the offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant's belief or perception was correct.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used,

persuaded, induced, enticed or coerced any individual under 16 years of age to:

- (i) Commit any person felony;
- (ii) assist in avoiding detection or apprehension for commission of any person felony; or
- (iii) attempt, conspire or solicit, as defined in K.S.A. 2012 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, to commit any person felony.

That the defendant did not know the age of the individual under 16 years of age shall not be a consideration.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:

(i) "Crime of extreme sexual violence" is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization; ~~or~~

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age;

(d) *aggravated human trafficking, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5426, and amendments thereto, if the victim is less than 14 years of age; or*

(e) *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto, if the victim is less than 14 years of age.*

(ii) "Predatory sex offender" is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) "Mental condition or personality disorder" means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

(G) The defendant was incarcerated during the commission of the offense.

(H) The crime involved two or more participants in the criminal conduct, and the defendant played a major role in the crime as the organizer, leader, recruiter, manager or supervisor.

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating 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.

(d) In determining aggravating or mitigating circumstances, the court shall consider:

- (1) Any evidence received during the proceeding;
- (2) the presentence report;
- (3) written briefs and oral arguments of either the state or counsel for the defendant; and
- (4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

(e) Upon motion of the prosecutor stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense, the court may consider such mitigation in determining whether substantial and compelling reasons for a departure exist. In considering this mitigating factor, the court may consider the following:

- (1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the prosecutor's evaluation of the assistance rendered;
- (2) the truthfulness, completeness and reliability of any information or testimony provided by the defendant;
- (3) the nature and extent of the defendant's assistance;
- (4) any injury suffered, or any danger or risk of injury to the defendant or the defendant's family resulting from such assistance; and
- (5) the timeliness of the defendant's assistance.

Sec. 24. K.S.A. 2012 Supp. 22-2515 is hereby amended to read as follows: 22-2515. (a) An ex parte order authorizing the interception of a wire, oral or electronic communication may be issued by a judge of competent jurisdiction. The attorney general, district attorney or county attorney may make an application to any judge of competent jurisdiction for an order authorizing the interception of a wire, oral or electronic communication by an investigative or law enforcement officer and agency having responsibility for the investigation of the offense regarding which the application is made, when such interception may provide evidence of the commission of any of the following offenses:

- (1) Any crime directly and immediately affecting the safety of a human life which is a felony;
- (2) murder;
- (3) kidnapping;
- (4) treason;
- (5) sedition;
- (6) racketeering;
- (7) commercial bribery;
- (8) robbery;
- (9) theft, if the offense would constitute a felony;
- (10) bribery;
- (11) any felony violation of K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto;
- (12) commercial gambling;
- (13) sports bribery;
- (14) tampering with a sports contest;
- (15) aggravated escape;
- (16) aggravated failure to appear;
- (17) arson;
- (18) terrorism;
- (19) illegal use of weapons of mass destruction; ~~or~~
- (20) *human trafficking or aggravated human trafficking;*
- (21) *sexual exploitation of a child;*
- (22) *commercial sexual exploitation of a child;*
- (23) *buying sexual relations, promoting the sale of sexual relations or selling sexual relations; or*
- ~~(20)~~(24) any conspiracy to commit any of the foregoing offenses.

(b) Any investigative or law enforcement officer who, by any means authorized by this act or by chapter 119 of title 18 of the United States code, has obtained knowledge of the contents of any wire, oral or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(c) Any investigative or law enforcement officer who, by any means authorized by this act or by chapter 119 of title 18 of the United States code, has obtained knowledge of the contents of any wire, oral or electronic communication, or evidence derived therefrom, may use such contents to the extent such use is appropriate to the proper performance of such officer's official duties.

(d) Any person who has received, by any means authorized by this act or by chapter 119 of title 18 of the United States code or by a like statute of any other state, any information concerning a wire, oral or electronic communication, or evidence derived therefrom, intercepted in accordance with the provisions of this act, may disclose the contents of

such communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court, or before any grand jury, of this state or of the United States or of any other state.

(e) No otherwise privileged wire, oral or electronic communication intercepted in accordance with, or in violation of, the provisions of this act or of chapter 119 of title 18 of the United States code shall lose its privileged character.

(f) When an investigative or law enforcement officer, while engaged in intercepting wire, oral or electronic communications in the manner authorized by this act, intercepts wire, oral or electronic communications relating to offenses other than those specified in the order authorizing the interception of the wire, oral or electronic communication, the contents thereof and evidence derived therefrom may be disclosed or used as provided in subsections (b) and (c) of this section. Such contents and evidence derived therefrom may be used under subsection (d) of this section when authorized or approved by a judge of competent jurisdiction, where such judge finds on subsequent application, made as soon as practicable, that the contents were otherwise intercepted in accordance with the provisions of this act, or with chapter 119 of title 18 of the United States code.

Sec. 25. K.S.A. 22-2530 is hereby amended to read as follows: 22-2530. If a search warrant is executed which authorizes a search of real property based upon an alleged offense involving gambling, obscenity, ~~prostitution~~ *the sale of sexual relations*, controlled substances or liquor, a copy of the warrant shall be delivered to the last known address of the owner of the property within two business days, excluding Saturdays, Sundays and legal holidays, after execution of the warrant if such address is different from the address of the property for which the warrant was issued.

Sec. 26. K.S.A. 2012 Supp. 22-3601 is hereby amended to read as follows: 22-3601. (a) Any appeal permitted to be taken from a district court's final judgment in a criminal case shall be taken to the court of appeals, except in those cases reviewable by law in the district court or in which a direct appeal to the supreme court is required. Whenever an interlocutory appeal is permitted in a criminal case in the district court, such appeal shall be taken to the court of appeals.

(b) Any appeal permitted to be taken from a district court's final judgment in a criminal case shall be taken directly to the supreme court in the following cases:

(1) Any case in which a statute of this state or of the United States has been held unconstitutional;

(2) any case in which the defendant has been convicted of a class A felony;

(3) any case in which a maximum sentence of life imprisonment has been imposed, unless the maximum sentence has been imposed pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2012 Supp. 21-6627, and amendments thereto; and

(4) except as provided further, any case in which the crime was committed on or after July 1, 1993, and the defendant has been convicted of an off-grid crime. The provisions of this paragraph shall not apply to any case in which the off-grid crime was:

(A) Aggravated human trafficking, subsection (c)(2)(B) of K.S.A. 2012 Supp. 21-5426, and amendments thereto;

(B) rape, subsection (b)(2)(B) of K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(C) aggravated criminal sodomy, subsection (c)(2)(B)(ii) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(D) aggravated indecent liberties with a child, subsection (c)(2)(C)(ii) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(E) sexual exploitation of a child, subsection (b)(2)(B) of K.S.A. 2012 Supp. 21-5510, and amendments thereto;

(F) ~~promoting prostitution, subsection (b)(4) of K.S.A. 2012 Supp. 21-6420, and amendments thereto~~ *commercial sexual exploitation of a child, subsection (b)(2) of section 4, and amendments thereto*; or

(G) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 2012 Supp. 21-5301, 21-5302 or 21-3503, and amendments thereto, of any such felony.

Sec. 27. K.S.A. 2012 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638, prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642, prior to its repeal; K.S.A. 2012 Supp. 21-6617, 21-6620, 21-6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567, and amendments thereto; an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2012 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2012 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2012 Supp. 21-6620, 21-6623, 21-6624 and

21-6625, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2012 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, prior to its repeal, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2012 Supp. 21-6627, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, prior to its repeal, or K.S.A. 2012 Supp. 21-6606, and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2012 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 1 through 4 crimes, drug severity levels 1 and 2 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity levels 1, 2 and 3 crimes committed on or after July 1, 2012, must serve 36 months, plus the amount of good time and

program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2012 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes, drug severity level 3 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity level 4 crimes committed on or after July 1, 2012, must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2012 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(C) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 7 through 10 crimes, drug severity level 4 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity level 5 crimes committed on or after July 1, 2012, must serve 12 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2012 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(D) (i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated. In that event, departure may be imposed to extend the post-release supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, prior to its repeal, or K.S.A. 2012 Supp. 21-6820, and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714, prior to its repeal, or subsection (e) of K.S.A. 2012 Supp. 21-6813, and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the prisoner review board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(D), the court shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2012 Supp. 21-6817, and amendments thereto.

(vi) Upon petition, the prisoner review board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2012 Supp. 21-5508, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

(E) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months and the period of post-release supervision provided in subparagraph (C) may be reduced by up to six months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(F) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(2) As used in this subsection, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) and (a)(4) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal, or K.S.A. 2012 Supp. 21-5510, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5505, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5604, and amendments thereto; ~~or~~

(K) *aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5426, and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;*

(L) *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto; or*

~~(K)~~ (M) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section.

(3) As used in this subsection, “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 prisoner review board may postpone the inmate’s parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate’s parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, prior to its repeal, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender’s conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the prisoner review board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of 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 prisoner review board.

(g) Subject to the provisions of this section, the prisoner review board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, 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 prisoner review board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least one 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 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 prisoner review board will review the inmate's 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 prisoner review board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the 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 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 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 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 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 board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the 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 board determines that such resources are insufficient. If the board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) (1) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(2) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment.

(3) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by any law enforcement

officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity. Any law enforcement officer who conducts such a search shall submit a written report to the appropriate parole officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.

(l) The prisoner review board shall promulgate 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 prisoner review board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable;

(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 prisoner review board shall take

account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services;

(6) shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment; and

(7) shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the prisoner review board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the prisoner review board grants the parole of an inmate, the board, within 14 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and (d)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to May 25, 2000, who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity levels 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 levels 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity levels 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2012 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the prisoner review board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the prisoner review board orders a person to be electronically monitored pursuant to this section, or the court orders a person to be electronically monitored pursuant to subsection (r) of K.S.A. 2012 Supp. 21-6604, and amendments thereto, the board 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 shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

(w)(1) On and after July 1, 2012, for any inmate who is a sex offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever the prisoner review board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to not possess pornographic materials.

(A) As used in this subsection, "pornographic materials" means: Any obscene material or performance depicting sexual conduct, sexual contact or a sexual performance; and any visual depiction of sexually explicit conduct.

(B) As used in this subsection, all other terms have the meanings provided by K.S.A. 2012 Supp. 21-5510, and amendments thereto.

(2) The provisions of this subsection shall be applied retroactively to every sex offender, as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2012. The

prisoner review board shall obtain the written agreement required by this subsection from such offenders as soon as practicable.

Sec. 28. K.S.A. 2012 Supp. 22-3901 is hereby amended to read as follows: 22-3901. The following unlawful activities and the use of real or personal property in maintaining and carrying on such activities are hereby declared to be common nuisances:

- (a) Commercial gambling;
- (b) dealing in gambling devices;
- (c) possession of gambling devices;
- (d) promoting obscenity;
- (e) promoting prostitution *the sale of sexual relations*;
- (f) ~~habitually promoting prostitution~~ *commercial sexual exploitation of a child*;
- (g) violations of any law regulating controlled substances;
- (h) habitual violations of any law regulating the sale or exchange of alcoholic liquor or cereal malt beverages, by any person not licensed pursuant to chapter 41 of the Kansas Statutes Annotated, and amendments thereto;
- (i) habitual violations of any law regulating the sale or exchange of cigarettes or tobacco products, by any person not licensed pursuant to article 33 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto;
- (j) any felony committed 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. As used in this subsection, "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. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, article 57 of chapter 21 of the Kansas Statutes Annotated, 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. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, article 57 of chapter 21 of the Kansas Statutes Annotated, 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; or

(k) use of pyrotechnics, pyrotechnic devices or pyrotechnic materials in violation of K.S.A. 2012 Supp. 31-170, and amendments thereto.

Any real property used as a place where any such activities are carried on or permitted to be carried on and any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used on such premises in connection with such unlawful activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-3904, and amendments thereto.

Sec. 29. K.S.A. 2012 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;

(2) a violent offender;

(3) a drug offender;

(4) any person who has been required to register under out of state law or is otherwise required to be registered; and

(5) any person required by court order to register for an offense not otherwise required as provided in the Kansas offender registration act.

(b) “Sex offender” includes any person who:

(1) On or after April 14, 1994, is convicted of any sexually violent crime;

(2) On or after April 14, 1994, is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim;

(3) has been determined to be a sexually violent predator;

(4) on or after May 29, 1997, is convicted of any of the following crimes when one of the parties involved is less than 18 years of age:

(A) Adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2012 Supp. 21-5511, and amendments thereto;

(B) criminal sodomy, as defined in subsection (a)(1) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(1) or (a)(2) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(C) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2012 Supp. 21-6420, ~~and amendments thereto~~ prior to its amendment by this act on July 1, 2013;

(D) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its

repeal, or K.S.A. 2012 Supp. 21-6421, ~~and amendments thereto~~ prior to its amendment by this act on July 1, 2013; or

(E) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2012 Supp. 21-5513, and amendments thereto;

(5) is convicted of sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5505, and amendments thereto;

(6) is 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 K.S.A. 2012 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of an offense defined in this subsection; or

(7) has been convicted of an offense that is comparable to any crime defined in this subsection, or any out of state conviction for an offense that under the laws of this state would be an offense defined in this subsection.

(c) “Sexually violent crime” means:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5506, 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 K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(6) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2012 Supp. 21-5510, and amendments thereto;

(9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5505, and amendments thereto;

(10) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5605, and amendments thereto;

(11) electronic solicitation, as defined in K.S.A. 21-3523, prior to its

repeal, and K.S.A. 2012 Supp. 21-5509, and amendments thereto, committed on or after April 17, 2008;

(12) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2012 Supp. 21-5512, and amendments thereto;

(13) *aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5426, and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;*

(14) *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto;*

~~(13)~~ (15) any conviction or adjudication for an offense that is comparable to a sexually violent crime as defined in this subsection, or any out of state conviction or adjudication for an offense that under the laws of this state would be a sexually violent crime as defined in this subsection;

~~(14)~~ (16) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of a sexually violent crime, as defined in this subsection; or

~~(15)~~ (17) any act which has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim. As used in this paragraph, “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) “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.

(e) “Violent offender” includes any person who:

(1) On or after May 29, 1997, is convicted of any of the following crimes:

(A) Capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2012 Supp. 21-5401, and amendments thereto;

(B) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2012 Supp. 21-5402, and amendments thereto;

(C) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2012 Supp. 21-5403, and amendments thereto;

(D) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2012 Supp. 21-5404, and amendments thereto;

(E) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2012 Supp. 21-5405, and amendments thereto;

(F) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5408, and amendments thereto;

(G) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its

repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5408, and amendments thereto;

(H) criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2012 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less than 18 years of age; or

(I) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5426, and amendments thereto, *if not committed in whole or in part for the purpose of the sexual gratification of the defendant or another*;

(2) 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;

(3) has been convicted of an offense that is comparable to any crime defined in this subsection, any out of state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(4) is 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 K.S.A. 2012 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(f) “Drug offender” means any person who has been convicted of:

(1) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog as defined in K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2012 Supp. 21-5703, and amendments thereto;

(2) 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 in subsection (a) of K.S.A. 65-7006, prior to its repeal, subsection (a) of K.S.A. 2010 Supp. 21-36a09, prior to its transfer, or subsection (a) of K.S.A. 2012 Supp. 21-5709, and amendments thereto;

(3) K.S.A. 65-4161, prior to its repeal, subsection (a)(1) of K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or subsection (a)(1) of K.S.A. 2012 Supp. 21-5705, 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 which occurred on or after July 1, 2009, through April 15, 2010;

(4) an offense that is comparable to any crime defined in this subsection, any out of state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(5) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(g) Convictions or adjudications 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 or adjudication. Any conviction or adjudication set aside pursuant to law is not a conviction or adjudication for purposes of this section. A conviction or adjudication from any out of state court shall constitute a conviction or adjudication for purposes of this section.

(h) "School" means any public or private educational institution, including, but not limited to, postsecondary school, college, university, community college, secondary school, high school, junior high school, middle school, elementary school, trade school, vocational school or professional school providing training or education to an offender for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(i) "Employment" means any full-time, part-time, transient, day-labor employment or volunteer work, with or without compensation, for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(j) "Reside" means to stay, sleep or maintain with regularity or temporarily one's person and property in a particular place other than a location where the offender is incarcerated. It shall be presumed that an offender resides at any and all locations where the offender stays, sleeps or maintains the offender's person for three or more consecutive days or parts of days, or for ten or more non-consecutive days in a period of 30 consecutive days.

(k) "Residence" means a particular and definable place where an individual resides. Nothing in the Kansas offender registration act shall be construed to state that an offender may only have one residence for the purpose of such act.

(l) "Transient" means having no fixed or identifiable residence.

(m) "Law enforcement agency having initial jurisdiction" means the registering law enforcement agency of the county or location of jurisdiction where the offender expects to most often reside upon the offender's discharge, parole or release.

(n) "Registering law enforcement agency" means the sheriff's office or tribal police department responsible for registering an offender.

(o) "Registering entity" means any person, agency or other governmental unit, correctional facility or registering law enforcement agency responsible for obtaining the required information from, and explaining the required registration procedures to, any person required to register pursuant to the Kansas offender registration act. "Registering entity" shall include, but not be limited to, sheriff's offices, tribal police departments and correctional facilities.

(p) "Treatment facility" means any public or private facility or institution providing inpatient mental health, drug or alcohol treatment or

counseling, but does not include a hospital, as defined in K.S.A. 65-425, and amendments thereto.

(q) “Correctional facility” means any public or private correctional facility, juvenile detention facility, prison or jail.

(r) “Out of state” means: the District of Columbia; any federal, military or tribal jurisdiction, including those within this state; any foreign jurisdiction; or any state or territory within the United States, other than this state.

(s) “Duration of registration” means the length of time during which an offender is required to register for a specified offense or violation.

Sec. 30. K.S.A. 2012 Supp. 22-4906 is hereby amended to read as follows: 22-4906. (a) (1) Except as provided in subsection (c), if convicted of any of the following offenses, an offender’s duration of registration shall be, if confined, 15 years after the date of parole, discharge or release, whichever date is most recent, or, if not confined, 15 years from the date of conviction:

(A) Sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5505, and amendments thereto;

(B) adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2012 Supp. 21-5511, and amendments thereto, when one of the parties involved is less than 18 years of age;

(C) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or K.S.A. 2012 Supp. 21-6421, ~~and amendments thereto~~ *prior to its amendment by this act on July 1, 2013*, when one of the parties involved is less than 18 years of age;

(D) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2012 Supp. 21-5513, and amendments thereto, when one of the parties involved is less than 18 years of age;

(E) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2012 Supp. 21-5401, and amendments thereto;

(F) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2012 Supp. 21-5402, and amendments thereto;

(G) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2012 Supp. 21-5403, and amendments thereto;

(H) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2012 Supp. 21-5404, and amendments thereto;

(I) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2012 Supp. 21-5405, and amendments thereto;

(J) criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2012 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less than 18 years of age;

(K) any act which has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least

14 years of age and the offender was not more than four years older than the victim;

(L) conviction of any person required by court order to register for an offense not otherwise required as provided in the Kansas offender registration act;

(M) conviction 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;

(N) unlawful manufacture or attempting such of any controlled substance or controlled substance analog as defined in K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2012 Supp. 21-5703, and amendments thereto;

(O) 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, subsection (a) of K.S.A. 2010 Supp. 21-36a09, prior to its transfer, or subsection (a) of K.S.A. 2012 Supp. 21-5709, and amendments thereto;

(P) K.S.A. 65-4161, prior to its repeal, subsection (a)(1) of K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or subsection (a)(1) of K.S.A. 2012 Supp. 21-5705, and amendments thereto; or

(Q) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(2) Except as otherwise provided by the Kansas offender registration act, the duration of registration terminates, if not confined, at the expiration of 15 years from the date of conviction. Any period of time during which any offender is incarcerated in any jail or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration.

(b) (1) Except as provided in subsection (c), if convicted of any of the following offenses, an offender's duration of registration shall be, if confined, 25 years after the date of parole, discharge or release, whichever date is most recent, or, if not confined, 25 years from the date of conviction:

(A) Criminal sodomy, as defined in subsection (a)(1) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(1) or (a)(2) of K.S.A. 2012 Supp. 21-5504, and amendments thereto, when one of the parties involved is less than 18 years of age;

(B) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(C) electronic solicitation, as defined in K.S.A. 21-3523, prior to its repeal, or K.S.A. 2012 Supp. 21-5509, and amendments thereto;

(D) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5604, and amendments thereto;

(E) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5506, and amendments thereto;

(F) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2012 Supp. 21-5512, and amendments thereto;

(G) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2012 Supp. 21-5510, and amendments thereto, if the victim is 14 or more years of age but less than 18 years of age;

(H) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5505, and amendments thereto;

(I) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2012 Supp. 21-6420, ~~and amendments thereto~~ *prior to its amendment by this act on July 1, 2013*, if the ~~prostitute~~ *prostitute person selling sexual relations* is 14 or more years of age but less than 18 years of age; or

(J) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(2) Except as otherwise provided by the Kansas offender registration act, the duration of registration terminates, if not confined, at the expiration of 25 years from the date of conviction. Any period of time during which any offender is incarcerated in any jail or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration.

(c) Upon a second or subsequent conviction of an offense requiring registration, an offender's duration of registration shall be for such offender's lifetime.

(d) The duration of registration for any offender who has been convicted of any of the following offenses shall be for such offender's lifetime:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(2) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5508, and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5506, 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 K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(6) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5426, and amendments thereto;

(7) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2012 Supp. 21-5510, and amendments thereto, if the victim is less than 14 years of age;

(8) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2012 Supp. 21-6420, ~~and amendments thereto~~ *prior to its amendment by this act on July 1, 2013*, if the ~~prostitute person~~ *prostitute person selling sexual relations* is less than 14 years of age;

(9) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5408, and amendments thereto;

(10) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5408, and amendments thereto; ~~or~~

~~(11) commercial sexual exploitation of a child, as defined in section 4, and amendments thereto; or~~

~~(11)~~ (12) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012 Supp. 21-5301, 21-5302 and 21-5303, 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) Notwithstanding any other provisions of this section, for an offender less than 14 years of age who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and amendments thereto, the court shall:

(1) Require registration until such offender 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. Any period of time during which the offender is incarcerated in any jail, juvenile facility or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration;

(2) not require registration if the court, on the record, finds substantial and compelling reasons therefor; or

(3) require registration, 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 registration but such registration is not open to the public, such offender shall provide a copy of such court order to the registering law enforcement agency at the time of registration. The registering law enforcement agency shall forward a copy of such court order to the Kansas bureau of investigation.

If such offender violates a condition of release during the term of the conditional release, the court may require such offender to register pursuant to paragraph (1).

(g) Notwithstanding any other provisions of this section, for an offender 14 years of age or more who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute 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 K.S.A. 2012 Supp. 21-6804, and amendments thereto, the court shall:

(1) Require registration until such offender 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. Any period of time during which the offender is incarcerated in any jail, juvenile facility or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration;

(2) not require registration if the court, on the record, finds substantial and compelling reasons therefor; or

(3) require registration, 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 registration but such registration is not open to the public, such offender shall provide a copy of such court order to the registering law enforcement agency at the time of registration. The registering law enforcement agency shall forward a copy of such court order to the Kansas bureau of investigation.

If such offender violates a condition of release during the term of the conditional release, the court may require such offender to register pursuant to paragraph (1).

(h) Notwithstanding any other provisions of this section, an offender 14 years of age or more who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute 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 K.S.A. 2012 Supp. 21-6804, and amendments thereto, shall be required to register for such offender's lifetime.

(i) Notwithstanding any other provision of law, if a diversionary agreement or probation order, either adult or juvenile, or a juvenile offender sentencing order, requires registration under the Kansas offender registration act for an offense that would not otherwise require registration as provided in subsection (a)(5) of K.S.A. 22-4902, and amendments thereto, then all provisions of the Kansas offender registration act shall apply, except that the duration of registration shall be controlled by such diversionary agreement, probation order or juvenile offender sentencing order.

(j) The duration of registration does not terminate if the convicted or adjudicated offender again becomes liable to register as provided by the Kansas offender registration act during the required period of registration.

(k) For any person moving to Kansas who has been convicted or adjudicated in an out of state court, or who was required to register under an out of state law, the duration of registration shall be the length of time required by the out of state jurisdiction or by the Kansas offender registration act, whichever length of time is longer. The provisions of this subsection shall apply to convictions or adjudications prior to June 1, 2006, and to persons who moved to Kansas prior to June 1, 2006, and to convictions or adjudications on or after June 1, 2006, and to persons who moved to Kansas on or after June 1, 2006.

(l) For any person residing, maintaining employment or attending school in this state who has been convicted or adjudicated by an out of state court of an offense that is comparable to any crime requiring registration pursuant to the Kansas offender registration act, but who was not required to register in the jurisdiction of conviction or adjudication, the duration of registration shall be the duration required for the comparable offense pursuant to the Kansas offender registration act. The duration of registration shall begin upon establishing residency, beginning employment or beginning school.

Sec. 31. K.S.A. 2012 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. 2012 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. 41-727, subsection (j) of K.S.A. 74-8810, subsection (m) or (n) of K.S.A. 79-3321, or subsection (a)(14) of K.S.A. 2012 Supp. 21-6301, 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. 2012 Supp. 21-5102, 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 subsection (a)(14) of K.S.A. 2012 Supp. 21-6301, 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. 2012 Supp. 38-2207 and 38-2208, and amendments thereto.

(f) "Civil custody case" includes any case filed under chapter 23 of the Kansas Statutes Annotated, and amendments thereto, the Kansas family law code, article 11, of chapter 38 of the Kansas Statutes Anno-

tated, and amendments thereto, determination of parentage, 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.

(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. 2012 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. 2012 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 hazardous 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. 2012 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. 2012 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. 2012 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~~ *the department for children and families* or the secretary’s designee.

(cc) “Secure facility” means a facility, *other than a staff secure 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~~ *the sale of sexual relations or commercial sexual exploitation of a child*, 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 *or staff secure 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) “*Staff secure facility*” means a facility described in section 6, and amendments thereto: (1) That does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein; (2) that may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. No staff secure facility shall be in a city or county jail.

~~(ff)~~ (gg) “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)~~ (hh) “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. 32. On January 1, 2014, K.S.A. 2012 Supp. 38-2231 is hereby amended to read as follows: 38-2231. (a) A law enforcement officer or court services officer shall take a child under 18 years of age into custody when:

(1) The law enforcement officer or court services officer has a court order commanding that the child be taken into custody as a child in need of care; or

(2) the law enforcement officer or court services officer has probable cause to believe that a court order commanding that the child be taken into custody as a child in need of care has been issued in this state or in another jurisdiction.

(b) A law enforcement officer shall take a child under 18 years of age into custody when *the officer*:

(1) ~~The law enforcement officer~~ Reasonably believes the child will be harmed if not immediately removed from the place or residence where the child has been found; ~~or~~

(2) ~~when the officer~~ has probable cause to believe that the child is a missing person and a verified missing person entry for the child can be found in the national crime information center missing person system; *or*

(3) *reasonably believes the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.*

(c) (1) If a person provides shelter to a child whom the person knows is a runaway, such person shall promptly report the child’s location either to a law enforcement agency or to the child’s parent or other custodian.

(2) If a person reports a runaway’s location to a law enforcement agency pursuant to this section and a law enforcement officer of the agency has reasonable grounds to believe that it is in the child’s best interests, the child may be allowed to remain in the place where shelter is being provided, subject to subsection (b), in the absence of a court order to the contrary. If the child is allowed to so remain, the law enforcement agency shall promptly notify the secretary of the child’s location and circumstances.

(d) *Except as provided in subsections (a) and (b),* a law enforcement officer may temporarily detain and assume temporary custody of any child subject to compulsory school attendance, pursuant to K.S.A. 72-1111, and amendments thereto, during the hours school is actually in session and

shall deliver the child pursuant to subsection (g) of K.S.A. 2012 Supp. 38-2232, and amendments thereto.

Sec. 33. On January 1, 2014, K.S.A. 2012 Supp. 38-2232 is hereby amended to read as follows: 38-2232. (a) (1) To the extent possible, when any law enforcement officer takes into custody a child under the age of 18 years without a court order, the child shall forthwith be delivered to the custody of the child's parent or other custodian unless there are reasonable grounds to believe that such action would not be in the best interests of the child.

(2) Except as provided in subsection (b), if the child is not delivered to the custody of the child's parent or other custodian, the child shall forthwith be delivered to a shelter facility designated by the court, court services officer, juvenile intake and assessment worker, licensed attendant care center or other person 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 a facility or person designated by the secretary.

(3) If, after delivery of the child to a shelter facility, the person in charge of the shelter facility at that time and the law enforcement officer determine that the child will not remain in the shelter facility and if the child is presently alleged, but not yet adjudicated, to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10) of K.S.A. 2012 Supp. 38-2202, and amendments thereto, the law enforcement officer shall deliver the child to a juvenile detention facility or other secure facility, designated by the court, where the child shall be detained for not more than 24 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible.

(4) No child taken into custody pursuant to this code shall be placed in a juvenile detention facility or other secure facility, except as authorized by this section and by K.S.A. 2012 Supp. 38-2242, 38-2243 and 38-2260, and amendments thereto.

(5) It shall be the duty of the law enforcement officer to furnish to the county or district attorney, without unnecessary delay, all the information in the possession of the officer pertaining to the child, the child's parents or other persons interested in or likely to be interested in the child and all other facts and circumstances which caused the child to be taken into custody.

(b) (1) When any law enforcement officer takes into custody any child as provided in subsection (b)(2) of K.S.A. 2012 Supp. 38-2231, and amendments thereto, proceedings shall be initiated in accordance with the provisions of the interstate compact on juveniles, K.S.A. 38-1001 et seq., and amendments thereto, or K.S.A. 2012 Supp. 38-1008, and amendments thereto, when effective. Any child taken into custody pur-

suant to the interstate compact on juveniles may be detained in a juvenile detention facility or other secure facility.

(2) *When any law enforcement officer takes into custody any child as provided in subsection (b)(3) of K.S.A. 2012 Supp. 38-2231, and amendments thereto, the law enforcement officer shall place the child in protective custody and may deliver the child to a staff secure facility. The law enforcement officer shall contact the department for children and families to begin an assessment to determine safety, placement and treatment needs for the child. Such child shall not be placed in a juvenile detention facility or other secure facility, except as authorized by this section and by K.S.A. 2012 Supp. 38-2242, 38-2243 and 38-2260, and amendments thereto.*

(c) Whenever a child under the age of 18 years is taken into custody by a law enforcement officer without a court order and is thereafter placed as authorized by subsection (a), the facility or person shall, upon written application of the law enforcement officer, have physical custody and provide care and supervision for the child. The application shall state:

(1) The name and address of the child, if known;

(2) the names and addresses of the child's parents or nearest relatives and persons with whom the child has been residing, if known; and

(3) the officer's belief that the child is a child in need of care and that there are reasonable grounds to believe that the circumstances or condition of the child is such that the child would be harmed unless placed in the immediate custody of the shelter facility or other person.

(d) A copy of the application shall be furnished by the facility or person receiving the child to the county or district attorney without unnecessary delay.

(e) The shelter facility or other person designated by the court who has custody of the child pursuant to this section shall discharge the child not later than 72 hours following admission, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, unless a court has entered an order pertaining to temporary custody or release.

(f) In absence of a court order to the contrary, the county or district attorney or the placing law enforcement agency shall have the authority to direct the release of the child at any time.

(g) When any law enforcement officer takes into custody any child as provided in subsection (d) of K.S.A. 2012 Supp. 38-2231, and amendments thereto, the child shall forthwith be delivered to the school in which the child is enrolled, any location designated by the school in which the child is enrolled or the child's parent or other custodian.

Sec. 34. On January 1, 2014, K.S.A. 2012 Supp. 38-2242 is hereby amended to read as follows: 38-2242. (a) The court, upon verified application, may issue ex parte an order directing that a child be held in pro-

tective custody and, if the child has not been taken into custody, an order directing that the child be taken into custody. The application shall state for each child:

(1) The applicant's belief that the child is a child in need of care;

(2) that the child is likely to sustain harm if not immediately removed from the home;

(3) that allowing the child to remain in the home is contrary to the welfare of the child; and

(4) the facts relied upon to support the application, including efforts known to the applicant to maintain the family unit and prevent the unnecessary removal of the child from the child's home, or the specific facts supporting that an emergency exists which threatens the safety of the child.

(b) (1) The order of protective custody may be issued only after the court has determined there is probable cause to believe the allegations in the application are true. The order shall remain in effect until the temporary custody hearing provided for in K.S.A. 2012 Supp. 38-2243, and amendments thereto, unless earlier rescinded by the court.

(2) No child shall be held in protective custody for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, unless within the 72-hour period a determination is made as to the necessity for temporary custody in a temporary custody hearing. The time spent in custody pursuant to K.S.A. 2012 Supp. 38-2232, and amendments thereto, shall be included in calculating the 72-hour period. Nothing in this subsection shall be construed to mean that the child must remain in protective custody for 72 hours. If a child is in the protective custody of the secretary, the secretary shall allow at least one supervised visit between the child and the parent or parents within such time period as the child is in protective custody. The court may prohibit such supervised visit if the court determines it is not in the best interest of the child.

(c) (1) Whenever the court determines the necessity for an order of protective custody, the court may place the child in the protective custody of:

(A) A parent or other person having custody of the child and may enter a restraining order pursuant to subsection (e);

(B) a person, other than the parent or other person having custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

(C) a youth residential facility;

(D) a shelter facility; ~~or~~

(E) *a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2012 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by section*

4, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto; or

~~(E)~~ (F) the secretary, 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.

(2) If the secretary presents the court with a plan to provide services to a child or family which the court finds will assure the safety of the child, the court may only place the child in the protective custody of the secretary until the court finds the services are in place. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan. When the child is placed in the protective custody of the secretary, the secretary shall have the discretionary authority to place the child with a parent or to make other suitable placement for the child. *When the child is placed in the temporary custody of the secretary and the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2012 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by section 4, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto, the secretary shall have the discretionary authority to place the child in a staff secure facility, notwithstanding any other provision of law.* When the child is presently alleged, but not yet adjudicated, to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10) of K.S.A. 2012 Supp. 38-2202, and amendments thereto, the child may be placed in a juvenile detention facility or other secure facility pursuant to an order of protective custody for a period of not to exceed 24 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible.

(d) The order of protective custody shall be served pursuant to subsection (a) of K.S.A. 2012 Supp. 38-2237, and amendments thereto, on the child's parents and any other person having legal custody of the child. The order shall prohibit the removal of the child from the court's jurisdiction without the court's permission.

(e) If the court issues an order of protective custody, the court may also enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional 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. 2012 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

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

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

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

(B) 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.

(2) Such findings shall be included in any order entered by the court. If the child is placed in the custody of the secretary, the court shall provide the secretary with a written copy of any orders entered upon making the order.

Sec. 35. On January 1, 2014, K.S.A. 2012 Supp. 38-2243 is hereby amended to read as follows: 38-2243. (a) Upon notice and hearing, the court may issue an order directing who shall have temporary custody and may modify the order during the pendency of the proceedings as will best serve the child's welfare.

(b) A hearing pursuant to this section shall be held within 72 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, following a child having been taken into protective custody.

(c) Whenever it is determined that a temporary custody hearing is required, the court shall immediately set the time and place for the hearing. Notice of a temporary custody hearing shall be given to all parties and interested parties.

(d) Notice of the temporary custody hearing shall be given at least 24 hours prior to the hearing. The court may continue the hearing to afford the 24 hours prior notice or, with the consent of the party or interested party, proceed with the hearing at the designated time. If an order of temporary custody is entered and the parent or other person having custody of the child has not been notified of the hearing, did not appear or waive appearance and requests a rehearing, the court shall rehear the matter without unnecessary delay.

(e) Oral notice may be used for giving notice of a temporary custody hearing where there is insufficient time to give written notice. Oral notice is completed upon filing a certificate of oral notice.

(f) The court may enter an order of temporary custody after determining there is probable cause to believe that the: (1) Child is dangerous to self or to others; (2) child is not likely to be available within the jurisdiction of the court for future proceedings; ~~or~~ (3) health or welfare of the child may be endangered without further care; (4) *child has been subjected to human trafficking or aggravated human trafficking, as defined*

by K.S.A. 2012 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by section 4, and amendments thereto; or (5) child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto.

(g) (1) Whenever the court determines the necessity for an order of temporary custody the court may place the child in the temporary custody of:

(A) A parent or other person having custody of the child and may enter a restraining order pursuant to subsection (h);

(B) a person, other than the parent or other person having custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

(C) a youth residential facility;

(D) a shelter facility; ~~or~~

(E) *a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2012 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by section 4, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto; or*

~~(F)~~ (F) the secretary, 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.

(2) If the secretary presents the court with a plan to provide services to a child or family which the court finds will assure the safety of the child, the court may only place the child in the temporary custody of the secretary until the court finds the services are in place. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan. When the child is placed in the temporary custody of the secretary, the secretary shall have the discretionary authority to place the child with a parent or to make other suitable placement for the child. *When the child is placed in the temporary custody of the secretary and the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2012 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by section 4, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto, the secretary shall have the discretionary authority to place the child in a staff secure facility, notwithstanding any other provision of law.* When the child is presently alleged, but not yet adjudicated to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10) of K.S.A. 2012 Supp. 38-2202, and amendments thereto, the child may be placed in a juvenile

detention facility or other secure facility, but the total amount of time that the child may be held in such facility under this section and K.S.A. 2012 Supp. 38-2242, and amendments thereto, shall not exceed 24 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible. The order of temporary custody shall remain in effect until modified or rescinded by the court or an adjudication order is entered but not exceeding 60 days, unless good cause is shown and stated on the record.

(h) If the court issues an order of temporary custody, the court may also enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child; or attempting to visit, contact, harass or intimidate the child, other family members or witnesses. Such restraining order shall be served by personal service pursuant to subsection (a) of K.S.A. 2012 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

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

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

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

(B) 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.

(2) Such findings shall be included in any order entered by the court. If the child is placed in the custody of the secretary, upon making the order the court shall provide the secretary with a written copy.

(j) If the court enters an order of temporary custody that provides for placement of the child with a person other than the parent, the court shall make a child support determination pursuant to K.S.A. 2012 Supp. 38-2277, and amendments thereto.

Sec. 36. On January 1, 2014, K.S.A. 2012 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; *a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2012 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by section 4, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto;* 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. 2012 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. 2012 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, con-

spired 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 K.S.A. 2012 Supp. 21-5402, and amendments thereto; (B) murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2012 Supp. 21-5403, and amendments thereto; (C) capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2012 Supp. 21-5401, and amendments thereto; (D) voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2012 Supp. 21-5404, 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. 2012 Supp. 21-5701 through 21-5717, 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. 2012 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. 2012 Supp. 23-3101 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. 2012 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. 37. K.S.A. 2012 Supp. 38-2312 is hereby amended to read as follows: 38-2312. (a) Except as provided in subsection (b) and (c), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 2012 Supp. 21-

5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402, prior to its repeal, or K.S.A. 2012 Supp. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 2012 Supp. 21-5404, and amendments thereto, voluntary manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 2012 Supp. 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-3439, prior to its repeal, or K.S.A. 2012 Supp. 21-5401, and amendments thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs; K.S.A. 21-3502, prior to its repeal, or K.S.A. 2012 Supp. 21-5503, and amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5506, and amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5506, and amendments thereto, aggravated indecent liberties with a child; K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto, aggravated criminal sodomy; K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5508, and amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5508, and amendments thereto, aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 2012 Supp. 21-5510, and amendments thereto, sexual exploitation of a child; K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2012 Supp. 21-5604, and amendments thereto, aggravated incest; K.S.A. 21-3608, prior to its repeal, or subsection (a) of K.S.A. 2012 Supp. 21-5601, and amendments thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A. 2012 Supp. 21-5602, and amendments thereto, abuse of a child; or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

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

(d) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after the effective date of this act through June

30, 2013, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(e) (1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A) (i) The juvenile has reached 23 years of age or that two years have elapsed since the final discharge; or

(ii) *one year has elapsed since the final discharge for an adjudication concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 2012 Supp. 21-6419, and amendments thereto;*

(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.

(f) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The petitioner, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the juvenile. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The inspection shall be limited to inspection by the person who is the subject of the files or records and the person's designees.

(g) A certified copy of any order made pursuant to subsection (a) or (d) shall be sent to the Kansas bureau of investigation, which shall notify every juvenile or criminal justice agency which may possess records or files ordered to be expunged. If the agency fails to comply with the order within a reasonable time after its receipt, such agency may be adjudged in contempt of court and punished accordingly.

(h) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(i) Nothing in this section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the juvenile.

(j) Nothing in this section shall be construed to permit or require expungement of files or records related to a child support order registered pursuant to the revised Kansas juvenile justice code.

(k) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of ~~social and rehabilitation services~~ *the department for children and families*, 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~~ *for children and families* 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;

(8) the Kansas sentencing commission; or

(9) the Kansas bureau of investigation, for the purposes of:

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

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(l) The provisions of subsection (k)(9) shall apply to all records created prior to, on and after July 1, 2011.

Sec. 38. K.S.A. 2012 Supp. 38-2361 is hereby amended to read as follows: 38-2361. (a) Upon adjudication as a juvenile offender pursuant to K.S.A. 2012 Supp. 38-2356, and amendments thereto, modification of sentence pursuant to K.S.A. 2012 Supp. 38-2367, and amendments thereto, or violation of a condition of sentence pursuant to K.S.A. 2012 Supp. 38-2368, and amendments thereto, and subject to subsection (a) of K.S.A. 2012 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. 2012 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. 2012 Supp. 21-6609, and amendments thereto.

(10) Place the juvenile in the custody of the commissioner as provided

in K.S.A. 2012 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. 2012 Supp. 38-2369, and amendments thereto. The provisions of K.S.A. 2012 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. 2012 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~~ *the department for children and families* or the department of ~~social and rehabilitation services~~ *for children and families* 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. 2012 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 *subsection (b) of K.S.A. 2012 Supp. 21-5426*, and amendments thereto, if the victim is less than 14 years of age; (2) rape, as defined in

subsection (a)(3) of K.S.A. 2012 Supp. 21-5503, and amendments thereto; (3) aggravated indecent liberties with a child, as defined in subsection (b)(3) of K.S.A. 2012 Supp. 21-5506, and amendments thereto; (4) aggravated criminal sodomy, as defined in subsection (b)(1) or (b)(2) of K.S.A. 2012 Supp. 21-5504, and amendments thereto; (5) ~~promoting prostitution, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, if the prostitute~~ *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto, if the victim* is less than 14 years of age; (6) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of K.S.A. 2012 Supp. 21-5510, 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. 2012 Supp. 21-5301, 21-5302 or 21-5303, 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. 2012 Supp. 38-2353, and amendments thereto.

Sec. 39. K.S.A. 2012 Supp. 41-311 is hereby amended to read as follows: 41-311. (a) No license of any kind shall be issued pursuant to the liquor control act to a person:

(1) Who has not been a citizen of the United States for at least 10 years, except that the spouse of a deceased retail licensee may receive and renew a retail license notwithstanding the provisions of this subsection (a)(1) if such spouse is otherwise qualified to hold a retail license and is a United States citizen or becomes a United States citizen within one year after the deceased licensee's death;

(2) who has been convicted of a felony under the laws of this state, any other state or the United States;

(3) who has had a license revoked for cause under the provisions of the liquor control act, the beer and cereal malt beverage keg registration act or who has had any license issued under the cereal malt beverage laws of any state revoked for cause except that a license may be issued to a person whose license was revoked for the conviction of a misdemeanor at any time after the lapse of 10 years following the date of the revocation;

(4) who has been convicted of being the keeper or is keeping ~~a house of prostitution~~ *any property, whether real or personal, where sexual re-*

lations are being sold or offered for sale by a person who is 18 years of age or older or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution any property, whether real or personal, where sexual relations are being sold or offered for sale by a person who is 18 years of age or older;

(5) who has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;

(6) who is not at least 21 years of age;

(7) who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the director;

(8) who intends to carry on the business authorized by the license as agent of another;

(9) who at the time of application for renewal of any license issued under this act would not be eligible for the license upon a first application, except as provided by subsection (a)(12);

(10) who is the holder of a valid and existing license issued under article 27 of chapter 41 of the Kansas Statutes Annotated, *and amendments thereto*, unless the person agrees to and does surrender the license to the officer issuing the same upon the issuance to the person of a license under this act, except that a retailer licensed pursuant to K.S.A. 41-2702, and amendments thereto, shall be eligible to receive a retailer's license under the Kansas liquor control act;

(11) who does not own the premises for which a license is sought, or does not, at the time of application, have a written lease thereon;

(12) whose spouse would be ineligible to receive a license under this act for any reason other than citizenship, residence requirements or age, except that this subsection (a)(12) shall not apply in determining eligibility for a renewal license;

(13) whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this act; or

(14) who does not provide any data or information required by K.S.A. 2012 Supp. 41-311b, and amendments thereto.

(b) No retailer's license shall be issued to:

(1) A person who is not a resident of this state;

(2) a person who has not been a resident of this state for at least four years immediately preceding the date of application;

(3) a person who has a beneficial interest in a manufacturer, distributor, farm winery or microbrewery licensed under this act, except that the spouse of an applicant for a retailer's license may own and hold a

farm winery license, microbrewery license, or both, if the spouse does not hold a retailer's license issued under this act;

(4) a person who has a beneficial interest in any other retail establishment licensed under this act, except that the spouse of a licensee may own and hold a retailer's license for another retail establishment;

(5) a copartnership, unless all of the copartners are qualified to obtain a license;

(6) a corporation; or

(7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.

(c) No manufacturer's license shall be issued to:

(1) A corporation, if any officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a manufacturer's license for any reason other than citizenship and residence requirements;

(2) a copartnership, unless all of the copartners shall have been residents of this state for at least five years immediately preceding the date of application and unless all the members of the copartnership would be eligible to receive a manufacturer's license under this act;

(3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license;

(4) an individual who is not a resident of this state;

(5) an individual who has not been a resident of this state for at least five years immediately preceding the date of application; or

(6) a person who has a beneficial interest in a distributor, retailer, farm winery or microbrewery licensed under this act, except as provided in K.S.A. 41-305, and amendments thereto.

(d) No distributor's license shall be issued to:

(1) A corporation, if any officer, director or stockholder of the corporation would be ineligible to receive a distributor's license for any reason. It shall be unlawful for any stockholder of a corporation licensed as a distributor to transfer any stock in the corporation to any person who would be ineligible to receive a distributor's license for any reason, and any such transfer shall be null and void, except that: (A) If any stockholder owning stock in the corporation dies and an heir or devisee to whom stock of the corporation descends by descent and distribution or by will is ineligible to receive a distributor's license, the legal representatives of the deceased stockholder's estate and the ineligible heir or devisee shall have 14 months from the date of the death of the stockholder within which to sell the stock to a person eligible to receive a distributor's license, any such sale by a legal representative to be made in accordance with the

provisions of the probate code; or (B) if the stock in any such corporation is the subject of any trust and any trustee or beneficiary of the trust who is 21 years of age or older is ineligible to receive a distributor's license, the trustee, within 14 months after the effective date of the trust, shall sell the stock to a person eligible to receive a distributor's license and hold and disburse the proceeds in accordance with the terms of the trust. If any legal representatives, heirs, devisees or trustees fail, refuse or neglect to sell any stock as required by this subsection, the stock shall revert to and become the property of the corporation, and the corporation shall pay to the legal representatives, heirs, devisees or trustees the book value of the stock. During the period of 14 months prescribed by this subsection, the corporation shall not be denied a distributor's license or have its distributor's license revoked if the corporation meets all of the other requirements necessary to have a distributor's license;

(2) a copartnership, unless all of the copartners are eligible to receive a distributor's license;

(3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license; or

(4) a person who has a beneficial interest in a manufacturer, retailer, farm winery or microbrewery licensed under this act.

(e) No nonbeverage user's license shall be issued to a corporation, if any officer, manager or director of the corporation or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a nonbeverage user's license for any reason other than citizenship and residence requirements.

(f) No microbrewery license, microdistillery license or farm winery license shall be issued to a:

(1) Person who is not a resident of this state;

(2) person who has not been a resident of this state for at least one year immediately preceding the date of application;

(3) person who has a beneficial interest in a manufacturer or distributor licensed under this act, except as provided in K.S.A. 41-305, and amendments thereto;

(4) person, copartnership or association which has a beneficial interest in any retailer licensed under this act or under K.S.A. 41-2702, and amendments thereto, except that the spouse of an applicant for a microbrewery or farm winery license may own and hold a retailer's license if the spouse does not hold a microbrewery or farm winery license issued under this act;

(5) copartnership, unless all of the copartners are qualified to obtain a license;

(6) corporation, unless stockholders owning in the aggregate 50% or more of the stock of the corporation would be eligible to receive such

license and all other stockholders would be eligible to receive such license except for reason of citizenship or residency; or

(7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.

(g) The provisions of subsections (b)(1), (b)(2), (c)(3), (c)(4), (d)(3), (f)(1), (f)(2) and K.S.A. 2012 Supp. 41-311b, and amendments thereto, shall not apply in determining eligibility for the 10th, or a subsequent, consecutive renewal of a license if the applicant has appointed a citizen of the United States who is a resident of Kansas as the applicant's agent and filed with the director a duly authenticated copy of a duly executed power of attorney, authorizing the agent to accept service of process from the director and the courts of this state and to exercise full authority, control and responsibility for the conduct of all business and transactions within the state relative to alcoholic liquor and the business licensed. The agent must be satisfactory to and approved by the director, except that the director shall not approve as an agent any person who:

(1) Has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has had a license issued under the alcoholic liquor or cereal malt beverage laws of this or any other state revoked for cause, except that a person may be appointed as an agent if the person's license was revoked for the conviction of a misdemeanor and 10 years have lapsed since the date of the revocation;

(3) has been convicted of being the keeper or is keeping ~~a house of prostitution~~ *any property, whether real or personal, where sexual relations are being sold or offered for sale by a person who is 18 years of age or older* or has forfeited bond to appear in court to answer charges of being a keeper of ~~a house of prostitution~~ *any property, whether real or personal, where sexual relations are being sold or offered for sale by a person who is 18 years of age or older*;

(4) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes; or

(5) is less than 21 years of age.

Sec. 40. K.S.A. 2012 Supp. 41-2601 is hereby amended to read as follows: 41-2601. As used in the club and drinking establishment act:

(a) The following terms shall have the meanings provided by K.S.A. 41-102, and amendments thereto: (1) "Alcoholic liquor"; (2) "director"; (3) "original package"; (4) "person"; (5) "sale"; and (6) "to sell."

(b) "Beneficial interest" shall not include any interest a person may have as owner, operator, lessee or franchise holder of a licensed hotel or

motel on the premises of which a club or drinking establishment is located.

(c) “Caterer” means an individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

(d) “Cereal malt beverage” has the meaning provided by K.S.A. 41-2701, and amendments thereto.

(e) “Class A club” means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans’ club, as determined by the director, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members) and their families and guests accompanying them.

(f) “Class B club” means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(g) “Club” means a class A or class B club.

(h) “Drinking establishment” means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold. Drinking establishment includes a railway car.

(i) “Food” means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

(j) “Food service establishment” has the meaning provided by K.S.A. 36-501, and amendments thereto.

(k) “Hotel” has the meaning provided by K.S.A. 36-501, and amendments thereto.

(l) “Individual drink” means a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. The term “individual drink” includes beverages containing not more than: (1) Eight ounces of wine; (2) thirty-two ounces of beer or cereal malt beverage; or (3) four ounces of a single spirit or a combination of spirits.

(m) “Minibar” means a closed cabinet, whether nonrefrigerated or wholly or partially refrigerated, access to the interior of which is restricted by means of a locking device which requires the use of a key, magnetic card or similar device.

(n) “Minor” means a person under 21 years of age.

(o) “Morals charge” means a charge involving ~~prostitution~~ *the sale of sexual relations*; procuring any person; soliciting of a child under 18 years of age for any immoral act involving sex; possession or sale of narcotics,

marijuana, amphetamines or barbiturates; rape; incest; gambling; illegal cohabitation; adultery; bigamy; or a crime against nature.

(p) “Municipal corporation” means the governing body of any county or city.

(q) “Public venue” means an arena, stadium, hall or theater, used primarily for athletic or sporting events, live concerts, live theatrical productions or similar seasonal entertainment events, not operated on a daily basis, and containing:

(1) Not less than 4,000 permanent seats; and

(2) not less than two private suites, which are enclosed or semi-enclosed seating areas, having controlled access and separated from the general admission areas by a permanent barrier.

(r) “Railway car” means a locomotive drawn conveyance used for the transportation and accommodation of human passengers that is confined to a fixed rail route and which derives from sales of food for consumption on the railway car not less than 30% of its gross receipts from all sales of food and beverages in a 12-month period.

(s) “Restaurant” means:

(1) In the case of a club, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed club premises not less than 50% of its gross receipts from all sales of food and beverages on such premises in a 12-month period;

(2) in the case of a drinking establishment subject to a food sales requirement under K.S.A. 41-2642, and amendments thereto, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed drinking establishment premises not less than 30% of its gross receipts from all sales of food and beverages on such premises in a 12-month period; and

(3) in the case of a drinking establishment subject to no food sales requirement under K.S.A. 41-2642, and amendments thereto, a licensed food service establishment.

(t) “RV resort” means premises where a place to park recreational vehicles, as defined in K.S.A. 75-1212, and amendments thereto, is offered for pay, primarily to transient guests, for overnight or longer use while such recreational vehicles are used as sleeping or living accommodations.

(u) “Secretary” means the secretary of revenue.

(v) “Temporary permit” means a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto.

Sec. 41. K.S.A. 2012 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 involving controlled substances, as described in K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto;

(c) theft, as defined in K.S.A. 2012 Supp. 21-5801, and amendments thereto;

(d) criminal discharge of a firearm, as defined in subsections (a)(1) and (a)(2) of K.S.A. 2012 Supp. 21-6308, and amendments thereto;

(e) gambling, as defined in K.S.A. 2012 Supp. 21-6404, and amendments thereto, and commercial gambling, as defined in subsection (a)(1) of K.S.A. 2012 Supp. 21-6406, and amendments thereto;

(f) counterfeiting, as defined in K.S.A. 2012 Supp. 21-5825, and amendments thereto;

(g) unlawful possession *or use* of a scanning device or reencoder, as described in K.S.A. 2012 Supp. 21-6108, and amendments thereto;

(h) medicaid fraud, as described in K.S.A. 2012 Supp. 21-5925 through 21-5934, and amendments thereto;

(i) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;

(j) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

(k) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

(l) furtherance of terrorism or illegal use of weapons of mass destruction, as described in K.S.A. 2012 Supp. 21-5423, and amendments thereto;

(m) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6414, and amendments thereto;

(n) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6417, and amendments thereto;

(o) ~~prostitution~~ *selling sexual relations*, as defined in K.S.A. 2012 Supp. 21-6419, and amendments thereto, promoting ~~prostitution~~ *the sale of sexual relations*, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, and ~~patronizing a prostitute~~ *buying sexual relations*, as defined in K.S.A. 2012 Supp. 21-6421, and amendments thereto;

(p) human trafficking and aggravated human trafficking, as defined in K.S.A. 2012 Supp. 21-5426, and amendments thereto;

(q) violations of the banking code, as described in K.S.A. 9-2012, and amendments thereto;

(r) mistreatment of a dependent adult, as defined in K.S.A. 2012 Supp. 21-5417, and amendments thereto;

(s) giving a worthless check, as defined in K.S.A. 2012 Supp. 21-5821, and amendments thereto;

(t) forgery, as defined in K.S.A. 2012 Supp. 21-5823, and amendments thereto;

(u) making false information, as defined in K.S.A. 2012 Supp. 21-5824, and amendments thereto;

(v) criminal use of a financial card, as defined in K.S.A. 2012 Supp. 21-5828, and amendments thereto;

(w) unlawful acts concerning computers, as described in K.S.A. 2012 Supp. 21-5839, and amendments thereto;

(x) identity theft and identity fraud, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6107, and amendments thereto;

(y) electronic solicitation, as defined in K.S.A. 2012 Supp. 21-5509, and amendments thereto; ~~and~~

(z) felony violations of fleeing or attempting to elude a police officer, as described in K.S.A. 8-1568, and amendments thereto; *and*

(aa) *commercial sexual exploitation of a child, as defined in section 4, and amendments thereto.*

Sec. 42. K.S.A. 2012 Supp. 68-2255 is hereby amended to read as follows: 68-2255. (a) As used in this section:

(1) “Adult cabaret” means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

(A) Persons who appear in a state of nudity or semi-nudity;

(B) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(C) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas;

(2) “nudity” or a “state of nudity” means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernibly turgid state;

(3) “semi-nudity” means a state of dress in which opaque clothing fails to cover the genitals, anus, anal cleft or cleavage, pubic area, vulva, nipple and areola of the female breast below a horizontal line across the top of the areola at its highest point. Semi-nudity shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the human female breast exhibited by wearing apparel provided the areola is not exposed in whole or part;

(4) “sexually-oriented business” means any business which offers its patrons goods of which a substantial portion are sexually-oriented mate-

rials. Any business where more than 10% of display space is used for sexually-oriented materials shall be presumed to be a sexually-oriented business;

(5) “sexually-oriented materials” means any textual, pictorial or three dimensional material that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors;

(6) “sign” or “outdoor advertising” means any outdoor sign, display, device, notice, bulletin, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informative contents of which is located within an adjacent area, and is visible from the state highway.

(b) No sign or other outdoor advertising, for an adult cabaret or sexually-oriented business shall be located within one mile of any state highway except if such business is located within one mile of a state highway then the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that the premises are off limits to minors. The identification sign shall be no more than 40 square feet in size and shall include no more than the following information: Name, street address, telephone number and operating hours of the business.

(c) Signs existing at the time of the effective date of this act, which did not conform to the requirements of this section, and amendments thereto, may be allowed to continue as a nonconforming use, but should be made to conform within three years from July 1, 2006.

(d) Any owner of such a business who violates the provisions of this section shall be guilty of a class C misdemeanor. Each week a violation of this section continues to exist shall constitute a separate offense.

(e) This section is designed to protect the following public policy interests of this state, including, but not limited to:

(1) To mitigate the adverse secondary effects of sexually-oriented businesses; (2) to improve traffic safety; (3) to limit harm to minors; and (4) to reduce ~~prostitution~~ *the sale of sexual relations*, crime, juvenile delinquency, deterioration in property values and lethargy in neighborhood improvement efforts.

(f) The attorney general shall represent the state in all actions and proceedings arising from this section, and amendments thereto. All costs incurred by the attorney general to defend or prosecute this section, including payment of all court costs, civil judgments and, if necessary, any attorneys fees, shall be paid from the state general fund.

Sec. 43. K.S.A. 22-2530 and K.S.A. 2012 Supp. 12-4106, 12-4120, 12-4516, 21-5301, 21-5302, 21-5303, 21-5401, 21-5502, 21-6419, 21-6420,

21-6421, 21-6614, 21-6626, 21-6627, 21-6806, 21-6815, 22-2515, 22-3601, 22-3717, 22-3901, 22-4902, 22-4906, 38-2202, 38-2312, 38-2361, 41-311, 41-2601, 60-4104 and 68-2255 are hereby repealed.

Sec. 44. On January 1, 2014, K.S.A. 2012 Supp. 38-2231, 38-2232, 38-2242, 38-2243 and 38-2255 are hereby repealed.

Sec. 45. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 22, 2013.

CHAPTER 121

HOUSE BILL No. 2261

AN ACT concerning school districts; relating to the financing thereof; relating to the policies thereof; establishing celebrate freedom week and related curriculum; amending K.S.A. 2012 Supp. 72-965, 72-3607, 72-3715, 72-6414a, 72-6414b, 72-6420, 72-6421, 72-6423, 72-6426, 72-6460, 72-8237, 72-8250, 72-8256, 72-9509 and 72-9609 and repealing the existing sections.

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

New Section 1. (a) In order to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded, the week of September containing the 17th day of such month in each year thereafter is hereby designated as “celebrate freedom week” in each public school offering any of the grades kindergarten through eight.

(b) The state board of education, in cooperation with such other state agencies or private entities who voluntarily participate, shall promote “celebrate freedom week” through a coordinated program.

(c) For purposes of this section, Sunday is deemed to be the first day of the week.

New Sec. 2. On or before December 31, 2013, the state board of education shall adopt rules and regulations requiring appropriate instruction be provided as part of the curriculum for grades kindergarten through eight on history and government concerning the original intent, meaning and importance of the declaration of independence and the United States constitution, including the bill of rights of the United States constitution, in their historical contexts. The religious references in the writings of the founding fathers shall not be censored when presented as part of such instruction. Such rules and regulations shall provide that the study of the declaration of independence include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of such ideas to the rich diversity of our people as a nation of immigrants, the American revolution, the for-

mulation of the United States constitution and the abolitionist movement, which led to the emancipation proclamation and the women's suffrage movement. Such instruction shall be taught during "celebrate freedom week," established under section 1, and amendments thereto, or during such other full school week as determined by the board of education of the school district.

Sec. 3. K.S.A. 2012 Supp. 72-965 is hereby amended to read as follows: 72-965. (a) The state board shall be responsible for the distribution and allocation of state and federal funds for special education. Such moneys shall be expended only in accordance with and for the purposes specified in federal or state law. Payments under this act may be made in installments and in advance or by way of reimbursement, with necessary adjustments for overpayments or underpayments. Federal funds for special education shall be deposited in the state treasury.

(b) The state board is hereby authorized to accept from an individual or individuals, the United States government or any of its agencies or any other public or private body, grants or contributions of money, funds or property which the state board may authorize to be used in accordance with appropriation acts, for or in aid of special education or related services or any of the purposes authorized by the federal law or this act.

(c) (1) Each board may use up to 15% of the amount it receives each year under the federal law to develop and implement coordinated, early intervening services for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three, who have not been identified as needing special education or related services but who appear to need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated, early intervening services under this subsection, a board may carry out activities that include:

(A) Providing professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software; and

(B) providing educational and behavioral evaluations, services and supports, including scientifically based literacy instruction.

(3) Each board that develops and maintains coordinated, early intervening services under this subsection shall annually report to the department:

(A) The number of students served under this subsection; and

(B) the number of students served under this subsection who subsequently receive special education and related services under this title during the two-year period preceding each report.

(d) Except for moneys received under K.S.A. 72-978, and amend-

ments thereto, from cooperative agreements entered into under K.S.A. 72-968, and amendments thereto, any unencumbered balance of moneys attributable to appropriations by the legislature for special education or related services remaining in the special education fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education in an amount not to exceed $\frac{1}{3}$ of the unencumbered balance of the school district's special education fund.

Sec. 4. K.S.A. 2012 Supp. 72-3607 is hereby amended to read as follows: 72-3607. (a) There is hereby established in every school district which has developed and is operating a parent education program for which grants are awarded under this act a fund which shall be called the parent education program fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. Notwithstanding any other provision of law, all moneys received by the school district from whatever source for a parent education program operated under this act shall be credited to the fund established by this section. Amounts deposited in the parent education program fund shall be used exclusively for the payment of expenses directly attributable to the program.

(b) Any unencumbered balance of moneys remaining in the parent education program fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education.

Sec. 5. K.S.A. 2012 Supp. 72-3715 is hereby amended to read as follows: 72-3715. (a) In order to be included in the full-time equivalent enrollment of a virtual school, a pupil shall be in attendance at the virtual school on: (1) A single school day on or before September 19 of each school year; and (2) on a single school day on or after September 20, but before October 4 of each school year.

(b) A school district which offers a virtual school shall determine the full-time equivalent enrollment of each pupil enrolled in the virtual school on September 20 of each school year as follows:

(1) Determine the number of hours the pupil was in attendance on a single school day on or before September 19 of each school year;

(2) determine the number of hours the pupil was in attendance on a single school day on or after September 20, but before October 4 of each school year;

(3) add the numbers obtained under paragraphs (1) and (2);

(4) divide the sum obtained under paragraph (3) by 12. The quotient is the full-time equivalent enrollment of the pupil.

(c) The school days on which a district determines the full-time equivalent enrollment of a pupil under paragraphs (1) and (2) of subsec-

tion (b) shall be the school days on which the pupil has the highest number of hours of attendance at the virtual school. No more than six hours of attendance may be counted in a single school day. Attendance may be shown by a pupil's on-line activity or entries in the pupil's virtual school journal or log of activities.

(d) (1) Subject to the availability of appropriations for virtual school state aid and within the limits of any such appropriations, each school year a school district which offers a virtual school shall be entitled to virtual school state aid.

(2) The state board of education shall determine the amount of virtual school state aid a school district is entitled to receive as follows:

(A) Multiply the full-time equivalent enrollment of the virtual school by an amount equal to 105% of the amount of base state aid per pupil;

(B) multiply the full-time equivalent enrollment of nonproficient at-risk pupils enrolled in an approved at-risk program offered by the virtual school, if any, by an amount equal to 25% of the amount of base state aid per pupil;

(C) add any amount determined under K.S.A. 2012 Supp. 72-3716, and amendments thereto; and

(D) add the amounts obtained under subparagraphs (A) through (C). The sum is the amount of the virtual school state aid to which the school district is entitled.

(3) There is hereby established in every school district a fund which shall be called the virtual school fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. Moneys received as virtual school state aid shall be deposited in the general fund of the school district and transferred to the virtual school fund of the district. The expenses of a district directly attributable to virtual schools offered by a school district shall be paid from the virtual school fund. The cost of an advance placement course provided to a pupil described in subsection (d)(2)(D) shall be paid by the virtual school.

Any balance remaining in the virtual school fund at the end of the budget year shall be carried forward into the virtual school fund for succeeding budget years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto.

Any unencumbered balance of moneys remaining in the virtual school fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education.

In preparing the budget of such school district, the amounts credited to and the amount on hand in the virtual school fund, and the amount expended therefrom shall be included in the annual budget for the information of the residents of the school district. Interest earned on the investment of moneys in any such fund shall be credited to that fund.

(e) For the purposes of this section, a pupil enrolled in a virtual school who is not a resident of the state of Kansas shall not be counted in the full-time equivalent enrollment of the virtual school.

Sec. 6. K.S.A. 2012 Supp. 72-6414a is hereby amended to read as follows: 72-6414a. (a) There is hereby established in every district a fund which shall be called the at-risk education fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. The expenses of a district directly attributable to providing at-risk assistance or programs, including assistance or programs provided to non-proficient pupils, shall be paid from the at-risk education fund.

(b) Any balance remaining in the at-risk education fund at the end of the budget year shall be carried forward into the at-risk education fund for succeeding budget years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto. In preparing the budget of such school district, the amounts credited to and the amount on hand in the at-risk education fund, and the amount expended therefrom shall be included in the annual budget for the information of the residents of the school district. Interest earned on the investment of moneys in any such fund shall be credited to that fund.

Any unencumbered balance of moneys remaining in the at-risk education fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education.

(c) Each year the board of education of each school district shall prepare and submit to the state board a report on the at-risk program or assistance provided by the district. Such report shall include information specifying the number of at-risk pupils and nonproficient pupils who were served or provided assistance, the type of service provided, the research upon which the district relied in determining that a need for service or assistance existed, the results of providing such service or assistance and any other information required by the state board.

(d) In order to achieve uniform reporting of the number of at-risk pupils and nonproficient pupils provided service or assistance by school districts in at-risk programs, districts shall report the number of at-risk pupils and nonproficient pupils served or assisted in the manner required by the state board.

Sec. 7. K.S.A. 2012 Supp. 72-6414b is hereby amended to read as follows: 72-6414b. (a) There is hereby established in every district a fund which shall be called the preschool-aged at-risk education fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. The expenses of a district directly attributable to providing preschool-aged at-risk assistance or programs shall be paid from the preschool-aged at-risk education fund.

(b) A school district may expend amounts received from the preschool-aged at-risk weighting to pay the cost of providing at-risk, bilingual and vocational education programs and services.

(c) Any balance remaining in the preschool-aged at-risk education fund at the end of the budget year shall be carried forward into the preschool-aged at-risk education fund for succeeding budget years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto. In preparing the budget of such school district, the amounts credited to and the amount on hand in the preschool-aged at-risk education fund, and the amount expended therefrom shall be included in the annual budget for the information of the residents of the school district. Interest earned on the investment of moneys in any such fund shall be credited to that fund.

Any unencumbered balance of moneys remaining in the preschool-aged at-risk education fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education.

(d) Each year the board of education of each school district shall prepare and submit to the state board a report on the preschool-aged at-risk program or assistance provided by the district. Such report shall include information specifying the number of pupils who were served or provided assistance, the type of service provided, the research upon which the district relied in determining that a need for service or assistance existed, the results of providing such service or assistance and any other information required by the state board.

Sec. 8. K.S.A. 2012 Supp. 72-6420 is hereby amended to read as follows: 72-6420. (a) There is hereby established in every district a fund which shall be called the special education fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. Notwithstanding any other provision of law, all moneys received by the district from whatever source for special education shall be credited to the special education fund established by this section, except that: (1) Amounts of payments received by a district under K.S.A. 72-979, and amendments thereto, and amounts of grants, if any, received by a district under K.S.A. 72-983, and amendments thereto, shall be deposited in the general fund of the district and transferred to the special education fund; and (2) moneys received by a district pursuant to lawful agreements made under K.S.A. 72-968, and amendments thereto, shall be credited to the special fund established under the agreements.

(b) The expenses of a district directly attributable to special education shall be paid from the special education fund and from special funds established under K.S.A. 72-968, and amendments thereto.

(c) Obligations of a district pursuant to lawful agreements made un-

der K.S.A. 72-968, and amendments thereto, shall be paid from the special education fund established by this section.

(d) Except for moneys received under K.S.A. 72-978, and amendments thereto, from cooperative agreements entered into under K.S.A. 72-968, and amendments thereto, any unencumbered balance of moneys attributable to appropriations by the legislature for special education or related services remaining in the special education fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education in an amount not to exceed $\frac{1}{3}$ of the unencumbered balance of the school district's special education fund.

Sec. 9. K.S.A. 2012 Supp. 72-6421 is hereby amended to read as follows: 72-6421. (a) There is hereby established in every district a fund which shall be called the vocational education fund. All moneys received by a district for any course or program authorized and approved under the provisions of article 44 of chapter 72 of Kansas Statutes Annotated, and amendments thereto, except for courses and programs conducted in an area vocational school, shall be credited to the vocational education fund. All moneys received by the district from tuition, fees or charges or from any other source for vocational education courses or programs, except for courses and programs conducted in an area vocational school, shall be credited to the vocational education fund. The expenses of a district directly attributable to vocational education shall be paid from the vocational education fund.

(b) Obligations of a district pursuant to lawful agreements made under K.S.A. 72-4421, and amendments thereto, shall be paid from the vocational education fund established by this section. If any such agreement expresses an obligation of a district in terms of a mill levy, such obligation shall be construed to mean an amount equal to that which would be produced by the levy.

(c) Any balance remaining in the vocational education fund at the end of the budget year shall be carried forward into the vocational education fund for succeeding budget years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto. In preparing the budget of such school district, the amounts credited to and the amount on hand in the vocational education fund, and the amount expended therefrom shall be included in the annual budget for the information of the residents of the school district. Interest earned on the investment of moneys in any such fund shall be credited to that fund.

Any unencumbered balance of moneys attributable to appropriations by the legislature in the vocational education fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school

year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education.

Sec. 10. K.S.A. 2012 Supp. 72-6423 is hereby amended to read as follows: 72-6423. (a) There is hereby established in every district a fund which shall be called the driver training fund which fund shall consist of all moneys deposited therein or transferred thereto according to law. All moneys received by the district from distributions made from the state safety fund and the motorcycle safety fund and from tuition, fees or charges for driver training courses shall be credited to the driver training fund. The expenses of a district directly attributable to driver training shall be paid from the driver training fund.

(b) Any unencumbered balance of moneys remaining in the driver training fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education.

Sec. 11. K.S.A. 2012 Supp. 72-6426 is hereby amended to read as follows: 72-6426. (a) There is hereby established in every district a fund which shall be called the contingency reserve fund. Such fund shall consist of all moneys deposited therein or transferred thereto according to law. The fund shall be maintained for payment of expenses of a district attributable to financial contingencies as determined by the board.

~~(b) Except as otherwise provided in subsection (c), at no time in school year 2008-2009 or each school year thereafter shall the amount maintained in the contingency reserve fund exceed an amount equal to 10% of the general fund budget of the district for the school year.~~

~~(c) (1) If the amount in the contingency reserve fund of a district is in excess of the amount authorized under subsection (b), and if such excess amount is the result of a reduction in the general fund budget of the district for the school year because of a decrease in enrollment, the district may maintain the excess amount in the fund until depletion of such excess amount by expenditure from the fund for the purposes thereof.~~

~~(2) The limitation on the amount which may be maintained in the contingency reserve fund imposed under subsection (b) shall not apply to any district whose state financial aid is computed under the provisions of K.S.A. 72-6445a, and amendments thereto. Any such district may maintain the excess amount in the fund until depletion of such excess amount by expenditure from the fund for the purposes thereof.~~

~~(d)(b) Notwithstanding the provisions of subsection (c), Any unencumbered balance of moneys remaining in the contingency reserve fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the~~

school district for general operating expenses of the school district as approved by the board of education.

Sec. 12. K.S.A. 2012 Supp. 72-6460 is hereby amended to read as follows: 72-6460. (a) For school year ~~2012-2013~~ 2013-2014, and each school year thereafter, subject to any limitations as provided in this act, any school district may expend the unencumbered balance of the moneys held in the at-risk education fund, as provided in K.S.A. 76-6414a, and amendments thereto, bilingual education fund, as provided in K.S.A. 72-9509, and amendments thereto, contingency reserve fund, as provided in K.S.A. 72-6426, and amendments thereto, driver training fund, as provided in K.S.A. 72-6423, and amendments thereto, parent education program fund, as provided in K.S.A. 72-3607, and amendments thereto, pre-school-aged at-risk education fund, as provided in K.S.A. 72-6414b, and amendments thereto, professional development fund, as provided in K.S.A. 72-9609, and amendments thereto, summer program fund, as provided in K.S.A. 72-8237, and amendments thereto, textbook and student materials revolving fund, as provided in K.S.A. 72-8250, and amendments thereto, special education fund, as provided in K.S.A. 72-965 and 72-6420, and amendments thereto, virtual school fund, as provided in K.S.A. 72-3715, and amendments thereto, and vocational education fund, as provided in K.S.A. 72-6421, and amendments thereto, to pay for general operating expenses of the district out of the general fund as approved by the board of education of such district.

The board of education of a school district shall consider the use of such funds in the following order of priority:

- (1) At-risk education fund, bilingual education fund, contingency reserve fund, driver training fund, parent education program fund, pre-school-aged at-risk education fund, professional development fund, summer program fund, virtual school fund and vocational education fund;
- (2) textbook and student materials revolving fund; and
- (3) special education fund.

The board of education of a school district shall not be limited to the order of priority as listed in this subsection if the board so chooses. The board of education of a school district shall not be required to use the total amount of the unencumbered balance of moneys in a fund before using the unencumbered balance of moneys in another fund.

(b) The amount of money expended by a school district in school year ~~2012-2013~~ 2013-2014, and each school year thereafter, from the unencumbered balance of moneys in the funds under subsection (a) of this section shall not exceed, in the aggregate, an amount determined by the state board of education. Such amount shall be determined by the state board as follows:

- (1) Determine the adjusted enrollment of the district, excluding special education and related services weighting, for the current school year;

(2) multiply the adjusted enrollment determined under paragraph (1) by \$250. The product is the aggregate amount of moneys that may be expended by a school district in the current school year from the unencumbered balance of moneys in the funds under subsection (a) of this section.

(c) It is the public policy goal of the state of Kansas that at least 65% of the aggregate of all unencumbered balances authorized to be expended for general operating expenses pursuant to subsection (a) shall be expended in the classroom or for instruction, as provided in K.S.A. 2012 Supp. 72-64c01, and amendments thereto.

(d) *The superintendent appointed by the board of education of each school district under K.S.A. 72-8202b, and amendments thereto, shall report the unencumbered balance of moneys in each fund listed in subsection (a) to the board of education in July of each year at the meeting described in K.S.A. 72-8205, and amendments thereto, and to the state board of education on or before July 15 of such year.*

Sec. 13. K.S.A. 2012 Supp. 72-8237 is hereby amended to read as follows: 72-8237. (a) The board of education of any school district may: (1) Establish, operate and maintain a summer program for pupils; (2) enter into cooperative or interlocal agreements with one or more other boards of education for the establishment, operation and maintenance of a summer program for pupils; and (3) prescribe and collect fees for providing a summer program for pupils or provide such program without charge.

(b) Fees for providing a summer program for pupils shall be prescribed and collected only to recover the costs incurred as a result of and directly attributable to the establishment, operation and maintenance of the program.

(c) No school district may collect fees for providing a summer program for pupils required to attend such a program in accordance with the provisions of law, rules and regulations of the state board of education, policy of the board of education, or an individualized education plan developed for an exceptional child.

(d) There is hereby established in every district which establishes, operates and maintains a summer program a fund which shall be called the summer program fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. All moneys received by a district from fees collected under this section or from any other source for summer programs shall be credited to the summer program fund. The expenses of a district directly attributable to summer programs shall be paid from the summer program fund.

Any unencumbered balance of moneys remaining in the summer program fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date

by the school district for general operating expenses of the school district as approved by the board of education.

(e) As used in this section, the term “summer program” means a program which is established by the board of education of a school district and operated during the summer months for the purpose of giving remedial instruction to pupils or for the purpose of conducting special projects and activities designed to enrich and enhance the educational experience of pupils, or for both such purposes.

Sec. 14. K.S.A. 2012 Supp. 72-8250 is hereby amended to read as follows: 72-8250. (a) There is hereby established in every school district a textbook and student materials revolving fund. Moneys in such fund shall be used to:

(1) Purchase any items designated in K.S.A. 72-5389, and amendments thereto;

(2) pay the cost of materials or other items used in curricular, extracurricular or other school-related activities; and

(3) purchase textbooks as authorized by K.S.A. 72-4141, and amendments thereto.

(b) Any balance remaining in the textbook and student materials revolving fund at the end of the budget year shall be carried forward into that fund for succeeding budget years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto. In preparing the budget of such school district, the amounts credited to and the amount on hand in the textbook and student materials revolving fund, and the amount expended therefrom shall be included in the annual budget for the information of the residents of the school district. Interest earned on the investment of moneys in any such fund shall be credited to that fund.

Any unencumbered balance of moneys remaining in the textbook and student materials revolving fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education in an amount not to exceed $\frac{1}{3}$ of the unencumbered balance of the school district’s textbook and student materials revolving fund.

Sec. 15. K.S.A. 2012 Supp. 72-8256 is hereby amended to read as follows: 72-8256. (a) As used in this section:

(1) “Bullying” means: (A) Any intentional gesture or any intentional written, verbal, electronic or physical act or threat *either by any student, staff member or parent towards a student or by any student, staff member or parent towards a staff member* that is sufficiently severe, persistent or pervasive that ~~it~~ *such gesture, act or threat* creates an intimidating, threatening or abusive educational environment ~~for a student or staff member~~

that a reasonable person, under the circumstances, knows or should know will have the effect of:

- (i) Harming a student or staff member, whether physically or mentally;
 - (ii) damaging a student's or staff member's property;
 - (iii) placing a student or staff member in reasonable fear of harm to the student or staff member; or
 - (iv) placing a student or staff member in reasonable fear of damage to the student's or staff member's property;
- (B) cyberbullying; or
- (C) any other form of intimidation or harassment prohibited by the board of education of the school district in policies concerning bullying adopted pursuant to this section or subsection (e) of K.S.A. 72-8205, and amendments thereto.

(2) "Cyberbullying" means bullying by use of any electronic communication device through means including, but not limited to, e-mail, instant messaging, text messages, blogs, mobile phones, pagers, online games and websites.

(3) "Parent" includes a guardian, custodian or other person with authority to act on behalf of the child.

(4) "School district" or "district" means any unified school district organized and operating under the laws of this state.

~~(4)~~(5) "School vehicle" means any school bus, school van, other school vehicle and private vehicle used to transport students or staff members to and from school or any school-sponsored activity or event.

(6) "Staff member" means any person employed by a school district.

(b) The board of education of each school district shall adopt a policy to prohibit bullying *either by any student, staff member or parent towards a student or by a student, staff member or parent towards a staff member* on or while utilizing school property, in a school vehicle or at a school-sponsored activity or event.

(c) The board of education of each school district shall adopt and implement a plan to address bullying *either by any student, staff member or parent towards a student or by a student, staff member or parent towards a staff member* on school property, in a school vehicle or at a school-sponsored activity or event. Such plan shall include provisions for the training and education for staff members and students.

(d) The board of education of each school district may adopt additional policies relating to bullying pursuant to subsection (e) of K.S.A. 72-8205, and amendments thereto.

(e) *Nothing in this section shall be construed to limit or supersede or in any manner affect or diminish the requirements of compliance by a staff member with the provisions of K.S.A. 2012 Supp. 38-2223 or 38-2226, and amendments thereto.*

Sec. 16. K.S.A. 2012 Supp. 72-9509 is hereby amended to read as follows: 72-9509. (a) There is hereby established in every school district a fund which shall be called the bilingual education fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. The expenses of a district directly attributable to such bilingual education programs shall be paid from the bilingual education fund.

(b) Any balance remaining in the bilingual education fund at the end of the budget year shall be carried forward into the bilingual education fund for succeeding budget years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto. In preparing the budget of such school district, the amounts credited to and the amount on hand in the bilingual education fund, and the amount expended therefrom shall be included in the annual budget for the information of the residents of the school district. Interest earned on the investment of moneys in any such fund shall be credited to that fund.

Any unencumbered balance of moneys remaining in the bilingual education fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education.

(c) Each year the board of education of each school district shall prepare and submit to the state board a report on the bilingual education program and assistance provided by the district. Such report shall include information specifying the number of pupils who were served or provided assistance, the type of service provided, the research upon which the district relied in determining that a need for service or assistance existed, the results of providing such service or assistance and any other information required by the state board.

Sec. 17. K.S.A. 2012 Supp. 72-9609 is hereby amended to read as follows: 72-9609. There is hereby established in every school district a fund which shall be called the professional development fund, which fund shall consist of all moneys deposited therein or transferred thereto according to law. All moneys received by the school district from whatever source for professional development programs established under this act shall be credited to the fund established by this section. The expenses of a school district directly attributable to professional development programs shall be paid from the professional development fund.

Any unencumbered balance of moneys remaining in the professional development fund of a school district on June 30, ~~2012~~ *of the current school year*, may be expended in the school year that immediately succeeds such date by the school district for general operating expenses of the school district as approved by the board of education.

Sec. 18. K.S.A. 2012 Supp. 72-965, 72-3607, 72-3715, 72-6414a, 72-

6414b, 72-6420, 72-6421, 72-6423, 72-6426, 72-6460, 72-8237, 72-8250, 72-8256, 72-9509 and 72-9609 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 22, 2013.

CHAPTER 122

HOUSE BILL No. 2218

AN ACT concerning prohibited activities while under the influence of alcohol or drugs; relating to driving under the influence of alcohol or drugs; boating under the influence of alcohol or drugs; tests; implied consent; administrative hearings; aggravated battery; amending K.S.A. 8-1567a, 32-1130 and 32-1131 and K.S.A. 2012 Supp. 8-2,144, 8-1001, 8-1013, 8-1020, 8-1025, 8-1567, 21-5413 and 21-6804 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 8-2,144 is hereby amended to read as follows: 8-2,144. (a) Driving a commercial motor vehicle under the influence is operating or attempting to operate 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 three 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) (1) Driving a commercial motor vehicle under the influence is:

(A) On a first conviction a class B, nonperson misdemeanor. The person convicted shall be 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 \$750 nor more than \$1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation, suspension or reduction of sentence or parole or other release;

(B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more

than \$1,750. The person convicted shall 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 person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours; and

(C) on a third or subsequent conviction a nonperson felony. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750 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 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 person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence

provided for in the house arrest agreement shall not be counted as part of the 2,160 hours.

(2) In addition, for any conviction pursuant to subsection (b)(1)(C), at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A. 2012 Supp. 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. 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 supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

(3) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of a violation of this section, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, 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 shall be served consecutively to any other minimum mandatory penalty im-

posed for a violation of this section, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section. 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.

(d) 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.

(e) 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.

(f) 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.

(g) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the: (1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(h) 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 on 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: (1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(i) 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: (1) Disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2,142, and amendments thereto; and (2) suspend,

restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(j) (1) 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 section as unlawful or prohibited in such city or county and prescribing penalties for violation thereof.

(2) The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this section 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.

(3) 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.

(k) (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: (A) Division of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(2) 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. The county or district attorney shall accept such referral and pursue a disposition of such violation, and shall not refer any such violation back to the city attorney.

(l) 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 or resolution.

(m) 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 may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

(n) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a

complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) This section; (B) refusing to submit to a test to determine the presence of alcohol or drugs, K.S.A. 2012 Supp. 8-1025, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments thereto; (E) *aggravated battery as described in subsection (b)(3) of K.S.A. 2012 Supp. 21-5413, and amendments thereto*; and ~~(E)~~ (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (n)(2); (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (n)(1) or (n)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (n)(1) or (n)(2) if committed off a military reservation in this state;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) multiple convictions of any crime described in subsection (n)(1) or (n)(2) arising from the same arrest shall only be counted as one conviction.

(o) 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; and

(3) "drug" includes toxic vapors as such term is defined in K.S.A. 2012 Supp. 21-5712, and amendments thereto.

(p) On and after July 1, 2011, the amount of \$250 from each fine imposed pursuant to 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 each such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2012 Supp. 75-52,113, and amendments thereto.

Sec. 2. K.S.A. 2012 Supp. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this ~~act~~ *article*, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a): (1) If, *at the time of the request*, the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or was under the age of 21 years *and was operating or attempting to operate a vehicle* while having alcohol or other drugs in such person's system; and one of the following conditions exists: (A) The person has been arrested or otherwise taken into custody for any ~~offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance~~ *violation of any state statute, county resolution or city ordinance*; or (B) the person has been involved in a vehicle accident or collision resulting in property damage or personal injury other than serious injury; or (2) if the person was operating or attempting to operate a vehicle and such vehicle has been involved in an accident or collision resulting in serious injury or death of any person and the operator could be cited for any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense violation shall constitute probable cause for purposes of paragraph (2). The test or tests under paragraph (2) shall not be required if a law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective

information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol; or (4) a phlebotomist.

(d) A law enforcement officer may direct a medical professional described in this section to draw a sample of blood from a person:

(1) If the person has given consent and meets the requirements of subsection (b);

(2) if medically unable to consent, if the person meets the requirements of paragraph (2) of subsection (b); or

(3) if the person refuses to submit to and complete a test, if the person meets the requirements of paragraph (2) of subsection (b).

(e) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

(f) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(g) If a person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or at-

tending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

(h) A law enforcement officer may request a urine sample upon meeting the requirements of paragraph (1) of subsection (b) and shall request a urine sample upon meeting the requirements of paragraph (2) of subsection (b).

(i) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by: (1) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) a law enforcement officer of the same sex as the person being tested. The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in subsections (d) and (e) shall apply to the collection of a urine sample.

(j) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(k) Before a test or tests are administered under this section, the person shall be given oral and written notice that:

(1) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both;

(2) the opportunity to consent to or refuse a test is not a constitutional right;

(3) there is no constitutional right to consult with an attorney regarding whether to submit to testing;

(4) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person may be charged with a separate crime of refusing to submit to a test to determine the presence of alcohol or drugs, which carries criminal penalties that are greater than or equal to the criminal penalties for the crime of driving under the influence, if such person has:

(A) Any prior test refusal as defined in K.S.A. 8-1013, and amendments thereto, which occurred: (i) On or after July 1, 2001; and (ii) when such person was 18 years of age or older; or

(B) any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144,

and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, which occurred: (i) On or after July 1, 2001; and (ii) when such person was 18 years of age or older;

(5) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for one year for the first or subsequent occurrence;

(6) if the person submits to and completes the test or tests and the test results show:

(A) An alcohol concentration of .08 or greater, the person's driving privileges will be suspended for 30 days for the first occurrence and one year for the second or subsequent occurrence; or

(B) an alcohol concentration of .15 or greater, the person's driving privileges will be suspended for one year for the first or subsequent occurrence;

(7) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both;

(8) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and

(9) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities willing to conduct such testing.

(l) If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145, and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has reasonable grounds to believe that the person has been ~~driving operating~~ or attempting to ~~drive operate~~ a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

(m) After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or

tests shall be made by the officer. If the test results show a blood or breath alcohol concentration of .08 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

(n) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both. The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged violation of K.S.A. 2012 Supp. 8-1025, and amendments thereto.

(o) If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

(p) An officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to a person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto.

(q) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(r) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(s) No test results shall be suppressed because of technical irregularities in the consent or notice required pursuant to this act.

(t) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(u) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(v) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

(w) As used in this section, “serious injury” means a physical injury to a person, as determined by law enforcement, which has the effect of, prior to the request for testing:

- (1) Disabling a person from the physical capacity to remove themselves from the scene;
- (2) renders a person unconscious;
- (3) the immediate loss of or absence of the normal use of at least one limb;
- (4) an injury determined by a physician to require surgery; or
- (5) otherwise indicates the person may die or be permanently disabled by the injury.

Sec. 3. K.S.A. 2012 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. 8-2,144 or 8-1567 or K.S.A. 2012 Supp. 8-1025, and amendments thereto, *or conviction of a violation of aggravated battery as described in subsection (b)(3) of K.S.A. 2012 Supp. 21-5413, 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. 8-2,144 or 8-1567 or K.S.A. 2012 Supp. 8-1025, 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 [date] of this act.

(f) "Other competent evidence" includes: (1) Alcohol concentration tests obtained from samples taken three 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 of the person's blood, breath, urine or other bodily substance, 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. 2012 Supp. 21-5111, 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 or K.S.A. 2012 Supp. 8-1025, and amendments thereto, if committed off a military reservation in this state.

Sec. 4. K.S.A. 2012 Supp. 8-1020 is hereby amended to read as follows: 8-1020. (a) Any licensee served with an officer's certification and notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto, may request an administrative hearing. Such request may be made either by:

(1) Mailing a written request which is postmarked 14 days after service of notice; or

(2) transmitting a written request by electronic facsimile which is received by the division within 14 days after service of notice.

(b) If the licensee makes a timely request for an administrative hearing and makes a timely payment of the required hearing fee, any tem-

porary license issued pursuant to K.S.A. 8-1002, and amendments thereto, shall remain in effect until the 30th day after the effective date of the decision made by the division.

(c) If the licensee fails to make a timely request for an administrative hearing together with the required hearing fee, the licensee's driving privileges shall be suspended or suspended and then restricted in accordance with the notice of suspension served pursuant to K.S.A. 8-1002, and amendments thereto.

(d) (1) Upon receipt of a timely request for a hearing together with the required hearing fee, the division shall forthwith set the matter for hearing before a representative of the director and provide notice of the extension of temporary driving privileges. The hearing shall be held by telephone conference call unless the hearing request includes a request that the hearing be held in person before a representative of the director. The officer's certification and notice of suspension shall inform the licensee of the availability of a hearing before a representative of the director. Except for a hearing conducted by telephone conference call, the hearing shall be conducted in the county where the arrest occurred or a county adjacent thereto.

(2) The division shall charge a fee of \$50 for a hearing, to be paid within the time period for making a timely request for a hearing, whether held by telephone or in person, to be applied by the division for administrative costs to conduct the hearing. The division shall remit all hearing 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. The hearing fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such hearing. 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.

(e) Except as provided in subsection (f), prehearing discovery shall be limited to the following documents, which shall be provided to the licensee or the licensee's attorney no later than seven days prior to the date of hearing:

- (1) The officer's certification and notice of suspension;
- (2) in the case of a breath or blood test failure, copies of documents indicating the result of any evidentiary breath or blood test administered at the request of a law enforcement officer;
- (3) in the case of a breath test failure, a copy of the affidavit showing certification of the officer and the instrument; and
- (4) in the case of a breath test failure, a copy of the Kansas department of health and environment testing protocol checklist.

(f) At or prior to the time the notice of hearing is sent, the division shall issue an order allowing the licensee or the licensee's attorney to

review any video or audio tape record made of the events upon which the administrative action is based. Such review shall take place at a reasonable time designated by the law enforcement agency and shall be made at the location where the video or audio tape is kept. The licensee may obtain a copy of any such video or audio tape upon request and upon payment of a reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

(g) Witnesses at the hearing shall be limited to the licensee, to any law enforcement officer who signed the certification form and to one other witness who was present at the time of the issuance of the certification and called by the licensee. The presence of the certifying officer or officers shall not be required, unless requested by the licensee at the time of making the request for the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer's certification.

(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system *or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system;*

(B) the person was in custody or arrested ~~for an alcohol or drug related offense~~ or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and

(D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed a breath test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system *or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system;*

(B) the person was in custody or arrested ~~for an alcohol or drug related offense~~ or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was certified by the Kansas department of health and environment;

(E) the person who operated the testing equipment was certified by the Kansas department of health and environment;

(F) the testing procedures used substantially complied with the procedures set out by the Kansas department of health and environment;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's breath; and

(H) the person was operating or attempting to operate a vehicle.

(3) If the officer certifies that the person failed a blood test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system *or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system*;

(B) the person was in custody or arrested ~~for an alcohol or drug related offense~~ or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was reliable;

(E) the person who operated the testing equipment was qualified;

(F) the testing procedures used were reliable;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood; and

(H) the person was operating or attempting to operate a vehicle.

(i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

(j) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be

introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(k) At the hearing, the licensee has the burden of proof by a preponderance of the evidence to show that the facts set out in the officer's certification are false or insufficient and that the order suspending or suspending and restricting the licensee's driving privileges should be dismissed.

(l) Evidence at the hearing shall be limited to the following:

- (1) The documents set out in subsection (e);
- (2) the testimony of the licensee;
- (3) the testimony of any certifying officer;
- (4) the testimony of any witness present at the time of the issuance of the certification and called by the licensee;
- (5) any affidavits submitted from other witnesses;
- (6) any documents submitted by the licensee to show the existence of a medical condition, as described in K.S.A. 8-1001, and amendments thereto; and
- (7) any video or audio tape record of the events upon which the administrative action is based.

(m) After the hearing, the representative of the director shall enter an order affirming the order of suspension or suspension and restriction of driving privileges or for good cause appearing therefor, dismiss the administrative action. If the representative of the director enters an order affirming the order of suspension or suspension and restriction of driving privileges, the suspension or suspension and restriction shall begin on the 30th day after the effective date of the order of suspension or suspension and restriction. If the person whose privileges are suspended is a non-resident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(n) The representative of the director may issue an order at the close of the hearing or may take the matter under advisement and issue a hearing order at a later date. If the order is made at the close of the hearing, the licensee or the licensee's attorney shall be served with a copy of the order by the representative of the director. If the matter is taken under advisement or if the hearing was by telephone conference call, the licensee and any attorney who appeared at the administrative hearing upon behalf of the licensee each shall be served with a copy of the hearing order by mail. Any law enforcement officer who appeared at the hearing also may be mailed a copy of the hearing order. The effective date of the

hearing order shall be the date upon which the hearing order is served, whether served in person or by mail.

(o) The licensee may file a petition for review of the hearing order pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition for review, the licensee shall serve the secretary of revenue with a copy of the petition and summons. Upon receipt of a copy of the petition for review by the secretary, the temporary license issued pursuant to subsection (b) shall be extended until the decision on the petition for review is final.

(p) Such review shall be in accordance with this section and the Kansas judicial review act. To the extent that this section and any other provision of law conflicts, this section shall prevail. The petition for review shall be filed within 14 days after the effective date of the order. Venue of the action for review is the county where the person was arrested or the accident occurred, or, if the hearing was not conducted by telephone conference call, the county where the administrative proceeding was held. The action for review shall be by trial de novo to the court and the evidentiary restrictions of subsection (l) shall not apply to the trial de novo. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension or suspension and restriction under the provisions of this act. If the court finds that the grounds for action by the agency have been met, the court shall affirm the agency action.

(q) Upon review, the licensee shall have the burden to show that the decision of the agency should be set aside.

(r) Notwithstanding the requirement to issue a temporary license in K.S.A. 8-1002, and amendments thereto, and the requirements to extend the temporary license in this section, any such temporary driving privileges are subject to restriction, suspension, revocation or cancellation as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

(s) Upon motion by a party, or on the court's own motion, the court may enter an order restricting the driving privileges allowed by the temporary license provided for in K.S.A. 8-1002, and amendments thereto, and in this section. The temporary license also shall be subject to restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-1014, and amendments thereto, or for other cause.

(t) The facts found by the hearing officer or by the district court upon a petition for review shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension or suspension and restriction to be imposed under this section.

(u) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of tem-

porary driving privileges pursuant to this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing, except that this provision shall not apply to any licensee where such application would result in a manifest injustice.

(v) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) and to the time for filing a petition for review pursuant to subsection (o) and K.S.A. 8-259, and amendments thereto.

Sec. 5. K.S.A. 2012 Supp. 8-1025 is hereby amended to read as follows: 8-1025. (a) Refusing to submit to a test to determine the presence of alcohol or drugs is refusing to submit to or complete a test or tests deemed consented to under subsection (a) of K.S.A. 8-1001, and amendments thereto, if such person has:

(1) Any prior test refusal as defined in K.S.A. 8-1013, and amendments thereto, which occurred: (A) On or after July 1, 2001; and (B) when such person was 18 years of age or older; or

(2) any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, which occurred: (A) On or after July 1, 2001; and (B) when such person was 18 years of age or older.

(b) (1) Refusing to submit to a test to determine the presence of alcohol or drugs is:

(A) On a first conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted shall 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 person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment

mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours;

(B) on a second conviction a class A, nonperson misdemeanor, except as provided in subsection (b)(1)(C). The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750 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 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 person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours;

(C) on a second conviction a nonperson felony if the person has a prior conviction which occurred within the preceding 10 years, not including any period of incarceration. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750 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 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 person convicted, if placed into a work

release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours; and

(D) on a third or subsequent conviction a nonperson felony. The person convicted shall be 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 subsection 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. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 72 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 72 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours.

(2) The court may order that the term of imprisonment imposed pursuant to subsection (b)(1)(C) or (b)(1)(D) 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. 2012 Supp. 21-6804, 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.

(3) In addition, for any conviction pursuant to subsection (b)(1)(B), (b)(1)(C) or (b)(1)(D), at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A. 2012 Supp. 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. 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 supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail

for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

(4) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) 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.

(d) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessments 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.

(e) 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.

(f) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the:

(1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and

(2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(g) 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 on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section

tion, 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.

(h) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring: (A) On or after July 1, 2001; and (B) when such person was 18 years of age or older. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections which occurred during a person's lifetime shall be taken into account, but only convictions occurring when such person was 18 years of age or older: (A) This section; (B) driving a commercial motor vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments thereto; (E) *aggravated battery as described in subsection (b)(3) of K.S.A. 2012 Supp. 21-5413, and amendments thereto*; and ~~(E)~~ (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (h)(2); (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (h)(1) or (h)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (h)(1) or (h)(2) if committed off a military reservation in this state;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense;

(5) multiple convictions of any crime described in subsection (h)(1)

or (h)(2) arising from the same arrest shall only be counted as one conviction;

(6) the prior conviction that is an element of the crime of refusing to submit to a test to determine the presence of alcohol or drugs shall not be used for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section and shall not be considered in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense; and

(7) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or an ordinance which prohibits the acts of this section, only once during the person's lifetime.

(i) 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.

(j) (1) 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.

(2) The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this section 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.

(3) 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.

(4) 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.

(k) (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:

(A) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and

(B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(2) 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.

(l) 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.

(m) As used in this section, “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.

(n) On and after July 1, 2012, the amount of \$250 from each fine imposed pursuant to 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 each such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2012 Supp. 75-52,113, and amendments thereto.

Sec. 6. K.S.A. 2012 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) Driving under the influence is operating or attempting 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 three 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) (1) Driving under the influence is:

(A) On a first conviction a class B, nonperson misdemeanor. The

person convicted shall be 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 \$750 nor more than \$1,000. The person convicted shall 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. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the remainder of the sentence only after such person has served 48 consecutive hours' imprisonment;

(B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted shall 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 person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours;

(C) on a third conviction a class A, nonperson misdemeanor, except as provided in subsection (b)(1)(D). The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750 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 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 person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours;

(D) on a third conviction a nonperson felony if the person has a prior conviction which occurred within the preceding 10 years, not including any period of incarceration. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750 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 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 person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours; and

(E) on a fourth or subsequent conviction a nonperson felony. The person convicted shall be 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 subsection 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. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 72 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 72 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours.

(2) The court may order that the term of imprisonment imposed pursuant to subsection (b)(1)(D) or (b)(1)(E) 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. 2012 Supp. 21-6804, 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.

(3) In addition, for any conviction pursuant to subsection (b)(1)(C), (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or

journal entry as required by K.S.A. 22-3426 or K.S.A. 2012 Supp. 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. 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 supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

(4) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the:

(1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and

(2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(h) 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 on 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.

(i) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) Convictions for a violation of this section, or a violation of 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 on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or

diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) Refusing to submit to a test to determine the presence of alcohol or drugs, K.S.A. 2012 Supp. 8-1025, and amendments thereto; (B) driving a commercial motor vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments thereto; (E) *aggravated battery as described in subsection (b)(3) of K.S.A. 2012 Supp. 21-5413, and amendments thereto*; and ~~(F)~~ (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (i)(2); (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (i)(1) or (i)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (i)(1) or (i)(2) if committed off a military reservation in this state;

(4) multiple convictions of any crime described in subsection (i)(1) or (i)(2) arising from the same arrest shall only be counted as one conviction;

(5) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(6) 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.

(j) 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.

(k) (1) 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.

(2) The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this section 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.

(3) 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.

(4) 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.

(l) (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:

(A) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and

(B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(2) 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.

(m) 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.

(n) 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.

(o) As used in 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; and

(3) “drug” includes toxic vapors as such term is defined in K.S.A. 2012 Supp. 21-5712, and amendments thereto.

(p) (1) 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.

(2) On and after July 1, 2011, the amount of \$250 from each fine imposed pursuant to 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 each such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2012 Supp. 75-52,113, and amendments thereto.

Sec. 7. K.S.A. 8-1567a is hereby amended to read as follows: 8-1567a. (a) It shall be unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater.

(b) Whenever a law enforcement officer determines that a breath or blood alcohol test is to be required of a person less than 21 years of age pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and amendments thereto, in addition to any other notices required by law, the law enforcement officer shall provide written and oral notice that: (1) It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater; and (2) if the person is less than 21 years of age at the time of the test request and submits to and completes the test or tests and the test results show an alcohol concentration of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges will be suspended for 30 days and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.

(c) Any suspension and restriction of driving privileges pursuant to this section shall be in addition to any disqualification from driving a

commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

(d) Whenever a breath or blood alcohol test is requested pursuant to K.S.A. 8-1001, and amendments thereto, from a person less than 21 years of age, and results in a test result of .02 or greater, but less than .08, a law enforcement officer's certification under this section shall be prepared. The certification required by this section shall be signed by one or more officers to certify that:

(1) (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system *or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system*; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto, and the oral and written notice required by this section; (D) that the person was less than 21 years of age at the time of the test request; and (E) the result of the test showed that the person had an alcohol concentration of .02 or greater in such person's blood or breath.

(2) With regard to a breath test, in addition to those matters required to be certified under subsection (d)(1), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.

(e) If a hearing is requested as a result of a law enforcement officer's certification under this section, the scope of the hearing shall be limited to whether: (1) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system *or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system*; (2) the person ~~had been placed under arrest, was in custody or arrested for an alcohol or drug related offense~~ or was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death; (3) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments

thereto, and the oral and written notice required by this section; (4) the testing equipment used was reliable; (5) the person who operated the testing equipment was qualified; (6) the testing procedures used were reliable; (7) the test result determined that the person had an alcohol concentration of .02 or greater in such person's blood or breath; (8) the person was operating a vehicle; and (9) the person was less than 21 years of age at the time a test was requested.

(f) If a person less than 21 years of age submits to a breath or blood alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and amendments thereto, and produces a test result of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges shall be suspended for 30 days and then restricted as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days, and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.

(g) Except where there is a conflict between this section and K.S.A. 8-1001 and 8-1002, and amendments thereto, the provisions of K.S.A. 8-1001 and 8-1002, and amendments thereto, shall be applicable to proceedings under this section.

(h) Any determination under this section that a person less than 21 years of age had a test result of .02 or greater, but less than .08, and any resulting administrative action upon the person's driving privileges, upon the first occurrence of such test result and administrative action, 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)(a) of K.S.A. 40-277, and amendments thereto.

Sec. 8. K.S.A. 2012 Supp. 21-5413 is hereby amended to read as follows: 21-5413. (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; or

(3) (A) *committing an act described in K.S.A. 8-1567, and amendments thereto, when great bodily harm to another person or disfigurement of another person results from such act; or*

(B) *committing an act described in K.S.A. 8-1567, and amendments thereto, when bodily harm to another person results from such act under circumstances whereby great bodily harm, disfigurement or death can result from such act.*

(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 officer or employee or a juvenile detention facility 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 officer, 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) 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) or (b)(3)(A) is a severity level 5, person felony; and

(D) subsection (b)(2)(B) or (b)(3)(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. 2012 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. 2012 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. 9. K.S.A. 2012 Supp. 21-6804 is hereby amended to read as follows: 21-6804. (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	267 233 240	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 83	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 63	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	6 5 4

LEGEND

Presumptive Probation
Presumptive Fine
Presumptive Imprisonment

(b) Sentences expressed in the sentencing guidelines grid for non-drug 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 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 K.S.A. 2012 Supp. 21-5412, 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. 2012 Supp. 8-1025*, *K.S.A. 8-2,144*, *K.S.A. 8-1567*, subsection (b)(3) of *K.S.A. 2012 Supp. 21-5414*, subsections (b)(3) and (b)(4) of *K.S.A. 2012 Supp. 21-5823*, *K.S.A. 2012 Supp. 21-6412* and *K.S.A. 2012 Supp. 21-6416*, 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 *K.S.A. 2012 Supp. 21-6807*, 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 *K.S.A. 2012 Supp. 21-6807*, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in *K.S.A. 2012 Supp. 21-5823*, 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. 2012 Supp. 8-1025*, *K.S.A. 8-2,144*, *K.S.A. 8-1567*, subsection (b)(3) of *K.S.A. 2012 Supp. 21-5414*, subsections (b)(3) and (b)(4) of *K.S.A. 2012 Supp. 21-5823*, *K.S.A. 2012 Supp. 21-6412* and *K.S.A. 2012 Supp. 21-6416*, 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. 2012 Supp. 8-1025* or *K.S.A. 8-2,144* or *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. Prior to imposing any sentence pursuant to this subsection, the court may consider assigning the defendant to a house arrest program pursuant to *K.S.A. 2012 Supp. 21-6609*, and amendments thereto.

(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 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 K.S.A. 2012 Supp. 21-5503, and amendments thereto; and

(ii) at the time of the conviction under 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 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 article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009; 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 article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, 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 K.S.A. 2012 Supp. 21-5807, and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2012 Supp. 21-5301 and 21-5302, 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 K.S.A. 2012 Supp. 21-5807, or subsection (b) of K.S.A. 2012 Supp. 21-5807, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or subsection (a)(2) of K.S.A. 2012 Supp. 21-5913, 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 K.S.A. 2012 Supp. 21-5803, 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 K.S.A. 2012 Supp. 21-5803, 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 K.S.A. 2012 Supp. 21-5801, and amendments thereto, or burglary as defined in subsection (a) of K.S.A. 2012 Supp. 21-5807, 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 K.S.A. 2012 Supp. 21-5801, and amendments thereto, or burglary as defined in subsection (a) of K.S.A. 2012 Supp. 21-5807, and amendments thereto; or the sentence for a felony violation of theft of property as defined in K.S.A. 2012 Supp. 21-5801, 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 K.S.A. 2012 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2012 Supp. 21-5807, and amendments thereto; or the sentence for a felony violation of burglary as defined in subsection (a) of K.S.A. 2012 Supp. 21-5807, 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 K.S.A. 2012 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2012 Supp. 21-5807, 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 K.S.A. 2012 Supp. 21-6824, 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 K.S.A. 2012 Supp. 21-5801, 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 K.S.A. 2012 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2012 Supp. 21-5807, and amendments thereto; or the sentence for a violation of burglary as defined in subsection (a) of K.S.A. 2012 Supp. 21-5807, 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 K.S.A. 2012 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2012 Supp. 21-5807, 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 K.S.A. 2012 Supp. 21-5413, 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 K.S.A. 2012 Supp. 21-5512, 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 K.S.A. 2012 Supp. 21-6107, and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2012 Supp. 21-5301 and 21-5302, 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 K.S.A. 2012 Supp.

21-6107, 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. 10. On and after January 1, 2014, K.S.A. 32-1130 is hereby amended to read as follows: 32-1130. As used in K.S.A. 32-1131 through 32-1136, *and amendments thereto*:

(a) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(b) "Other competent evidence" includes: (1) Alcohol concentration tests obtained from samples taken ~~two~~*three* hours or more after the operation or attempted operation of a vessel; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

(c) "Samples" includes breath supplied directly for testing, which breath is not preserved.

(d) "Vessel" and "operate" have the meanings provided by K.S.A. 32-1102, and amendments thereto.

Sec. 11. On and after January 1, 2014, K.S.A. 32-1131 is hereby amended to read as follows: 32-1131. (a) No person shall operate or attempt to operate any vessel 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 (b) of K.S.A. 32-1130, and amendments thereto, is .08 or more;*

~~(1)~~(2) the alcohol concentration in the person's blood or breath, at the time or within ~~two~~*three* hours after the person operated or attempted to operate the vessel, is .08 or more;

~~(2)~~(3) the alcohol concentration in the person's blood or breath, at the time or within ~~two~~*three* hours after the person operated or attempted to operate the vessel is .02 or more and the person is less than 21 years of age;

~~(3)~~(4) under the influence of alcohol *to a degree that renders the person incapable of safely operating a vessel*;

(4)(5) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating a vessel; or

~~(5)~~(6) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating a vessel.

~~(b) No person shall operate or attempt to operate any vessel within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.~~

~~(c)~~(b) 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)~~(c) No person shall operate or attempt to operate any vessel within this state for three months after the date of refusal of submitting to a test if such person refuses to submit to a test pursuant to K.S.A. 32-1132, and amendments thereto.

~~(e)~~(d) Except as provided by subsection ~~(f)~~(e), violation of this section is a misdemeanor punishable:

(1) On the first conviction, by imprisonment of not more than one year or a fine of not less than \$100 nor more than \$500, or both; and

(2) on the second or a subsequent conviction, by imprisonment for not less than 90 days nor more than one year and, in the court's discretion, a fine of not less than \$100 nor more than \$500.

~~(f)~~(e) Subsection ~~(e)~~(d) shall not apply to or affect a person less than 21 years of age who submits to a breath or blood alcohol test requested pursuant to K.S.A. 32-1132, and amendments thereto, and produces a test result of an alcohol concentration of .02 or greater but less than .08. Such person's boating privileges upon the first occurrence shall be suspended for 30 days and upon a second or subsequent occurrence shall be suspended for 90 days.

~~(g)~~(f) In addition to any other penalties prescribed by law or rule and regulation, any person convicted of a violation of this section shall be required to satisfactorily complete a boater safety education course of instruction approved by the secretary before such person subsequently operates or attempts to operate any vessel.

Sec. 12. K.S.A. 8-1567a and K.S.A. 2012 Supp. 8-2,144, 8-1001, 8-1013, 8-1020, 8-1025, 8-1567, 21-5413 and 21-6804 are hereby repealed.

Sec. 13. On and after January 1, 2014, K.S.A. 32-1130 and 32-1131 are hereby repealed.

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

Approved May 22, 2013.

CHAPTER 123

HOUSE BILL No. 2081

AN ACT concerning civil procedure and civil actions; relating to temporary restraining orders; docket fees and costs; poverty affidavits; redemption of real property; asset seizure and forfeiture; unconscionable act or practice under the Kansas consumer protection act; amending K.S.A. 60-903 and K.S.A. 2012 Supp. 60-2001, 60-2414, 60-4104 and 60-4105 and repealing the existing sections.

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

Section 1. K.S.A. 60-903 is hereby amended to read as follows: 60-903. ~~(a) No notice or bond required. A restraining order may issue without~~

~~notice or bond, except as provided in subsection (b) of K.S.A. 60-904, and amendments thereto, but if it appears to the judge that a restraining order may result in damage to the party restrained, a bond to secure payment of any damages sustained may be required. An application for a restraining order shall also be considered as an application for a temporary injunction and either party may give notice of hearing thereon. The order shall remain in force until the hearing on the application for a temporary injunction.~~

(a) Temporary restraining order; issuing without notice. Except as provided in subsection (b) of K.S.A. 60-904, and amendments thereto, the court may issue a temporary restraining order without notice or bond to the adverse party or its attorney only if:

(1) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition;

(2) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required; and

(3) notice of the issuance of a temporary restraining order is provided to the attorney general of the state of Kansas if the adverse party is the state of Kansas or an agency, officer or employee thereof, or to the appropriate city clerk or county clerk if the adverse party is a city or county or an agency, officer or employee thereof.

(b) Contents; expiration. Every temporary restraining order issued without notice must state the date and hour it was issued, describe the injury and state why it is irreparable, state why the order was issued without notice and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry, not to exceed 14 days, that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(c) Expediting the temporary injunction hearing. If the temporary restraining order is issued without notice, the motion for a temporary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion, and if the party does not, the court must dissolve the order.

(d) Service. Where a temporary restraining order is issued without notice, it shall be served upon each party restrained in the manner prescribed for personal service of a summons.

(e) Motion to Dissolve. On two days' notice to the party who obtained the temporary restraining order without notice, or on shorter notice set by the court, the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(f) *Security.* Unless otherwise provided by statute or this section, the court may issue a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully restrained. The state of Kansas or an agency, officer or employee thereof, is not required to give security. For any city or county or an agency, officer or employee thereof, at the discretion of the judge, the security required by this subsection may be waived.

Sec. 2. K.S.A. 2012 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, 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

(b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement disclosing the average account balance, or the total deposits, whichever is less, in the inmate's trust fund for each month in: (A) The six-month period preceding the filing of the action; or (B) the current period of incarceration, whichever is shorter. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the initial fee to be assessed for filing the action and in no event shall the court require an inmate to pay less than \$3. The secretary of corrections is hereby authorized to disburse money from the inmate's account to pay the costs as determined by the court. If the inmate has a zero balance in such inmate's account, the secretary shall debit such account in the amount of \$3 per filing fee as established by the court until money is credited to the account to pay such docket fee. Any initial filing fees assessed pursuant to this subsection shall not prevent the court, pursuant to subsection (d), from taxing that individual for the remainder of the amount required under subsection (a) or this subsection.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and attached to the petition:

State of Kansas, _____ County.

~~In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee set forth a factual basis upon which the plaintiff alleges by reason of poverty an inability to pay a docket fee, including, but not limited to, the source and amount of the plaintiff's weekly income. Such affidavit shall be signed and sworn to by the plaintiff under oath, before one who has authority to administer the oath, under penalty of perjury, K.S.A. 2012 Supp. 21-5903, and amendments thereto. The form of the affidavit shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.~~

(3) *Court review; grounds for dismissal; service of process.* The court shall review any petition authorized for filing under this subsection. Upon such review, if the court finds that the plaintiff's allegation of poverty is untrue, the court shall direct the plaintiff to pay the docket fee or dismiss the petition without prejudice. Notwithstanding K.S.A. 60-301, and amendments thereto, service of process shall not issue unless the court grants leave following its review.

(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. 3. K.S.A. 2012 Supp. 60-2414 is hereby amended to read as follows: 60-2414. (a) *Right of redemption by defendant owner.* Except as stated in subsection (m) and as otherwise provided by law, the defendant owner may redeem any real property sold under execution, special execution or order of sale, at any time within 12 months from the day of sale, for the amount paid by the current holder of the certificate of purchase,

including expenses incurred by the holder of the certificate of purchase in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption. The defendant owner in the meantime shall be entitled to the possession of the property. If the court finds after hearing, either before or after sale, upon not less than 21 days' notice to all parties, that the property has been abandoned, or is not occupied in good faith, the period of redemption for the defendant owner may be shortened or extinguished by the court. The right of redemption shall not apply to oil and gas leaseholds. Except for mortgages covering agricultural lands or *for mortgages covering single or two-family dwellings owned by or held in trust for natural persons owning or holding such dwelling as their residence*, the mortgagor may agree in the mortgage instrument to a shorter period of redemption than 12 months or may wholly waive the period of redemption.

(b) *Redemption by lien creditor.* Except as provided in subsection (m), for the first three months of the redemption period, if any, the right of the defendant owner or successors and assigns to redeem is exclusive. If no redemption is made by the defendant owner during the time in which the defendant owner has the exclusive right to redeem, any creditor referred to in subsection (c) may redeem the property during the balance of the redemption period remaining. If the defendant owner has waived the right of redemption, a creditor shall have a right to redeem the property for a period of three months from the date of the judicial sale. If the defendant owner has agreed to a period of redemption of three months or less, a creditor shall have a right to redeem for a period of three months from the date of expiration of the defendant owner's redemption period. If the court shortens or extinguishes the period of redemption because of abandonment or lack of good faith occupation as provided in subsection (a), the court shall specify in the order a time not to exceed three months during which a creditor may redeem. The first creditor redeeming must pay only the amount of the successful sale bid, the expenses incurred by the holder of the certificate in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption. After redemption by a creditor, no further redemption shall be allowed except by the defendant owner or such owner's successors and assigns. If a creditor redeems during the period of redemption for the defendant owner, the defendant owner shall have the balance of such period, but in no event less than 14 days from the filing of the affidavit required in subsection (f), to redeem from the creditor. When the defendant owner or such owner's successors and assigns redeem subsequent to redemption by a creditor, the defendant owner or such owner's successors and assigns shall pay an amount equal to the redemption amount paid by such creditor, plus the amount required by subsection (f), and expenses incurred

by the creditor in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption.

(c) *Creditors who may redeem.* Any creditor whose claim is or becomes a lien prior to the expiration of the time allowed by law for the redemption by creditors may redeem. A mortgagee may redeem upon the terms prescribed by this section before or after the debt secured by the mortgage falls due.

(d) *Terms of redemption; rights of parties.* During the period allowed for redemption, the holder of the certificate of purchase or the creditor who has redeemed may pay the taxes on the lands sold, insurance premiums on the improvements thereon, other sums necessary to prevent waste, and interest or sums due, upon any prior lien or encumbrance on the real property. Upon the redemption of the property, the holder of the certificate or the creditor who has redeemed shall be entitled to repayment of all sums thus paid, together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto. All expenses incurred by the holder of the certificate or the creditor who has redeemed shall be as shown by receipts or vouchers filed in the office of the clerk of the district court.

(e) *Effect of failure of debtor to redeem; deficiency.* If the defendant owner or such owner's successors or assigns fail to redeem as provided in this section, the holder of the certificate of purchase or the creditor who has redeemed prior to the expiration of the redemption period will hold the property absolutely. If it is held by a redeeming creditor, the lien and the claim out of which it arose will be held to be extinguished, unless the redeeming creditor is unwilling to hold the property and credit the defendant owner with the full amount of the redeeming creditor's lien and, at the time of redemption, files with the clerk of the district court a statement of the amount that the redeeming creditor is willing to credit on the claim. If the redeeming creditor files such a statement and the defendant owner or such owner's successors and assigns fail to redeem, the creditor's claim shall be extinguished by the amount in the statement. The sheriff, at the end of the redemption period, shall execute a deed to the current owner of the certificate of purchase or the creditor who has redeemed prior to the expiration of the redemption period.

(f) *Mode of redemption.* The party redeeming shall pay the money into the office of the clerk of the district court for the use of the persons entitled to it. The clerk shall give a receipt for the money, stating the purpose for which it is paid. The clerk shall also enter the transaction on the appearance docket of the case, showing the amount paid. A redeeming creditor, or agent of the creditor, shall also file an affidavit stating as nearly as practicable the amount still unpaid due on the claim of that creditor and any lesser amount the creditor is willing to credit on the claim in accordance with subsection (e). The creditor's claim, or such

lesser amount as the creditor is willing to credit on the claim in accordance with subsection (e), shall be added to the redemption amount to be paid by the defendant owner or such owner's successors and assigns.

(g) *Redemption of property sold in parcels, or undivided portions.* Whenever the property has been sold in parcels, any distinct portion of that property may be redeemed by itself. If a creditor has redeemed, the amount of the creditor's claim or such lesser amount as the creditor is willing to credit on the claim as stated in the affidavit under subsection (f) shall be added to each parcel sold pro rata in proportion to the amount for which it was originally sold. When the interests of several tenants in common have been sold on execution the undivided portion of any or either of them may be redeemed separately.

(h) *Transfer of right of redemption.* The rights of the defendant owner in relation to redemption may be assigned or transferred, and the assignee or transferee shall have the same right of redemption as the defendant owner. The assigned or transferred right of redemption shall not be subject to levy or sale on execution.

(i) *Holder of legal title.* The holder of the legal title at the time of issuance of execution or order of sale shall have the same right of redemption upon the same terms and conditions as the defendant in execution and shall be entitled to the possession of the property the same as the defendant in execution.

(j) *Injury or waste after sale.* After the sheriff makes the deed to the purchaser or party entitled to a deed under sale as provided in this section, the purchaser or party may assert a claim for damages against any person committing or permitting any injury or waste upon the property purchased after the sale and before possession is delivered under the conveyance.

(k) *Second sale not permitted.* Real estate once sold upon order of sale, special execution or general execution shall not again be liable for sale for any balance due upon the judgment or decree under which it is sold, or any judgment or lien inferior thereto, including unadjudicated junior liens filed after the petition is filed in the district court to foreclose the senior lien against the real estate.

(l) *Injunction or receiver to protect property.* The holder of the certificate of purchase shall be entitled to prevent any waste or destruction of the premises purchased. For that purpose the court, on proper showing, may issue an injunction or, when required to protect the premises against waste, appoint a receiver who shall hold the premises until the purchaser is entitled to a deed. The receiver may rent, control and manage the premises but the income during that time, except the fees and expenses of the receiver and the amount that is necessary to keep up repairs, prevent waste and pay real estate taxes and insurance premiums, shall go to the person who otherwise would be entitled to possession during the period of redemption.

(m) *Owners reduced redemption period.* In the event a default occurs in the conditions of the mortgage or instrument of the most senior lien foreclosed before 1/3 of the original indebtedness secured by the mortgage or lien has been paid, the court shall order a redemption period of three months. If, after proper showing, the court finds that the total outstanding amount of all mortgages or liens is less than 1/3 of the market value of the property, the court shall order a redemption period of 12 months. If the court finds after a hearing with not less than 21 days' notice to all parties, that the defendant owner has involuntarily lost such owner's primary source of income after the date of the foreclosure sale and prior to expiration of a three-month period of redemption, the court may extend the three-month period of redemption an additional three months. If the court orders a redemption period of six months or less, the right of the defendant owner or successors and assigns to redeem is exclusive for the first two months of the redemption period. This subsection shall not apply in the event redemption rights have been shortened, waived or terminated pursuant to subsection (a).

Sec. 4. K.S.A. 2012 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 involving controlled substances, as described in K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto;
- (c) theft, as defined in K.S.A. 2012 Supp. 21-5801, and amendments thereto;
- (d) criminal discharge of a firearm, as defined in subsections (a)(1) and (a)(2) of K.S.A. 2012 Supp. 21-6308, and amendments thereto;
- (e) gambling, as defined in K.S.A. 2012 Supp. 21-6404, and amendments thereto, and commercial gambling, as defined in subsection (a)(1) of K.S.A. 2012 Supp. 21-6406, and amendments thereto;
- (f) counterfeiting, as defined in K.S.A. 2012 Supp. 21-5825, and amendments thereto;
- (g) unlawful possession *or use* of a scanning device or reencoder, as described in K.S.A. 2012 Supp. 21-6108, and amendments thereto;
- (h) medicaid fraud, as described in K.S.A. 2012 Supp. 21-5925 through 21-5934, and amendments thereto;
- (i) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;
- (j) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense,

whether or not there is a prosecution or conviction related to the act or omission;

(k) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

(l) furtherance of terrorism or illegal use of weapons of mass destruction, as described in K.S.A. 2012 Supp. 21-5423, and amendments thereto;

(m) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6414, and amendments thereto;

(n) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6417, and amendments thereto;

(o) prostitution, as defined in K.S.A. 2012 Supp. 21-6419, and amendments thereto, promoting prostitution, as defined in K.S.A. 2012 Supp. 21-6420, and amendments thereto, and patronizing a prostitute, as defined in K.S.A. 2012 Supp. 21-6421, and amendments thereto;

(p) human trafficking and aggravated human trafficking, as defined in K.S.A. 2012 Supp. 21-5426, and amendments thereto;

(q) violations of the banking code, as described in K.S.A. 9-2012, and amendments thereto;

(r) mistreatment of a dependent adult, as defined in K.S.A. 2012 Supp. 21-5417, and amendments thereto;

(s) giving a worthless check, as defined in K.S.A. 2012 Supp. 21-5821, and amendments thereto;

(t) forgery, as defined in K.S.A. 2012 Supp. 21-5823, and amendments thereto;

(u) making false information, as defined in K.S.A. 2012 Supp. 21-5824, and amendments thereto;

(v) criminal use of a financial card, as defined in K.S.A. 2012 Supp. 21-5828, and amendments thereto;

(w) unlawful acts concerning computers, as described in K.S.A. 2012 Supp. 21-5839, and amendments thereto;

(x) identity theft and identity fraud, as defined in subsections (a) and (b) of K.S.A. 2012 Supp. 21-6107, and amendments thereto;

(y) electronic solicitation, as defined in K.S.A. 2012 Supp. 21-5509, and amendments thereto; ~~and~~

(z) felony violations of fleeing or attempting to elude a police officer, as described in K.S.A. 8-1568, and amendments thereto;

(aa) *indecent solicitation of a child and aggravated indecent solicitation of a child, as defined in K.S.A. 2012 Supp. 21-5508, and amendments thereto; and*

(bb) *sexual exploitation of a child, as defined in K.S.A. 2012 Supp. 21-5510, and amendments thereto.*

Sec. 5. K.S.A. 2012 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 *electronic device*, 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. 2012 Supp. 21-6108 ~~an offense listed in K.S.A. 60-4104~~, 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.

New Sec. 6. (a) The conduct prohibited by K.S.A. 2012 Supp. 21-6107, and amendments thereto, constitutes an unconscionable act or practice in violation of K.S.A. 50-627, and amendments thereto, and any person who engages in such conduct shall be subject to the remedies and penalties provided by the Kansas consumer protection act.

(b) For the purposes of the remedies and penalties provided by the Kansas consumer protection act:

(1) The person committing the conduct prohibited by K.S.A. 2012 Supp. 21-6107, and amendments thereto, shall be deemed the supplier, and the person who is the victim of such conduct shall be deemed the consumer; and

(2) proof of a consumer transaction shall not be required.

(c) This section shall be part of and supplemental to the Kansas consumer protection act and shall be known and may be cited as the Wayne Owen law.

Sec. 7. K.S.A. 60-903 and K.S.A. 2012 Supp. 60-2001, 60-2414, 60-4104 and 60-4105 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 22, 2013.

CHAPTER 124

HOUSE BILL No. 2015

AN ACT concerning domestic relations; relating to marital property; dissolution of marriage; service of process; enforcement of support orders; amending K.S.A. 39-7,148 and K.S.A. 2012 Supp. 23-2601, 23-2704, 23-3102, 23-3103, 23-3104, 23-3105 and 39-7,147 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 23-2601 is hereby amended to read as follows: 23-2601. 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, *except as provided in K.S.A. 33-101 et seq. and 33-201 et seq., and amendments thereto.*

Sec. 2. K.S.A. 2012 Supp. 23-2704 is hereby amended to read as follows: 23-2704. (a) *Verification of petition.* The truth of the allegations of any petition under this article must be verified by the petitioner in person or by the guardian of an incapacitated person.

(b) *Captions.* All pleadings shall be captioned, "In the matter of the marriage of _____ and _____." In the caption, the name of the petitioner shall appear first and the name of the respondent shall appear second, but the respective parties shall not be designated as such.

(c) *Contents of petition.* The grounds for divorce, annulment or separate maintenance shall be alleged as nearly as possible in the general language of the statute, without detailed statement of facts. If there are minor children of the marriage, the petition shall state their names and dates of birth and shall contain, or be accompanied by an affidavit which

contains, the information required by K.S.A. 2012 Supp. 23-37,209, and amendments thereto.

(d) *Bill of particulars.* The opposing party may demand a statement of the facts which shall be furnished in the form of a bill of particulars. The facts stated in the bill of particulars shall be the specific facts upon which the action shall be tried. If interrogatories have been served on or a deposition taken of the party from whom the bill of particulars is demanded, the court in its discretion may refuse to grant the demand for a bill of particulars. A copy of the bill of particulars shall be delivered to the judge. The bill of particulars shall not be filed with the clerk of the court or become a part of the record except on appeal, and then only when the issue to be reviewed relates to the facts stated in the bill of particulars. The bill of particulars shall be destroyed by the district judge unless an appeal is taken, in which case the bill of particulars shall be destroyed upon receipt of the final order from the appellate court.

(e) *Service of process.* Service of process shall be made in the manner provided in article ~~27~~ 3 of chapter ~~23~~ 60 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 3. (a) On and after July 1, 2015, notwithstanding any other law to the contrary, for any order of support required to be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 2012 Supp. 39-7,135, and amendments thereto, regardless of when such order was entered or modified, amounts collected by such central unit shall be distributed in accordance with rules and regulations adopted by the secretary of the department for children and families. Such rules and regulations shall be based on child support distribution requirements as set forth in part D of title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended, and federal regulations promulgated pursuant thereto.

(b) Prior to July 1, 2015, the secretary of the department for children and families shall adopt rules and regulations to implement the provisions of this section. Such rules and regulations shall not become effective until July 1, 2015.

New Sec. 4. (a) Except as otherwise provided in this section, an income withholding order for attachment of a lump sum payment shall have the effect of attaching: (1) Any intangible property, funds, credits or other indebtedness of a non-recurring nature belonging or owing to the obligor which is due from the payor or in the possession or under the control of the payor at the time of service of the order; and (2) all such personal property becoming due to the obligor between the time the order is served on the payor and the 35th day after the date the order is served.

(b) The payor shall hold the attached funds, credits or indebtedness at least 14 days following the date the income withholding order for attachment of a lump sum payment was served. Thereafter, except as oth-

erwise provided in this section, the payor shall remit the amount attached no later than the date the lump sum payment would have been paid to the obligor or 21 days after the date the order was served, whichever is later.

(c) The payor shall hold the attached funds, credits or indebtedness until further order of the court if, before remitting funds pursuant to subsection (b), the payor receives notice of a hearing on the obligor's claim of exemption concerning the income withholding order for attachment of a lump sum payment.

(d) This section shall be part of and supplemental to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto.

New Sec. 5. (a) Immediately following the date the income withholding order for attachment of a lump sum payment is served on the payor, the person or public office seeking the withholding shall send a notice to the obligor, notifying the obligor: (1) That an income withholding order to attach a lump sum payment has been served on the payor and the effect of such order; (2) of the obligor's right to assert any claim of exemption allowed under the income withholding act; and (3) of the obligor's right to a hearing on such claim. The notice shall be substantially in compliance with the form developed pursuant to K.S.A. 2012 Supp. 23-3113, and amendments thereto, and shall contain a description of the exemptions that are applicable under the income withholding act and the procedure by which the obligor can assert any claim of exemption.

(b) If the obligor requests a hearing to assert any claim of exemption, the request shall be filed no later than 10 days following the date the notice is served on the obligor. If a hearing is requested, the hearing shall be held by the court no sooner than five days nor later than 10 days after the request is filed. At the time the request for hearing is filed, the obligor shall obtain from the clerk of the court the date and time for the hearing which shall be noted on the request form. Immediately after the request for hearing is filed, the obligor shall hand-deliver or mail, by first-class mail, a copy of the request for hearing to the payor and to the person or public office seeking the withholding or such person's attorney, if the person is represented by an attorney.

(c) If a hearing is held, the obligor shall have the burden of proof to show that some or all of the property subject to the withholding is exempt, and the court shall enter an order determining the exemption and such other order as is appropriate.

(d) This section shall be part of and supplemental to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto.

New Sec. 6. (a) (1) The secretary of the department for children and families may collect, pursuant to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto, support owed in a title IV-D case from unemployment insurance benefits payable to the obligor.

Such collections may be remitted directly to the secretary. The secretary, and any other agency affected, shall use electronic processes to the greatest extent feasible.

(2) All provisions of the income withholding act shall apply to the withholding of support from unemployment insurance benefits from the state employment security agency, which shall be considered a payor for the purposes of the income withholding act, except that any cost recovery fee as a result of such withholding shall be paid by the department for children and families and shall not be paid by the obligor.

(b) If the secretary of the department for children and families receives an income withholding collection directly from another state agency for a debtor with more than one income withholding order and the payor agency does not identify the amount to be applied to each withholding order, the secretary may apply the collection in any manner allowed under title IV-D, provided that all current support due for the month under the withholding orders is satisfied first.

(c) This section shall be part of and supplemental to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto.

Sec. 7. K.S.A. 2012 Supp. 23-3102 is hereby amended to read as follows: 23-3102. As used in the income withholding act:

(a) “Arrearage” means the total amount of unpaid support which is due and unpaid under an order for support, based upon the due date specified in the order for support or, if no specific date is stated in the order, the last day of the month in which the payment is to be made. If the order for support includes a judgment for reimbursement, an arrearage equal to or greater than the amount of support payable for one month exists on the date the order for support is entered.

(b) “Business day” means a day on which state offices in Kansas are open for regular business.

(c) “Health benefit plan” means any benefit plan, other than public assistance, which is able to provide hospital, surgical, medical, dental or any other health care or benefits for a child, whether through insurance or otherwise, and which is available through a parent’s employment or other group plan.

(d) “Income” means any form of ~~periodic~~ payment to an individual, regardless of source, including, but not limited to, wages, salary, trust, royalty, commission, bonus, compensation as an independent contractor, annuity and retirement benefits, workers compensation and any other periodic payments made by any person, private entity or federal, state or local government or any agency or instrumentality thereof. “Income” does not include: (1) Any amounts required by law to be withheld, other than creditor claims, including, but not limited to, federal and state taxes, social security tax and other retirement and disability contributions; (2) any amounts exempted by federal law; (3) public assistance payments;

and (4) unemployment insurance benefits except to the extent otherwise provided by law. Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply. Workers compensation shall be considered income only for the purposes of child support and not for the purposes of maintenance. *Unemployment insurance benefits shall be considered income for purposes of this act when such funds are sought by the secretary of the department for children and families, or the secretary's designee, in administration of the title IV-D program.*

(e) *"Income withholding agency" means the department for children and families.*

~~(e)~~(f) *"Income withholding order" means an order issued under this act which requires a payor to withhold income to satisfy an order for support or to defray an arrearage.*

(g) *"Lump sum payment" means income in the form of a bonus, commission, an amount paid in lieu of vacation or other leave time, or any other payment to an obligor. "Lump sum payment" does not include payments made on regular paydays as compensation, reimbursement of expenses incurred by the obligor on behalf of the payor, or an amount paid as severance pay on termination of employment.*

~~(f)~~(h) *"Medical child support order" means an order requiring a parent to provide coverage for a child under a health benefit plan and, where the context requires, may include an order requiring a payor to enroll a child in a health benefit plan.*

~~(g)~~(i) *"Medical withholding order" means an income withholding order which requires an employer, sponsor or other administrator of a health benefit plan to enroll a child under the health coverage of a parent.*

~~(h)~~(j) *"Nonparticipating parent" means, if one parent is a participating parent as defined in this section, the other parent.*

~~(i)~~(k) *"Obligee" means the person or entity to whom a duty of support is owed.*

~~(j)~~(l) *"Obligor" means any person who owes a duty to make payments or provide health benefit coverage under an order for support.*

~~(k)~~(m) *"Order for support" means any order of a court, or of an administrative agency authorized by law to issue such an order, which provides for payment of funds for the support of a child, or for maintenance of a spouse or ex-spouse, and includes an order which provides for modification or resumption of a previously existing order; payment of uninsured medical expenses; payment of an arrearage accrued under a previously existing order; a reimbursement order, including, but not limited to, an order established pursuant to K.S.A. 39-718a or 39-718b, and amendments thereto; an order established pursuant to K.S.A. 23-451 et seq., and amendments thereto; or a medical child support order.*

~~(l)~~(n) *"Participating parent" means a parent who is eligible for single*

coverage under a health benefit plan as defined in this section, regardless of the type of coverage actually in effect, if any.

~~(m)~~(o) “Payor” means any person or entity owing income to an obligor or any self-employed obligor and includes, with respect to a medical child support order, the sponsor or administrator of a health benefit plan.

(p) “*Periodic payment*” means wages, salary, royalties, trust payments, annuity payments, retirement payments and any other regularly occurring, scheduled payment to an obligor.

~~(n)~~(q) “Public office” means any elected or appointed official of the state or any political subdivision or agency of the state, or any subcontractor thereof, who is or may become responsible by law for enforcement of, or who is or may become authorized to enforce, an order for support, including but not limited to, the department of social and rehabilitation services, court trustees, county or district attorneys and other subcontractors.

~~(o)~~(r) “Title IV-D” means part D of title IV of the federal social security act~~4~~, 42 U.S.C. § 651 et seq.~~5~~, and amendments thereto, as in effect on December 31, ~~1999~~ 2009. “Title IV-D cases” means those cases required by title IV-D to be processed by the department ~~of social and rehabilitation services for children and families~~ under the state’s plan for providing title IV-D services.

Sec. 8. K.S.A. 2012 Supp. 23-3103 is hereby amended to read as follows: 23-3103. (a) Any new or modified order for support shall include a provision for the withholding of income to enforce the order for support.

(b) Except as otherwise provided in subsection (j), (k) or ~~(l)~~(m), all new or modified orders for support shall provide for immediate issuance of an income withholding order. *The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.* The income withholding order shall be issued without further notice to the obligor and shall specify ~~an amount sufficient to satisfy the order for support and to defray any arrearage.~~ *The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.*

(1) *If the income withholding order is to attach to periodic payments, an amount sufficient to satisfy the order for support and to defray any arrearage; or*

(2) *if the income withholding order is to attach a lump sum payment, the amount the payor is required to withhold for support from the lump sum payment.*

(c) Except as otherwise provided in this subsection or subsections (j) or ~~(l)~~(m), if no income withholding order is in effect to enforce the support order, an income withholding order shall be issued by the court upon request of the obligee or public office, provided that the obligor

accrued an arrearage equal to or greater than the amount of support payable for one month and the requirements of subsections (d) and (h) have been met. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the income withholding order is issued.

(d) Not less than seven days after the obligee or public office has served a notice pursuant to subsection (h), the obligee or public office may initiate income withholding pursuant to paragraph (1) or (2).

(1) The obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (A) The date that the notice was served on the obligor and the manner of service; (B) that the obligor has not filed a motion to stay issuance of the income withholding order or, if a motion to stay has been filed, the reason an income withholding order must be issued immediately; (C) a specified amount to be withheld by the payor to satisfy the order of support and to defray any arrearage; (D) whether the income withholding order is to include a medical withholding order; and (E) that the amount of the arrearage as of the date the notice to the obligor was prepared was equal to or greater than the amount of support payable for one month. In addition to any other penalty provided by law, the filing of such an affidavit with knowledge of the falsity of a material declaration is punishable as a contempt.

Upon the filing of the affidavit, the income withholding order shall be issued without further notice to the obligor, hearing or amendments of the support order. Payment of all or part of the arrearage before issuance of the income withholding order shall not prevent issuance of the income withholding order, unless the arrearage is paid in full and the order for support does not include an amount for the current support of a person. No affidavit is required if the court, upon hearing a motion to stay issuance of the income withholding order or otherwise, issues an income withholding order.

(2) In a title IV-D case, the IV-D agency may issue an income withholding order as authorized by K.S.A. 39-7,147, and amendments thereto. Any such income withholding order shall be considered an income withholding order issued pursuant to this act.

(e) (1) An income withholding order shall be directed to any payor of the obligor. Notwithstanding any other requirement of this act as to form or content, ~~any~~ *only an income withholding order prepared in a standard format prescribed by the secretary of social and rehabilitation services the department for children and families, or the standard federal notices and forms promulgated under 42 U.S.C. § 652 (a)(11) and 42 U.S.C. § 666 (b)(A)(ii), shall be deemed to be in compliance with this act.*

(2) An income withholding order which does not include a medical withholding order shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage and shall include notice of and direction to comply with the provisions of K.S.A. 2012 Supp. 23-3104 and 23-3105, and amendments thereto.

(3) An income withholding order which consists only of a medical withholding order shall include notice of the medical child support order and shall conform to the requirements of K.S.A. 2012 Supp. 23-3116, and amendments thereto. The medical withholding order shall include notice of and direction to comply with the requirements of K.S.A. 2012 Supp. 23-3104, 23-3105, 23-3114 and 23-3117, and amendments thereto.

(4) An income withholding order which includes both a medical withholding order and an income withholding order for cash support shall meet the requirements of paragraphs (2) and (3).

(f) (1) Upon written request and without the requirement of further notice to the obligor, the clerk of the district court shall cause a copy of the income withholding order to be served on the payor ~~only by personal service or registered mail, return receipt requested by first-class mail.~~

(2) Without the requirement of further notice to the obligor, the court trustee or IV-D agency may cause a copy of any income withholding order to be served on the payor ~~only by personal service or registered mail, return receipt requested by first-class mail~~ or by any alternate method acceptable to the payor, *including, but not limited to: Facsimile transmission, electronic mail attachment or electronic interface allowing for the download of a document or transmission of the terms of the income withholding order.* No payor shall be liable to any person solely because of the method of service accepted by the payor.

(3) As used in this section, “copy of the income withholding order” means *a copy of any document or notice, regardless of copy format, that advises the payor of the same general duties, requires the same amount to be withheld from income and requires medical withholding to the same extent as the original income withholding order that complies with the requirements of subsection (e)(1).*

(g) An income withholding order shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court or agency that issued the income withholding order. At any time following issuance of an income withholding order, a copy of the income withholding order may be served on any payor without the requirement of further notice to the obligor.

(h) Except as provided in subsection (k) or ~~(l)~~ (m), at any time following entry of an order for support the obligee or public office may serve upon the obligor a written notice of intent to initiate income withholding. If any notice in the court record indicates that title IV-D services are

being provided in the case, whether or not the IV-D services include enforcement of current support, the person or public office requesting issuance of the income withholding order shall obtain the consent of the IV-D agency to the terms of the proposed income withholding order.

The notice of intent to initiate income withholding shall be served on the obligor ~~only~~ by personal service, *first-class mail* or registered mail, return receipt requested. The notice served on the obligor must state: (1) The terms of the order of support and the total arrearage as of the date the notice was prepared; (2) the amount of income that will be withheld, not including premiums to satisfy a medical withholding order; (3) whether a medical withholding order will be included; (4) that the provision for withholding applies to any current or subsequent payor; (5) the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (6) the period within which the obligor must act to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (7) the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(j) (1) In a nontitle IV-D case, upon presentation to the court of a written agreement between the parties providing for an alternative arrangement, no income withholding order shall be issued pursuant to subsection (b). In any case, before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or (B) a written agreement among all interested parties provides for an alternative arrangement. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has determined that good cause has been shown that direct child support payments to the obligee may be made, then the court shall provide for direct maintenance payments to the obligee and no income withholding order shall be issued pursuant to subsection (b). In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's previous finding of good cause not to require immediate income withholding pursuant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

- (A) The agreement was not in writing;
- (B) the agreement was not approved by all interested parties;
- (C) the terms of the agreement or alternative arrangement are not being met;
- (D) the agreement or alternative arrangement is not in the best interests of the child; or
- (E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. 2012 Supp. 23-3106, and amendments thereto, apply to any motion pursuant to paragraph (3) or (4) of this subsection.

(k) (1) An ex parte interlocutory order for support may be enforced pursuant to subsection (b) only if the obligor has consented to the income withholding in writing.

(2) An ex parte interlocutory order for support may be enforced pursuant to subsection (c) only if 14 or more days have elapsed since the order for support was served on the obligor.

(3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.

(4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.

(l) *All remittances from any income withholding order, regardless of when such order was entered or modified, shall be required to be directed to the central unit for collection and disbursement of support payments*

designated pursuant to K.S.A. 2012 Supp. 39-7,135, and amendments thereto.

~~(m)~~ All new or modified orders for maintenance of a spouse or ex-spouse, except orders for a spouse or ex-spouse living with a child for whom an order of support is also being enforced, entered on or after July 1, 1992, shall include a provision for the withholding of income to enforce the order of support. Unless the parties consent in writing to earlier issuance of a withholding order, withholding shall take effect only after there is an arrearage in an amount equal to or greater than the amount of support payable for two months and after service of a notice as provided in subsection (h).

Sec. 9. K.S.A. 2012 Supp. 23-3104 is hereby amended to read as follows: 23-3104. (a) It shall be the affirmative duty of any payor to respond within 10 days to written or electronic requests for information presented by the public office concerning: (1) The full name of the obligor; (2) the current address of the obligor; (3) the obligor's social security number; (4) the obligor's work location; (5) the number of the obligor's claimed dependents; (6) the obligor's gross income; (7) the obligor's net income; (8) an itemized statement of deductions from the obligor's income; (9) the obligor's pay schedule; (10) the obligor's health insurance coverage; and (11) whether or not income owed the obligor is being withheld pursuant to this act. This is an exclusive list of the information that the payor is required to provide under this section.

(b) It shall be the duty of any payor who has been served a copy of an income withholding order for payment of an order for cash support that meets the requirements of subsection ~~(h)~~ (i) to deduct and pay over income as provided in this section. The payor shall begin the required deductions no later than the next payment of income due the obligor after 14 days following service of the order on the payor.

(c) Within seven business days of the time the obligor is normally paid, the payor shall pay the amount withheld as directed by the income withholding agency pursuant to K.S.A. 2012 Supp. 23-3105, and amendments thereto, as directed by the income withholding order or by a rule of the Kansas supreme court. The payor shall identify each payment with the name of the obligor, the county and case number of the income withholding order, and the date the income was withheld from the obligor. The payor shall pay the amounts withheld and identify each payment in the same business day. A payor subject to more than one income withholding order payable to the same payee may combine the amounts withheld into a single payment, but only if the amount attributable to each income withholding order is clearly identified. Premiums required for a child's coverage under a health benefit plan shall be remitted as provided in the health benefit plan and shall not be combined with any other support payment required by the income withholding order.

(d) The payor shall continue to withhold income as required by the income withholding order until further order of the court or agency.

(e) From income due the obligor, the payor may withhold and retain to defray the payor's costs a cost recovery fee of \$5 for each pay period for which ~~income support is withheld from a periodic payment~~ or \$10 for each month for which ~~income support is withheld from a periodic payment~~, whichever is less. *For income withholding from a lump sum payment, a cost recovery fee of up to \$10 per withholding may be withheld by the payor and shall be in addition to any cost recovery fee charged for withholding from periodic payments. Any such cost recovery fee shall be in addition to the amount withheld as support.*

(f) The entire sum withheld by the payor, including the cost recovery fee and premiums due from the obligor which are incurred solely because of a medical withholding order, shall not exceed ~~the limits provided for under section 303(b)~~ 50% of the obligor's disposable income as defined by section 302(b) of the consumer credit protection act ~~(, 15 U.S.C. § 1673(b))~~ 1672(b). If amounts of earnings required to be withheld exceed the maximum amount of earnings which may be withheld ~~according to the consumer credit protection act under this section~~, priority shall be given to payment of current and past due support, and the payor shall promptly notify the holder of the limited power of attorney of any non-payment of premium for a health benefit plan on the child's behalf. An income withholding order issued pursuant to this act shall not be considered a wage garnishment as defined in subsection (b) of K.S.A. 60-2310, and amendments thereto. If amounts of earnings required to be withheld in accordance with this act are less than the maximum amount of earnings which could be withheld according to *section 303(b) of the consumer credit protection act, 15 U.S.C. § 1673(b)*, the payor shall honor garnishments filed by other creditors to the extent that the total amount taken from earnings does not exceed consumer credit protection act limitations.

(g) *A payor who has been served an income withholding order by the IV-D agency which includes an amount to defray an arrearage shall contact the IV-D agency no less than 14 days prior to making payment of any lump sum amount to the obligor. The payor may make payment of the lump sum to the obligor once 14 days have passed after providing such contact unless additional process, or notice of intended process, has been received.*

~~(g)~~(h) The payor shall promptly notify the court or agency that issued the income withholding order of the termination of the obligor's employment or other source of income, or the layoff of the obligor from employment, and provide the obligor's last known address and the name and address of the individual's current employer, if known.

~~(h)~~(i) A payor who complies with a copy of an income withholding order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the income withholding

order. As used in this section, “regular on its face” means a completed document ~~in the standard format for any income withholding notice that has been adopted by the United States secretary of health and human services in a final rule or a certified copy of the income withholding order that is in compliance with subsection (e)(1) of K.S.A. 2012 Supp. 23-3103, and amendments thereto.~~

(i)(j) Except as provided further, if any payor violates the provisions of this act, the court may enter a judgment against the payor for the total amount which should have been withheld and paid over. If the payor, without just cause or excuse, fails to pay over income within the time established in subsection (c) and the obligee files a motion to have such income paid over, the court shall enter a judgment against the payor and in favor of the obligee for three times the amount of the income owed and reasonable attorney fees. If the payor, without good cause, fails to pay over the income and identify each payment in the same business day, the court shall enter a judgment against the payor and in favor of the obligee for twice the amount of the cost recovery fee, as established in subsection (e), per obligor.

(j)(k) In addition to any judgment authorized by subsection (i), a payor shall be subject to a civil penalty not exceeding \$500 and other equitable relief as the court considers proper if the payor: (1) Discharges, refuses to employ or takes disciplinary action against an obligor subject to an income withholding order because of such withholding and the obligations or additional obligations which it imposes upon the payor; or (2) fails to withhold support from income or to pay such amounts in the manner required by this act.

(l) *The provisions of this section as amended by this act shall apply to all income withheld on or after July 1, 2013, regardless of when the applicable income withholding order was entered or modified.*

Sec. 10. K.S.A. 2012 Supp. 23-3105 is hereby amended to read as follows: 23-3105. (a) An income withholding order shall have priority over any other legal process under state law against the same income. Withholding of income under this section shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments or other claims of creditors.

(b) Except as provided by K.S.A. 60-2310, and amendments thereto, any state law which limits or exempts income from legal process or the amount or percentage of income that can be withheld shall not apply to withholding income under this act.

(c) Subject to the provisions of K.S.A. 2012 Supp. 23-36,503, and amendments thereto, if more than one income withholding order requires withholding from the same source of income of a single obligor, the payor shall withhold and disburse as ordered the total amount required by all income withholding orders if such amount does not exceed the limits of

subsection (f) of K.S.A. 2012 Supp. 23-3104, and amendments thereto, ~~as shown in the withholding order which specifies the highest percentage of income allowed to be withheld.~~ If the total amount required by all income withholding orders, including premiums due from the obligor which are incurred solely because of a medical withholding order, exceeds such limits, the payor shall withhold the amount permitted to be withheld under such limits and from the amount withheld the payor shall retain any cost recovery fee charged by the payor. The remaining funds shall first be prorated by the payor among all income withholding orders for the obligor that require payment of current support. When all current support for the month has been satisfied, any remaining funds shall be prorated among all income withholding orders for the obligor that require payment of an amount for arrearages. With respect to a medical withholding order, the payor shall promptly notify the affected holder of the limited power of attorney of any nonpayment of premium. The payor may request assistance from the income withholding agency in determining the amount to be disbursed for each income withholding order, but such assistance shall not relieve the payor from any responsibility under this act. Upon request of a public office or of any obligee whose income withholding order is affected by this subsection, the payor shall provide the county, case number and terms of all the obligor's income withholding orders.

(d) The provisions of this section as amended by this act shall apply to all income withheld on or after July 1, ~~1992~~ 2012, regardless of when the applicable income withholding order was entered or modified.

Sec. 11. K.S.A. 2012 Supp. 39-7,147 is hereby amended to read as follows: 39-7,147. (a) Except as otherwise provided in K.S.A. 39-7,149 or K.S.A. 2012 Supp. 23-3103, and amendments thereto, if no income withholding order is in effect to enforce a support order in a title IV-D case, an income withholding order may be entered by the secretary. A notice of intent to initiate income withholding, as described in K.S.A. 2012 Supp. 23-3103, and amendments thereto, shall be served on the responsible parent at least seven days before the secretary issues the income withholding order. If the amount of arrearages is less than the amount of current support due for one month, the requirements of subsection (d) must be met. The income withholding order shall conform to the requirements of the income withholding act, and amendments thereto and shall have the same force and effect as an income withholding order issued by a district court of this state.

(b) If an income withholding order is issued by the secretary to enforce a support order entered by a court of this state, the original document shall be delivered for filing to the clerk of the court that entered the support order. Thereafter, if the secretary is no longer providing title IV-D services in the case, the clerk of the district court shall use the

income withholding order issued by the secretary in the same manner as an income withholding order issued by the court.

(c) If an income withholding order is issued by the secretary to enforce a support order entered by a tribunal of another state, the secretary shall transmit a copy of the income withholding order to the tribunal of the other state.

(d) If there are no arrearages or the amount of arrearages under the support order is less than the amount of current support due for one month, the secretary may initiate income withholding only if:

- (1) Any arrearages are owed;
- (2) a medical child support order exists;
- (3) the secretary determines that immediate issuance of the income withholding order was required by K.S.A. 2012 Supp. 23-3103, and amendments thereto, or by a similar law of another state, but no income withholding order was entered;
- (4) the responsible parent consents;
- (5) required payments have been received after the due date at least twice within the preceding 12 months, regardless of whether any arrearages are owed; or
- (6) the support order was entered by a tribunal of another state.

(e) If the support order was entered by or registered with a court of this state, the notice of intent to initiate income withholding shall be served on the responsible parent by ~~only~~ personal service, *first-class mail* or registered mail, return receipt requested. In all other cases, the notice of intent to initiate income withholding shall be served upon the responsible parent only by personal service or registered mail, return receipt requested.

Sec. 12. K.S.A. 39-7,148 is hereby amended to read as follows: 39-7,148. (a) At any time after issuing an income withholding order, the secretary shall: (1) Modify or terminate the income withholding order because of a modification or termination of the underlying support order; (2) modify the amount of income withheld to reflect payment in full of the arrearages; (3) modify or terminate the income withholding order to reflect the final order in a fair hearing pursuant to K.S.A. 75-3306, and amendments thereto; or (4) modify, or when appropriate terminate, an income withholding order consisting in whole or in part of a medical withholding order because of a modification or termination of the underlying medical child support order.

(b) In addition to modifications required by subsection (a), at any time the secretary may issue a modified income withholding order: (1) To change the amount to be withheld to defray arrearages; or (2) to conform the terms of a medical withholding order to the requirements of a payer. The provisions of this subsection shall apply only to income

withholding orders issued pursuant to K.S.A. 39-7,147, and amendments thereto, including any modifications of such orders.

(c) The secretary shall provide notice of any proposed modification to the responsible parent by ~~only~~ personal service, *first-class mail* or registered mail, return receipt requested, at least 14 days before entry of the modified income withholding order. The responsible parent may request: (1) An administrative hearing pursuant to K.S.A. 75-3306, and amendments thereto, for review of the proposed modification by complying with procedures established by the secretary within ten days after service of the notice; or (2) a de novo court review pursuant to K.S.A. 39-7,139, and amendments thereto. If the notice is served by mail, the time for requesting review shall be extended by three days. If the proposed modification increases the total amount to be withheld from the responsible parent's income, entry of the modified income withholding order shall be stayed pending resolution of the review. In all other instances, entry of the proposed modification shall be stayed only for cause. The issues in the administrative hearing shall be limited to whether the amount of current support is as stated in the proposed modification and whether the total arrearages are less than the proposed installment to defray arrearages.

(d) The responsible parent may request that the secretary terminate an income withholding order for cash support if: (1) Withholding has not previously been terminated and reinitiated; and (2) there is a written agreement among the parties that provides for an alternative arrangement. If an income withholding order is terminated and the obligor subsequently accrues any arrearages, the secretary may issue another income withholding order as provided in K.S.A. 39-7,147, and amendments thereto.

(e) If the income withholding order includes both a medical withholding order and an income withholding order for cash support, modification or termination of one portion of the income withholding order shall not modify or terminate any other portion of the income withholding order except as expressly provided in the order.

(f) The provisions of K.S.A. 39-7,147, and amendments thereto, relating to transmitting income withholding orders to the tribunal that issued the underlying support order, shall apply to any order issued modifying or terminating income withholding that is issued pursuant to this section.

Sec. 13. K.S.A. 39-7,148 and K.S.A. 2012 Supp. 23-2601, 23-2704, 23-3102, 23-3103, 23-3104, 23-3105 and 39-7,147 are hereby repealed.

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