Kansas Legislative Research Department

Kansas Legislator Briefing Book

Prepared for the 2014 Kansas Legislature

Kansas Legislators are called upon to make decisions on many issues that come before the Legislature. In addition, members of the Legislature are frequently asked by constituent groups to discuss public policy issues in a community forum in their districts. The purpose of the Kansas Legislator Briefing Book is to assist members in making informed policy decisions and to provide information in a condensed form that is usable for discussions with constituents—whether in their offices in Topeka or in their districts.

This publication contains several reports on new topics plus reports from the prior version. Most of the reports from the prior version have been updated with new information.

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LEGISLATOR BRIEFING BOOK

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Section

A— Administrative Rules and Regulations

Rule and Regulation Legislative Oversight..... A1

This briefing paper provides an overview of the rules and regulations process, specifically related to the creation of rules and regulations authority, the process for temporary and permanent regulation approval, the oversight role assigned to the Joint Committee on Administrative Rules and Regulations, and the history of the Joint Committee. Also included is a brief review of current legislative amendments to the Rules and Regulations Filing Act.

B— Agriculture and Natural Resources

Water Litigation..... B1

Kansas has been involved in water litigation with Colorado for a number of years and more recently has been engaged in water litigation with Nebraska. Both of these cases have reached the final stage, although monitoring will be ongoing, particularly in the case of Colorado. In addition, settlement agreements have to be monitored. This briefing paper deals with the following issues:

- A short history of the litigation with both states, including a table showing amounts of money appropriated.
- Current status of the cases, including legal activities relating to Nebraska and Colorado.
- Discussion of monitoring activities and responsibilities.
- Review of statutes pertaining to disposition of any water litigation money received from Colorado or Nebraska.
- Discussion of pending issues before the Legislature or any legislative action that might be necessary concerning settlement and monitoring of the litigation.

State Water Plan Fund, Kansas Water Authority, and State Water Plan B2

For as long as Kansas has been a state, water has been an issue for policymakers, and for years the Legislature has passed legislation dealing with the regulation of water. In 1981, the Legislature created the Kansas Water Authority. One role of the Kansas Water Authority is to make policy recommendations for inclusion in the State Water Plan. The State Water Plan Fund was created in 1989 to fund water-related projects and programs consistent with the objectives of the State

Water Plan. This briefing paper summarizes the financing and uses of the State Water Plan Fund and the role of the Kansas Water Authority in the policy process.

Kansas Corporate Farming Law B3

This article summarizes former and current corporate farming statutes in Kansas. A brief description of the original law, including major changes over time, are discussed. A summary of the legal challenges to corporate farming laws and constitutional amendments in other states is included since the Kansas law contains similar provisions. These provisions could be challenged in a court and have been an item of discussion before the Kansas Legislature.

Weights and Measures Program B4

This briefing paper provides an overview of the Kansas Department of Agriculture's Weights and Measures program, which establishes and maintains uniform standards of mass, volume and weight. The paper discusses the Kansas Weights and Measures program and also contains information on weights and measures programs in surrounding states.

Waters of the United States B5

This briefing paper provides an update on the status of the Clean Water Act (CWA) as it relates to the uncertainty of the definition of "waters of the US," a key term in determining whether water is subject to the CWA. A summary of the two United States Supreme Court decisions that attempted to clarify the definition is included. The Environmental Protection Agency and the United States Army Corps of Engineers also attempted to clarify the definition through a draft rule jointly submitted to the Office of Management and Budget. The pending draft rule is examined briefly.

C— Alcohol, Drugs, and Gaming

Liquor Laws C1

Kansas statutes concerning alcoholic liquor are included in the Liquor Control Act, the Cereal Malt Beverage Act, the Club and Drinking Establishment Act, the Nonalcoholic Malt Beverages Act, the Flavored Malt Beverages Act, the Beer and Cereal Malt Beverages Keg Registration Act, the farm winery statutes, the microbrewery statutes, and the microdistillery statutes. A summary of state and local regulatory authority also is presented as applied to enforce these liquor laws.

Lottery, State-owned Casinos, Parimutuel Wagering, and Tribal Casinos C2

State constitutional amendments permit three types of non-tribal gaming in Kansas: the Kansas Lottery (including state-owned casinos authorized by the Expanded Lottery Act); parimutuel wagering on dog and horse races (currently inactive); and charitable bingo (discussed in article C-3). Four state-tribal

compacts were completed, beginning in 1995, with four resident tribes permitted to host casino gaming at one site in the state for each tribe.

Charitable Gaming, Bingo, and Other Games.....C3

In 1974, Kansas voters approved a constitutional amendment authorizing the Legislature to regulate, license, and tax the operation of games of "bingo" by bona fide non-profit organizations, including religious, charitable, fraternal, educational, and veterans. The constitutional amendment was amended in 1995 to authorize games of "instant bingo" (also known as "pull-tabs") as a similar type of bingo game. The Legislature assigned the Department of Revenue to staff and operate the state's oversight of regulating, licensing, and taxing bingo games and bingo operators. In recent years legislative discussion has addressed other types of charitable gaming, but absent a constitutional amendment, no other types may be conducted.

D— Children and Youth

Tobacco/Children's Initiatives Fund..... D1

Kansas became a party to the Master Settlement Agreement in 1998 and began receiving revenue from manufacturers of tobacco products in 1999. A decision was made to dedicate a large portion of the tobacco money to programs and services for children, resulting in the creation of the Kansas Children's Cabinet to make recommendations to the Governor and Legislature on programs to be funded and the creation of the Children's Initiatives Fund from which expenditures would be made.

This briefing paper contains the following information:

- Background on the tobacco settlement, how tobacco revenues may be spent, and the establishment of the Kansas Endowment for Youth Fund;
- A history of actual receipts of tobacco revenues, including revenues from nonparticipating manufacturers who have recently joined the agreement;
- A statement of concern about future payments in view of a reduction in sales of participating tobacco manufacturers and the possibility that one or more of the major participating manufacturers could declare bankruptcy;
- A discussion of how money in the Children's Initiatives Fund can be used and a table showing recently approved expenditures from the fund for children's programs and services; and
- An update on the arbitrated "settlement in principal" Kansas agreed to in December 2012.

Juvenile Services.....D2

This briefing paper summarizes the current function of Juvenile Services, now located within the Kansas Department of Corrections pursuant to ERO 42, and the history of juvenile justice reform in Kansas.

Child Custody and Visitation Procedures D3

This briefing paper summarizes Kansas laws governing custody of a child, including key terms, the process followed by the court to make an initial determination and the factors it considers, modification and violation of an order, special considerations for parents who are in the military, and the rights of nonparents.

Child in Need of Care Process D4

This briefing paper follows the process used to determine whether a child is a "child in need of care," beginning with an initial allegation of neglect, abuse, or abandonment until the child is either determined to not be in need of care or achieves permanency. Ultimately, based on the court's discretion, children who are determined to be in need of care may be adopted if parental rights are terminated, placed with a permanent custodian, or returned to a parent or parents.

Adoption D5

This briefing paper summarizes the Adoption and Relinquishment Act, which governs adoptions in Kansas, including both the termination of parental rights and the transfer of legal custody to and creation of legal rights in the adoptive parents after an adoption hearing and decree.

E— Commerce, Labor, and Economic Development

Statewide STAR Bond Authority E1

A STAR bond project is a state financing program that allows city governments to issue bonds that are repaid by all of the revenues received by the city or county from any transient guest, local sales taxes, and use taxes which are collected from taxpayers doing business within that portion of the city's redevelopment district to retire special obligation bonds. The bonds have a maximum 20-year repayment period. Kansas law allows the governing body of a city to establish one or more special bond projects in any area in the city or outside of a city's boundaries with the written approval of the county commission. However, each special bond project must be approved by the Secretary of Commerce, based on the required feasibility study, prior to utilizing STAR bonds. This briefing paper discusses these issues.

Kansas Bioscience Authority E2

The Kansas Economic Growth Act (KSA 74-99b01 to 74-99b89) creates the Kansas Bioscience Authority. The mission of the Authority is to make Kansas a desirable state in which to conduct, facilitate, support, fund, and perform bioscience research, development, and commercialization. In addition, the Authority is to make Kansas a national leader in bioscience, create new jobs, foster economic growth, advance scientific knowledge, and, therefore, improve the quality of life for all Kansas citizens.

Economic Development Initiatives Fund (EDIF) Overview..... E3

The Economic Development Initiatives Fund is used to finance programs that support and enhance economic development in the State of Kansas. In 1986, the State Legislature began appropriating funds from the Economic Development Initiatives Fund for individual projects and programs that were deemed to foster economic development in Kansas. The Legislature has made several changes to the transfers with the most recent changes occurring during the 2009 Legislative Session. This briefing paper discusses how money in the Economic Development Initiatives Fund can be used and a table showing expenditures for FY 2011, FY 2012, and FY 2013.

Department of Commerce E4

The Department of Commerce is the cabinet state agency concerned with economic and business development. The state's workforce training initiatives are housed in the Department, as well. For certain economic development programs, the Department of Commerce certifies to the Department of Revenue that individuals or entities meet the eligibility for tax credits or other special distributions of public revenue.

Unemployment Insurance Compensation Fund E5

This briefing paper provides an overview of the functions of the Kansas Unemployment Insurance Trust Fund with particular focus on the exhaustion of the Fund resources as a result of the 2009 Economic Crisis. Other topics considered include employer contributions, employee benefit calculations, and federal extensions of unemployment compensation.

Kansas Creative Arts Industries Commission..... E6

The Kansas Creative Arts Industries Commission (KCAIC) was created in May 2012 and is responsible for growing the creative industries sector of the Kansas economy. The KCAIC assumed the powers, duties and functions of the Kansas Arts Commission and the Kansas Film Commission and is administered by the Kansas Department of Commerce. This briefing summarizes the duties, programs and funding of the KCAIC

F— Corrections

Sentencing..... F1

This briefing paper summarizes the two grids that contain the sentencing range for drug crimes and nondrug crimes and discusses those crimes classified as "off-grid." The grids were developed for use as a tool in sentencing, providing practitioners in the criminal justice system with an overview of presumptive felony sentences. The paper also discusses sentencing considerations, postrelease supervision, and recent sentencing legislation.

Kansas Prison Population and Capacity F2

This briefing paper reviews the current and historic inmate populations and total inmate capacity within the Kansas Department of Corrections. The population and capacity are discussed in terms of overall numbers as well as by gender and inmate classification. Issues regarding operating close to capacity also are discussed.

Prisoner Review Board F3

In 2011, the Prisoner Review Board replaced the Kansas Parole Board as the releasing authority for incarcerated offenders who have committed the most serious, heinous, and detrimental acts against society. This paper outlines the creation, duties and functions of the Prisoner Review Board in the Kansas Criminal Justice system.

G— Education

School Finance..... G1

This briefing paper provides an overview of school finance state aid. The School District Finance and Quality Performance Act provides the formula for computing general state aid and supplemental state aid (local option budget aid) for the 286 unified school districts in Kansas.

H— Energy and Utilities

Renewable Portfolio Standards, Wind Generated Electricity in Kansas, and Production Tax Credit. ... H1

In 2009, Kansas enacted the Renewable Energy Standards Act, which requires electric public utilities, except municipally owned electric utilities, to generate or purchase renewable generating capacity equal to at least 10 percent of their peak demand beginning in 2011, 15 percent beginning in 2016, and 20 percent beginning in 2020. Renewable energy may be generated from a wide variety of resources, but most of Kansas' renewable electric power comes from wind. As of October 2013, Kansas had over 2,700 megawatts of commercial installed wind capacity. Wind is a renewable source eligible for the Production Tax Credit (PTC). The PTC is a federal, per kilowatt-hour (kWh) tax credit for electricity generated

by certain energy sources. The PTC ranges from 1.1 cents to 2.2 cents per kWh, depending upon the type of renewable energy source. The PTC is scheduled to expire on January 1, 2014.

Electricity Transmission in Kansas H2

At its most basic level, the transmission system (or "grid") is an interconnected assembly of high-voltage transmission lines and associated equipment for moving electric energy at high voltages (typically 110 kilovolts [kV] or above) between points of supply and points of delivery. Kansas has experienced tremendous growth in new high-voltage transmission lines since 2007. The cost of these projects is generally spread across ratepayers throughout the Southwest Power Pool's multi-state footprint. Siting of new transmission lines is subject to approval by the Kansas Corporation Commission. Once a siting application is approved, a utility may exercise the power of eminent domain if agreement cannot be reached with a landowner on compensation.

Keystone Pipeline System in Kansas H3

The Keystone Pipeline System includes several crude oil pipelines built or being built by TransCanada, a Canadian energy company. Phase II of the pipeline, the Cushing Extension, runs south from the Nebraska border through Washington, Clay, Dickinson, Marion, Butler, and Cowley counties in Kansas before arriving at Cushing, Oklahoma. This portion of the pipeline went into service in February 2011. In October 2010, TransCanada filed an application for a property tax exemption for the Cushing Extension in Kansas. The Department of Revenue did not recommend approval, but the exemption was granted by the Court of Tax Appeals in April 2012. The Department filed for judicial review and the case was pending with the Court of Appeals as of October 2012.

After being denied a Presidential Permit for a new pipeline that would run from Hardesty, Alberta to the U.S. Gulf Coast, incorporating the existing Cushing Extension through Kansas, TransCanada split the project. The southern portion, from Cushing, Oklahoma to the Gulf Coast, is under construction and is expected to be in service by mid-to-late 2013. The northern section, from Hardesty, Alberta to Steele City, Nebraska is undergoing review for a Presidential Permit.

I— Ethics and Elections

Identification and Citizenship Requirements for Voter Registration and Voting I1

Voter ID – For as long as voting has been a reality in the United States, the tension between voting access and security has existed. In the most recent chapter of this tension, voter identification and voter registration requirements have grown in scope in an attempt to increase voting security. This article outlines the federal and state requirements in these two areas.

J— Financial Institutions and Insurance

Kansas Health Insurance Mandates.....J1

Since 1973, the Kansas Legislature has added new insurance statutes mandating that certain health care providers be paid for services rendered and paying for certain prescribed types of coverages. This briefing paper outlines current Kansas provider and benefit mandates, legislative review and interim study, cost impact study requirements, and recent trends in mandates legislation. Also highlighted is the potential impact of the federal Patient Protection and Affordable Care Act on health benefit coverages in Kansas.

Payday Loan Regulation J2

The Kansas Legislature first began its review of the practice of payday lending and the potential for oversight under the Kansas Uniform Consumer Credit Code during the 1991 Session. This briefing paper provides a historical review of the creation of and amendments to payday lending laws in Kansas. The paper also provides data that details the growth in payday lending activities since 1995. Finally, a brief summary of recent federal payday lending law is provided.

Uninsured Motorists J3

The Insurance Research Council has estimated that approximately 10 percent of Kansas drivers were uninsured in 2009 (the most recent estimate available), even though Kansas law has long required continuous vehicle insurance coverage and provides for penalties for those who fail to get or maintain coverage. Research suggests a state can deter motorists from driving vehicles that are not insured through creating a culture of having insurance, making insurance more affordable, and punishing those who have been found to have no insurance. A state can verify coverage using a state-maintained database, direct access to insurance company data, or a combination of those methods. Several states by statute require the development and use of an online motor vehicle financial security verification and compliance system that checks insurance company records.

K— Firearms and Weapons

Concealed Carry.....K1

The Personal and Family Protection Act allows concealed carry of handguns. Recent changes generally streamlined the process of applying for a license and modified the basic requirements for initial licensing and renewing a license. The term “weapon” was changed to “handgun” to more accurately reflect the type of firearm covered by the legislation. Anyone licensed may carry concealed when hunting, fishing, or fur harvesting. In addition, a person with a legally acquired sound suppression device may use such device during these activities. The 2013 Legislature enacted Senate Sub. for HB 2052 that adds new sections to the Personal and Family Protection Act, primarily authorizing concealed carry of handguns by licensees into certain public buildings enumerated in the legislation. Also passed was SB 21, which also enacted firearms-related amendments. This article describes the recent changes.

Uniform State Laws—Knives, Handguns, State Pre-emption, and Unlawful Discharge K2

New law (2013 HB 2033) prohibits municipalities from regulating the transportation, possession, carrying, sales, transfer, purchase, gifting, licensing, registration, or use of a knife or knife-making components. The 2013 Legislature also passed

SB 102, which establishes the Second Amendment Protection Act in statute. Existing law concerning firearms, concealed handguns, criminal law regarding concealed handguns, and the Personal and Family Protection Act (concealed carry of handguns) also were revised in 2013 Senate Sub. for HB 2052. This article describes the recent changes intended to make such laws more uniform.

L— Health

Health Care Stabilization Fund and Kansas Medical Malpractice Law L1

This briefing paper details the assigned role of the Health Care Stabilization Oversight Committee, as well as provides a history of the Fund, recent issues (especially those related to insurance and health care providers), and current Fund balances. A brief summary of Kansas medical malpractice law is provided.

Kansas Provider Assessments L2

This briefing paper provides an explanation of the concept of a federal Medicaid provider assessment, guidelines for any form of a provider assessment, and the history of provider assessments in Kansas. The paper also contains information on the new federal Medicaid provider assessment on all licensed beds for Kansas skilled nursing facilities.

Olmstead—Institutional and Community Placement Decisions L3

This briefing paper summarizes the *Olmstead* Supreme Court decision and its affect on Community Based Care in Kansas. The paper includes a summary of the decision itself, as well as an explanation of the role of the U.S. Department of Justice in enforcing this decision. The paper also highlights recent *Olmstead*-based litigation in other states.

Massage Therapy L4

This briefing paper provides an update on massage therapy licensure in Kansas and other states. Kansas does not require licensure for massage therapists; however, three bills have been introduced in the Kansas Legislature in the last five years that would have required licensure. The most recent bill introduced remained in the House Committee on Health and Human Services at the end of the 2013 Legislative Session. A chart comparing and contrasting the three bills is included.

Recent Changes in Kansas Health Information Technology L5

This article provides background information on the development of health information technology in Kansas and changes made during the 2013 Legislative Session to the Kansas Health Information Technology and Exchange Act, which was renamed the Kansas Health Information Technology Act.

M— Health Reform

Supreme Court Ruling's Impact on Affordable Care Act—Medicaid Expansion M1

This article discusses the expansion of Medicaid under the Affordable Care Act and outlines the Court challenges to the expansion, the June 2012 U.S. Supreme Court decision making the expansion optional for states, available state options and those exercised by other states, and state budget concerns with Medicaid expansion.

Health Insurance Exchange/Market Reforms/Implementation M2

This briefing paper outlines the insurance marketplace reforms included in the Affordable Care Act, related changes in Kansas law, and the interaction of the market and Exchange and available options following the June 2012 U.S. Supreme Court decision. This paper also highlights the remaining implementation time line and policy considerations for state policy makers, as established by the Act.

N— Immigration

Immigration Issues N1

This briefing paper summarizes the Arizona immigration law, the federal court challenge, the Supreme Court decision, the proposed Kansas immigration law, the current in-state tuition law, and E-Verify.

O— Judiciary

Tort Claims Act O1

This briefing paper provides a summary of the Kansas Tort Claims Act, which governs the extent to which a governmental entity in Kansas would be liable for damages caused by the negligent or wrongful acts or omissions of any of its employees while acting within the scope of their employment. The Act places a $500,000 cap on damage awards for claims arising out of a single occurrence or accident. This paper also describes the exceptions set out in the Act.

Death Penalty In Kansas O2

This briefing paper reviews the death penalty as it exists in Kansas, enumerates the requirements for imposing capital punishment, summarizes the salient points of current controversy, and lists other states that have capital punishment.

Kansas Administrative Procedure Act O3

This briefing paper concerns the Kansas Administrative Procedure Act, which allows for the review of decisions made by state agencies by the Office of Administrative Hearings, an independent state agency required to conduct hearings for all state agencies, boards, and commissions.

Sex Offenders and Sexually Violent Predators O4

This briefing paper reviews the Kansas Offender Registration Act," residency restrictions; and the commitment of "sexually violent predators."

Human Trafficking O5

Although the word “trafficking” implies movement, human trafficking does not always follow that implication. Human trafficking, or modern day slavery, is a growing problem in the United States as well as Kansas. Human trafficking victims include U.S. citizens - including children - as well as immigrants. The problem is present in Kansas, having been discovered in Wichita and Kansas City, as well as in smaller communities. This article examines the presence of human trafficking in the U.S. and Kansas, and examines human trafficking laws at the federal and state level.

Judicial Selection.....O6

This briefing paper describes the current method for filling vacancies on the Kansas Supreme Court and Court of Appeals, as well as recent legislative efforts in this area.

P— Kansas Open Meetings Act

Kansas Open Meetings Act P1

This briefing paper reviews the provisions of the Kansas Open Meetings Act (KOMA) and the public bodies that are covered. The definition of “meeting” is explained. Penalties for violations of the law are described. Finally, open meetings laws from other states are examined briefly.

Q— Kansas Open Records Act

Kansas Open Records Act Q1

This briefing paper addresses the provisions of the Kansas Open Records Act (KORA). The exceptions to the open records law are reviewed. Responsibilities of public agencies are listed as well as the rights of persons who request public records. Penalties for violations of the law are described.

R— Local Government

Home Rule..... R1

This briefing paper reviews the constitutional home rule powers of cities and the statutory home rule powers of counties. Home rule power is exercised by cities by ordinance and is exercised by counties by resolution. Charter ordinances and charter resolutions that except cities and counties from nonuniform state laws are described.

Eminent Domain R2

This briefing paper addresses the power of public and certain private entities to take private property for a public purpose by the exercising of the power of eminent domain. Local governments and state agencies that have the power

of eminent domain are listed. The controversy over the use of eminent domain power to take private property for economic development purposes is reviewed.

Boundary Changes—Annexation R3

There are basically three ways a municipality can change its boundaries: annexation, consolidation, or detachment. This paper will discuss the first of these boundary change methods, annexation. A summary of Kansas' law as well as a brief history of recent annexation legislation is provided.

S— Retirement

Kansas Public Employees Retirement System's Retirement Plans S1

An overview of the Kansas Public Employees Retirement System (KPERS) and the different plans administered, including a brief history of the evolution of state public retirement plans, is presented in this article. Currently, there are five statutory plans for public employees: the regular KPERS plan for most state, school and local public employees; the Kansas Police and Fireman's (KP&F) Retirement System plan, the Retirement System for Judges plan, the special public official deferred compensation plan for certain state employees, and a closed retirement plan for certain session-only legislative employees. In addition, KPERS administers several other public employee benefit plans, including a death and long-term disability plan, an optional term life insurance plan, and a voluntary deferred compensation plan.

Judicial and Public Safety Retirement Plans S2

KPERS is an umbrella organization that often is referred to as the Retirement System. Its Board of Trustees administers five different retirement plans, two of which will be the focus of this article on the Kansas Retirement System for Judges and the Kansas Police and Fireman's (KP&F) Retirement System. Although all judicial branch district court judges and appellate court justices participate in the former plan, only a small proportion of public safety employees at the state and local agencies participate in the KP&F plan, if their employer opts for participation of its public safety employees. Most public safety employees are enrolled in regular KPERS by their employers due to the higher costs of the KP&F plan which also offers more enhanced benefits than KPERS.

Kansas Defined Contribution Plans S3

The State of Kansas provides three defined contribution pension plans for certain state employees designated by statute as eligible for membership in such programs. KPERS generally considered a defined benefit plan, which is different from a defined contribution plan wherein the employee bears most of the burden for retirement security. Three defined contribution plans authorized by statute have been implemented, with all three having active members. Enabling legislation is found for each plan separately in three statutory sections. KSA 74-4925 establishes the Regents Retirement Plan generally for certain faculty and administrators. KSA 74-49b01 *et seq*. provides for an authorized deferred

compensation plan under IRC section 457(b) for state, school and local public employees to make self-directed, deferred compensation payments into a savings plan. Finally, KSA 74-4911f allows certain statutorily defined state employees to participate in a deferred compensation plan where the state contributes 8.0 percent of compensation on behalf of participants.

Working After Retirement S4

This article addresses the retirees of KPERS and the policies adopted by the Legislature for working after retirement. The Legislature has alternated between a policy of restrictions and of no restrictions on retirees who go back to work for a KPERS participating employer after retirement from state agencies, local units of government, and school districts and other educational institutions. As recently as 1987, there were no statutory restrictions on working after retirement. Current statutory provisions generally impose a salary cap of $20,000 on KPERS retirees who return to work for the same KPERS participating employer from whom they retired. There are no salary cap restrictions if a KPERS retiree returns to work for another participating employer other than the one from which the employee retired. However, the Legislature has imposed a penalty on KPERS participating employers who hire KPERS retirees, and those participating employers must pay an assessment to KPERS. Certain KPERS school retirees who are allowed to return to work for the same employer from which they retired do not have a salary cap under a three-year exemption, but that employer is assessed the special payment for KPERS.

KPERS Long-Term Funding Plan S5

KPERS faces two challenges in terms of long-term funding. The first challenge involves the regular KPERS program's long-term funding of all three public employee coverage groups (state, school, and local), and the second challenge specifically involves the KPERS School Group which is no longer in actuarial balance to achieve full-funding for promised benefits under provisions of current law. The 2012 actuarial valuation projects that the actuarial required contributions may be reached by 2019 if all assumptions are met. Both long-term funding challenges are impacted by two situations. First, there is an annual gap between current revenue (contributions) and expenditure (benefits) that must be funded from investment income. Second, there is a shortfall in annual employer contributions computed as the difference between the actuarial rate (which indicates how much should be paid by employers) versus the statutory rate (which determines how much is paid by employers). The resulting reduced funding increases the unfunded actuarial liability, which is the difference between assets and promised benefits. The Legislature focused its attention on the long-term retirement funding issue during recent sessions. This article explores the situation in more detail and in light of recent legislative developments to increase funding to KPERS.

KPERS Early Retirement, Normal Retirement, and Early Retirement Incentive Plans S6

For KPERS that includes state, school, and local governmental employees, the KPERS actuary reviews the actual experience every three years to compare it

with anticipated experience (actuarial assumptions) in order to reexamine certain assumptions to see if the actual experience differed from the assumed pattern over the period. In recent years there has been increased concern about the impact of the early KPERS retirements at 85 points and of the added incentive of early retirement incentive plans reducing the number of public employees with many positions not filled with replacements. This article examines the dynamics as described by the KPERS actuary in the latest three-year actuarial experience study.

T— State Finance

Kansas Laws to Eliminate Deficit Spending T1

This briefing paper contains information on various state laws and statutory sections that provide safeguards to prevent deficit financing. Included are Constitutional provisions, ending balance requirements, Governor's options to eliminate a negative ending balance or create a $100 million ending balance, and a mechanism to eliminate cash flow issues during the year.

Local Demand Transfers T2

This briefing paper provides an explanation of the four local demand transfers (the School District Capital Improvements Fund, the Local Ad Valorem Tax Reduction Fund, the County-City Revenue Sharing Fund, and the Special City-County Highway Fund), including the statutory authorization for the transfers; the specific revenue sources for the transfers, where applicable; recent treatment of the transfers as revenue transfers; and funding provided for the transfers in recent years. In addition, other demand transfers (the State Water Plan Fund, the State Fair Capital Improvements Fund, and the Regents Faculty of Distinction Fund), which do not flow to local units government, are discussed.

District Court Docket Fees T3

The briefing paper includes a short background about docket fees and explains how docket fees, which are credited to the State Treasury, are distributed to various state funds. There also is a table that shows the amount of each docket fee, how the fee is authorized, and how it is distributed.

U— State Government

Veterans and Military Personnel Issues U1

This briefing paper contains information on benefits provided by the State of Kansas to veterans and to those on active military duty. The benefits are organized by type of benefit, such as educational benefits.

State Employee Issues U2

This paper discusses a variety of issues regarding state employees, including an explanation of classified and unclassified employees, benefits provided to state

employees, recent salary and wage adjustments authorized by the Legislature, and general information on the number of state employees.

Indigents' Defense Services U3

This briefing paper discusses issues surrounding the Board of Indigents' Defense Services. The paper explains the Constitutional requirement to provide legal counsel to indigent defendants and how this is accomplished through public defender offices and assigned counsel. Also included is an outline detailing where offices are located and where assigned counsel will be utilized in other areas of the state or where the public defender has a conflict of interest. Also discussed are the average costs per case as well as some of the data put together by Legislative Post Audit on the costs of capital defense cases and recent court cases dealing with the issue of compensation if there is appointed counsel.

Joint Committee on Special Claims Against the State U4

This briefing paper provides an overview of the Joint Committee on Special Claims Against the State, including the past committee history, membership requirements of the committee, explanation of the claims process, and information regarding committee recommendations.

Capitol Restoration U5

This briefing paper provides an overview of the Capitol Restoration project. The project is being financed by a series of bond issues approved by previous sessions of the Legislature. Replacement of the roof and dome, restoration of the entire of the four wings of the Statehouse, restoration of the rotunda and construction of a new parking facility are all included in the project funding.

Senate Confirmation Process U6

State law in Kansas requires that certain appointments by the Governor or other state officials be confirmed by the Senate prior to the appointee exercising any power, duty, or function of office. This paper summarizes the confirmation process.

V— Taxation

Homestead Program V1

This paper outlines the history and current structure of the Homestead Property Tax Refund Act, a "circuit-breaker" style property tax relief program Kansas has utilized since 1970. Significant expansions to the program were enacted in both 2006 and 2007, and more than $37.6 million in refunds were paid out in FY 2012. Renters will be removed from the program in tax year 2013 pursuant to 2012 legislation.

Liquor Taxes V2

This briefing paper provides a discussion of the three levels of liquor taxation in Kansas (represented by the liquor gallonage tax, the liquor enforcement tax, and the liquor drink tax). The paper also contains information on the disposition of revenue for the three taxes, as well as some brief history on the tax rates imposed.

Historical Overview of State and Local Revenue V3

This article provides a general overview of state and local revenue between FY 1996 and FY 2012. Both state and local tax revenues are generally increasing in that time period. The article also briefly discusses the composition of State General Fund Tax Revenue by major tax source at different points in the last three decades, as well as the tax burden of Kansas and the surrounding states.

W— Transportation and Motor Vehicles

State Funding for Transportation W1

Federal moneys this year were expected to provide about a quarter of the revenues for the Kansas Department of Transportation, but the remainder comes from State sources, primarily state fuel taxes, a portion of the sales tax, and registration and related fees. Fuel tax revenues reflect decreased fuel use. A portion of sales tax goes directly into the State Highway Fund, and that portion increased in 2013 under the provisions of 2010 Senate Sub. for HB 2360. The Transportation Works (T-Works) for Kansas bill, 2010 Senate Sub. for Senate Sub. for HB 2650, increased registration fees for large vehicles, starting in 2013. The T-Works bill also allows the Department to issue additional bonds.

Driver's License as Identification W2

States have taken various legal approaches to address the concerns of those who do not want photographs of themselves on driver's licenses or identification (ID) cards and to provide driver's licenses or ID cards to those who cannot prove lawful presence in the United States. At least 7 states specifically allow a driver's license to be issued without a photograph if the licensee has certain religious objections, and at least 11 states (an increase from 3 at the beginning of 2013) offer or soon will offer an official document that allows the document holder to drive and purchase vehicle insurance.

Informational and Traffic Control Signs W3

Federal and state laws govern which signs may be placed along highways in the state, whether those signs are for purposes of advertising, providing directions, or traffic control. Generally, only official signs are allowed in the right-of-way, and traffic control signs are placed based on engineering judgment.

Kansas Legislative Research Department

A-1
Rule and Regulation Legislative Oversight

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Administrative Rules and Regulations

A-1 Rule and Regulation Legislative Oversight

Since 1939, Kansas statutes have provided for legislative oversight of rules and regulations filed by state officers, boards, departments, and commissions. The 1939 law declared that all rules and regulations of a general or statewide character were to be filed with the Revisor of Statutes and would remain in force until and unless the Legislature disapproved or rejected the regulations. It was not until 1974 that the Legislature took steps to formalize an oversight process. In that year, all filed rules and regulations were submitted to each chamber. Within 60 days of that submission, the Legislature could act to modify and approve or reject any of the regulations submitted. In 1984, the Kansas Supreme Court held that a procedure adopted in 1979 which authorized the use of concurrent resolutions to modify or revoke administrative rules and regulations violated the doctrine of separation of powers under the state constitution.

The 1975 interim Legislative Budget Committee, under Proposal No. 33, found it "important to maintain and even enhance legislative oversight of all regulations in order to make sure that they conform with legislative intent." The 1976 Legislature agreed with that finding and enacted several amendments to the Rule and Regulation Filing Act. In that same year, the Legislative Coordinating Council created the Special Committee on Administrative Rules and Regulations to review proposed administrative rules and regulations filed with the Revisor. The law was later changed to require proposed agency rules and regulations to be reviewed as outlined below. A 1977 enacted bill created the Joint Committee on Administrative Rules and Regulations.

Rule and Regulation Authority: Examples

Regulations serve to implement or interpret legislation administered by a state agency. The statutory authority for the agency to adopt these regulations is found in enabling legislation, as illustrated below in the language found in recent legislation:

Kansas Roofing Registration Act (2013 Session)

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. (2013 Sub. for HB 2024, new Section 4).

Kansas One Map Act (2012 Session)

The executive chief information technology officer may adopt rules and regulations to implement the provisions of the Kansas one map act. (2012 HB 2175, KSA 74-99f06).

The Rules and Regulations Filing Act (KSA 77-415 through 77-437) outlines the statutory requirements for the filing of regulations by most executive branch agencies and for the Legislature's review of the agency regulations.

The Regulation Adoption Process

There are two types of administrative rules and regulations: temporary and permanent. A temporary rule and regulation, as defined in KSA 77-422, may be utilized by an agency if preservation of the health, safety, welfare, or public peace makes it necessary to put the regulation into effect before a permanent regulation would take effect. Temporary rules and regulations take effect and remain effective for 120 days, beginning with the date of approval by the State Rules and Regulations Board and filing with the Secretary of State. A state agency, for good cause, may request a temporary rule and regulation be renewed one time for an additional period not to exceed 120 days. A permanent rule and regulation takes effect 15 days after publication in the *Kansas Register*.

KSA 77-420 and 77-421 outline the process for the adoption of permanent Kansas Administrative Regulations (KAR) in the following steps (to be followed in consecutive order):

- Obtain approval of the proposed rules and regulations from the Secretary of Administration;
- Obtain approval of the proposed rules and regulations from the Attorney General including whether the rule and regulation is within the authority of the state agency;
- Submit the notice of hearing, copies of the proposed rules and regulations as approved, and the economic impact statement to the Secretary of State; and submit a copy of the notice of hearing to the chairperson of the Joint Committee on Administrative Rules and Regulations;
- Review the proposed rules and regulations with the Joint Committee;
- Hold the public hearing and prepare a statement of the principal reason for adopting the rule and regulation;
- Revise the rules and regulations and economic impact statement, as needed, and again obtain approval of the Secretary of Administration and the Attorney General;
- Adopt the rules and regulations; and
- File the rules and regulations and associated documents with the Secretary of State.

The Secretary of State, as authorized by KSA 77-417, endorses each rule and regulation filed, including the time and date of filing; maintains a file of rules and regulations for public inspection; keeps a complete record of all amendments and revocations; indexes the filed rules and regulations; and publishes the rules and regulations. The Secretary of State's Office publishes the adopted regulations in the KAR Volumes and Supplements. A full set is published every third year, with KAR supplements published in the other two years. In addition, new, amended, or revoked regulations are published in the *Kansas Register* as they are received. The Secretary of State has the authority to return to the state agency or otherwise dispose of any document which had been adopted previously by reference and filed with the Secretary of State.

Adoption of a Permanent Regulation - Time Frame

Total Time: 112 to 174 Days / 16 to 25 Weeks

Step 1
Submit regulations to Secretary of Administration

1 to 3 Weeks

Step 2
Submit regulations to Attorney General

1 to 3 Weeks

Step 3
Submit to *Kansas Register*

8 days to 2 Weeks

Step 4
Notice published in *Kansas Register*

61-day Minimum

Step 5
Joint Committee on Administrative Rules and Regulations reviews and comments on proposed regulations

Step 6
Hold public hearing

1 to 3 Weeks

Step 7
Obtain approval for revisions; adopt; file with Secretary of State

1 to 3 Weeks

Step 8
Regulations published in *Kansas Register*

15 Days

Step 9
Regulations take effect

Source: Policy and Procedure Manual for the Filing of Kansas Administrative Rules and Regulations, Department of Administration

Legislative Review

The law dictates that the 12-member Joint Committee on Administrative Rules and Regulations review all proposed rules and regulations during the 60-day public comment period prior to the required public hearing on the proposed regulations. Upon completion of its review, the Joint Committee may introduce legislation it deems as necessary in the performance of its review functions. Following the review of each proposed rule and regulation, the Joint Committee procedure is to forward comments it deems appropriate to the agencies for consideration at the time of their public hearings on the proposed rules and regulations. The letter expressing comments by the Joint Committee also includes a request that the agency reply to the Joint Committee in writing to respond directly to the comments made and to detail any amendments in the proposed rules and regulations made after the Joint Committee hearing and any delays in the adoption of or the withdrawal of the regulations. Staff maintains a database of responses to Joint Committee comments and reports on those responses to the Joint Committee. A limited number of regulations are exempt from the review process of the Joint Committee. In addition, certain permanent regulations have a defined statutory review period of 30 days, rather than the 60-day review period. Each year the Legislative Research Department prepares a report on the oversight activities of the Joint Committee on Administrative Rules and Regulations; this electronic report is available from the Department.

As part of its review process, the Joint Committee examines economic impact statements, as required by law, that are prepared by agencies and accompany the proposed rules and regulations. The Joint Committee may instruct the Director of the Budget to review the agency's economic impact statement and prepare a supplemental or revised statement.

The Legislature also is permitted to adopt a concurrent resolution expressing its concern regarding any permanent or temporary rule and regulation. The resolution may request revocation of the rule and regulation or amendment as specified in the resolution. If the agency does not respond positively in its regulation(s) to the recommendations of the Legislature, the Legislature may take other action through a bill.

Recent legislative changes to the Rules and Regulations Filing Act have not changed this review process.

2008 Legislative Action

During the 2008 Legislative Session, SB 579 was enacted. This legislation requires state agencies to consider the impact of proposed rules and regulations on small businesses. The bill defines "small businesses" as any person, firm, corporation, partnership, or association with 50 or fewer employees, the majority of whom are employed in the State of Kansas.

2010 Legislative Action

During the 2010 Legislative Session, House Sub. for SB 213 revised the Rules and Regulations Filing Act. The bill updated the Act by removing obsolete language and allowed for future publication of the Kansas Administrative Regulations in paper or electronic form by the Secretary of State. In addition, the bill made changes in the definitions used in the Act and in the exclusion of certain rules and regulations from the Act. Certain procedures to be followed in the rulemaking process and procedures also were revised. One provision requires state agencies to begin new rule making procedures when the adopted rule and regulations differ in subject matter or effect in a material respect. Under these conditions the public comment period may be shortened to not less than 30 days.

2011 Legislative Action

During the 2011 Legislative Session, HB 2027 amended the Rules and Regulations Filing Act by deleting the existing definition of "rule and regulation," "rule," and "regulation," including several provisions exempting specific rules and regulations from formal rulemaking under the Act, and replacing it with a simplified definition. It also expanded the definition of "person" to

include individuals and companies or other legal or commercial entities.

The bill gave precedential value to orders issued in an adjudication against a person who was not a party to the original adjudication when the order is:

- Designated by the agency as precedent;
- Not overruled by a court or other adjudication; and
- Disseminated to the public through the agency website or made available to the public in any other manner required by the Secretary of State.

The bill also allowed statements of policy to be treated as binding within the agency when directed to agency personnel concerning their duties or the internal management or organization of the agency.

The bill stated that agency-issued forms, whose contents are governed by rule and regulation or statute, and guidance and information the agency provides to the public do not give rise to a legal right or duty and are not treated as authority for any standard, requirement, or policy reflected in the forms, guidance, or information. Further, the bill provided for the following to be exempt from the Act:

- Policies relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution;
- Parking and traffic regulations of any state educational institution under the control and supervision of the State Board of Regents;
- Rules and regulations relating to the emergency or security procedures of a correctional institution; and
- Orders issued by the Secretary of Corrections or any warden of a correctional institution.

Similarly, statutes that specify the procedures for issuing rules and regulations will apply rather than the procedures outlined in the Act.

Finally, the bill created a new section giving state agencies the authority to issue guidance documents without following the procedures set forth in the Act. Under the terms of this new section, guidance documents can contain binding instructions to state agency staff members, except presiding officers. Presiding officers and agency heads can consider the guidance documents in an agency adjudication, but are not bound by them. To act in variance with a guidance document, an agency must provide a reasonable explanation for the variance and, if a person claims to have reasonably relied on the agency's position, the explanation must include a reasonable justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interests. The bill requires each state agency to maintain an index of the guidance documents; publish the index on the agency's website; make all guidance documents available to the public; file the index in any other manner required by the Secretary of State; and provide a copy of each guidance document to the Joint Committee on Administrative Rules and Regulations (may be provided electronically).

2012 Legislative Action

During the 2012 Legislative Session, SB 252 made several changes to the Kansas Rules and Regulations Filing Act. One of the items the bill accomplished was to update the names of the Kansas Department of Wildlife, Parks and Tourism and the Division of Health Care Finance of the Kansas Department of Health and Environment.

Another amendment by the bill changed notice requirements from 30 days to 60 days for new rule-making proceedings when an agency proposes to adopt a final rule and regulation that:

- Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and

- Is not a logical outgrowth of the rule and regulation as originally proposed.

In addition, the bill changed the Act by striking existing language that stated the period for public comment may be shortened to no less than 30 days, as the Act already stated the notice provided by state agencies constitutes a public comment period of 60 days.

2013 Legislative Action

The only legislative action during the 2013 Legislative Session was the passage of HB 2006, which amended the Kansas Rules and Regulations Filing Act to remove "Kansas" from the name of the Act.

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B-1
Water Litigation

B-2
State Water Plan Fund, Kansas Water Authority, and State Water Plan

B-3
Kansas Corporate Farming Law

B-4
Weights and Measures Program

B-5
Waters of the U.S.

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Agriculture and Natural Resources

B-1 Water Litigation

Kansas has been involved in water litigation against neighboring states for the past century. These included litigation against Colorado regarding the Arkansas River and Nebraska over water in the Republican River Basin. Longstanding litigation against Colorado resulted in Colorado paying Kansas $34.6 million in April 2005 in damages and penalties. An additional $1.1 million was collected in June 2006.

Arkansas River Litigation. Headwaters of the Arkansas River are located in the Rocky Mountains above Leadville, Colorado. Fed by mountain tributaries, the River supports agriculture in Eastern Colorado before flowing into Kansas. Kansas has contended that agricultural demands for irrigation in Eastern Colorado have depleted water coming into Kansas to the extent that irreparable injury has been done, particularly to the agricultural interests in the western part of the state. The State of Kansas and Kansas ditch companies (holders of water rights) brought suit against the State of Colorado that ended up before the United States Supreme Court several times. In the first half of the last century, two actions brought before the United States Supreme Court were resolved in Colorado's favor. The two states formed the Arkansas River Compact in 1948 in an effort to resolve ongoing disputes over water, particularly after the federal construction of the John Martin Reservoir in Colorado in 1946.

The purpose of the Arkansas River Compact is to resolve water disputes between Kansas and Colorado, to divide the waters of the Arkansas

State General Fund Expenditures for Colorado Water Litigation	
FY 1984	$ 96,032
FY 1985	70,424
FY 1986	281,324
FY 1987	651,449
FY 1988	511,045
FY 1989	746,490
FY 1990	1,655,812
FY 1991	3,213,075
FY 1992	1,313,943
FY 1993	655,060
FY 1994	354,457
FY 1995	506,250
FY 1996	1,042,688
FY 1997	921,800
FY 1998	730,715
FY 1999	950,215
FY 2000	1,523,871
FY 2001	878,172
FY 2002	815,120
FY 2003	939,835
FY 2004	695,308
FY 2005	514,208
FY 2006	915,060
FY 2007 *	0
FY 2008-FY 2013	0
TOTAL	$ 19,982,353

*The 2006 Legislature approved $560,000 from the Interstate Water Litigation Fund for ongoing water litigation activities against Colorado. The funding will be transferred from the Interstate Water Litigation account of the State General Fund to the special revenue fund, and so it is not considered a State General Fund expenditure. No funding has been recommended since FY 2007.

River between the states equitably, and to apportion water conservation benefits arising from the operation of the John Martin Reservoir Project. During the late 1970s and early 1980s, Kansas became increasingly dissatisfied with the Compact, partly because of specific decisions made by the Compact commissioners and because the Commission often was immobilized by the requirement that all of its decisions had to be unanimous. Committees of the Kansas Legislature considered the effectiveness of the Compact in the early 1980s, and in 1983, the Legislature made its first appropriation to the Attorney General for staff to investigate and commence litigation against Colorado regarding interstate water rights. Kansas ditch companies already had filed suit against Colorado.

The litigation begun in the 1980s extended over two decades, but this time the United States Supreme Court made decisions in Kansas' favor. The lawsuit originally asked the Court to require that the waters of the Arkansas River be delivered in accordance with the provisions of the Compact. In 1987, the Court ruled that monetary damages could be recovered in water compact enforcement cases and Kansas' motion was amended to also seek monetary damages. In 1995, the Court found that Colorado diverted water that should have gone to Kansas and had violated the Arkansas River Compact. In 2001, the Court ordered Colorado to pay Kansas for damages and prejudgment interest on the amount to be repaid. In April 2005, Colorado paid Kansas $34.6 million. The Attorney General announced in June 2006 that an additional $1.1 million had been collected from Colorado, representing costs associated with various experts retained by the Attorney General to support Kansas' claims that Presumptive Evapotransportation (PET) values required an increase in replacement water flows due Kansas.

A judgment and decree was jointly developed by Kansas and Colorado. The decree contains seven appendices, such as the hydrologic-institutional model and accounting procedures, which will be used to determine if Colorado is in compliance with the Compact. It was presented to the United States Supreme Court on August 4, 2009, and brought an end to the active litigation before the Court. Staff and technical experts from the Division of Water Resources of the Department of Agriculture continue to monitor Colorado's compliance and other issues that affect Colorado's ability to comply with the compact.

How Colorado Water Money Is To Be Used

Legislation enacted in 1996 (KSA 82a-1801) specifies how money recovered from Colorado may be spent. Under that law, an amount equal to the amount spent on the litigation (both money appropriated by the Legislature and money spent by ditch companies) would be credited to the Interstate Water Litigation Fund under the jurisdiction of the Attorney General. Money in the Fund would be used to reimburse the ditch companies ($112,500) and to pay for:

- Preparation for or actual water litigation with another state, the federal government, or an Indian nation;
- Monitoring or enforcing compliance with an interstate water compact or water settlement; and
- Ongoing expenses connected with Colorado litigation and expenses of Kansas agencies to monitor the settlement, including expenses of a River Master or other official appointed by the United States Supreme Court.

Any money recovered from Colorado in excess of amounts spent on the litigation with Colorado would be allocated as follows:

- One-third would go to the State Water Plan Fund for water conservation projects; and
- Two-thirds would go to the Water Conservation Projects Fund for projects in the Upper Arkansas River Basin affected by the Arkansas River Compact.

How Colorado Water Money Has Been Used

The 2008 Legislature approved expenditures using money recovered from litigation with Colorado. Of

the $1.1 million received from Colorado in June 2006, the Legislature approved expenditures of $584,217 in FY 2008 and $525,729 in FY 2009 for the Interstate Water Issues program, which monitors interstate compact compliance on both the Arkansas River and the Republican River. The program also receives funding from the State Water Plan Fund and resides in the Department of Agriculture - Division of Water Resources.

In addition, the Legislature approved the transfer of any remaining funds in the Water Conservation Projects Fund in FY 2008 to a new fund named the Western Water Conservation Projects Fund, with guidelines for establishing a board under the authority of the Groundwater Management District #3 (GMD#3) that will approve projects and disperse funding in the basin most affected by the Arkansas River Compact litigation. The Legislature also approved a transfer of $739,964 from the State Water Plan Fund to the Western Water Conservation Projects Fund in FY 2008. The total amount transferred to the Western Water Conservation Projects Fund in FY 2008 was $9,134,446.

Interstate Water Litigation Reserve Account of the State General Fund

After receipt of $34.6 million from Colorado in April 2005, the 2005 Legislature created the Interstate Water Litigation Reserve Account in the State General Fund and $20.1 million was deposited into the account, with a $0 expenditure limitation, to maintain the full balance in the account. The funding was to be set aside for use in future water litigation, while helping to maintain a positive ending balance in the State General Fund.

The 2006 Legislature approved, for FY 2006, funding of $1.0 million from the account for a loan to a groundwater management district. The funding was not utilized in FY 2006 and reappropriated to FY 2007. The Legislature approved the lapse of the $1.0 million in funding at the end of FY 2007. The language in the appropriations bill, although it was intended to lapse only the $1.0 million in expenditures, was written too broadly and resulted in the entire balance in the account being lapsed at the end of FY 2007 and returned to the State General Fund, completely depleting the Interstate Water Litigation Reserve Account. This erroneous lapse in funding was not discovered until the 2010 Legislative session, when the Attorney General requested funding be transferred from the account to the agency's special revenue Interstate Water Litigation Fund.

The 2010 Legislature authorized water litigation expenditures of $1.2 million in FY 2010 and $1.1 million in FY 2011, from the Attorney General's special revenue Interstate Water Litigation Fund. To provide this funding, the Legislature authorized a transfer of $686,998 from the agency's Medicaid Fraud Prosecution Revolving Fund to supplement existing balances in the Interstate Water Litigation Fund in FY 2010. For FY 2011, the 2010 Legislature authorized the transfer of $578,605 from the Medicaid Fraud Prosecution Revolving Fund and $578,605 from the agency's Court Cost Fund to fund the expenditure.

No funding was approved for water litigation activities for FY 2013.

Republican River Litigation

The states negotiated a settlement, which the United States Supreme Court approved in a decree entered in May 2003. The settlement provides the basis for the annual water accounting and establishes a mandatory non-binding dispute resolution process. From 2003 through 2007, Nebraska overused its annual Compact allocations of water, depriving Kansas of its full annual allocation. Kansas raised the concern that excessive groundwater pumping allowed by Nebraska's local water districts had caused these violations and would cause future violations as well. In 2008, Kansas triggered the dispute resolution process for these violations. That process concluded in late 2009, with Nebraska refusing to cut back on its groundwater pumping. In May 2010, Kansas filed a petition with the Supreme Court asking the Court to enforce the 2003 decree by imposing groundwater pumping restrictions on Nebraska, setting penalties for future violations, requiring Nebraska to pay damages for the water that it deprived Kansas from receiving, and granting other remedies. The Supreme Court has asked the

Solicitor General of the United States to file a brief expressing the federal government's views on the situation, and Kansas' petition remains pending at this time.

Ongoing monitoring of compliance with the Republican River Compact and settlement is the responsibility of the Water Resources Division of the Department of Agriculture. Expenditures by the Attorney General are largely for outside counsel and experts who work under contract with the Attorney General's Office. Currently, the Interstate Water Litigation account of the State General Fund has a zero balance.

State General Fund Expenditures for Nebraska Water Litigation

FY 1998	$ 173,570
FY 1999	277,571
FY 2000	177,448
FY 2001	606,483
FY 2002	1,222,057
FY 2003	527,390
FY 2004	450,718
FY 2005	50,828
FY 2006	99,267
FY 2007-FY 2013*	0
TOTAL	$ 3,585,332

*The 2007 Legislature approved $100,000 in FY 2007 and $1,000,000 in FY 2008 from the Interstate Water Litigation Fund for ongoing water litigation activities against Nebraska. The funding was to be transferred from the Interstate Water Litigation account of the State General Fund to the special revenue fund, and so is not considered a State General Fund expenditure. A total of $1.2 million in FY 2010, and $1.1 million in FY 2011 was approved from the Interstate Water Litigation Fund.

A Special Master appointed by the United States Supreme Court negotiated a settlement in 2003. Currently, the states are compiling and analyzing data concerning the Republican River Basin, which will provide the basis for enforcement of the settlement and future operation of the Compact. One of Kansas' concerns is that local water districts in Nebraska, which are not regulated by the state, will not comply with terms of the settlement. Once the settlement is reached, ongoing monitoring will become the responsibility of the Water Resources Division of the Department of Agriculture, which has been heavily involved in the litigation against both Nebraska and Colorado. Expenditures by the Attorney General in both cases largely have been for outside counsel and experts who have worked under contract to the Attorney General's Office.

Disposition of Republican River Compact Settlement Moneys—2008 Sub. for SB 89

Because of Nebraska's failure to comply with the Supreme Court settlement with respect to the amount of water coming to Kansas and in anticipation of water settlement moneys from Nebraska, the 2008 Legislature enacted legislation which establishes the procedure for the distribution

of any moneys recovered from disputes relating to the Republican River Compact from either Colorado or Nebraska. In addition, the legislation creates the Republican River Water Conservation Projects-Nebraska Moneys Fund and the Republican River Water Conservation Projects-Colorado Moneys Fund. The bill's provisions can be found in KSA 82a-1804 and 82a-1805.

Out of the first moneys received from any dispute in any litigation from both Nebraska and Colorado involving the Republican River Compact, 100 percent will be credited to the Interstate Water Litigation Fund created by KSA 82a-1802. When those moneys are credited to the Interstate Water Litigation Fund, the Director of Accounts and Reports will transfer moneys from the Fund to the Interstate Water Litigation Reserve Account of the State General Fund until the account balance reaches $20 million. The Attorney General is to certify to the Director of Accounts and Reports expenses incurred in any litigation to resolve disputes with Nebraska and Colorado on the Republican River Compact. After the amount required to be placed in the Interstate Water Litigation Fund Reserve Account is satisfied, any remaining moneys from the State of Nebraska are to be deposited in the Republican River Water Conservation Projects-Nebraska Moneys Fund. Likewise, any remaining moneys from the State of Colorado are to be credited to the Republican River Water Conservation Projects-Colorado Moneys Fund.

Moneys in the Republican River Water Conservation Projects-Nebraska Moneys Fund will be allocated as follows:

- One-third to the State Water Plan Fund to be used for water conservation projects with priority given to those projects which will ensure the State of Kansas will remain in compliance with the Republican River Compact; and
- Two-thirds to be used for conservation projects in the Lower Republican River Basin.

Of the moneys credited to the Republican River Water Conservation Projects-Colorado Moneys Fund:

- One-third of the money credited to the State Water Plan Fund to be used for water conservation projects; and
- Two-thirds of the money to be expended only for conservation projects in those areas of the state in the Upper Republican River Basin in Northwest Kansas.

Republican River Water Conservation Projects

The legislation lists the types of projects that may be funded by the moneys in the Republican River Water Conservation Projects-Nebraska Moneys Fund and the Republican River Water Conservation Projects-Colorado Moneys Fund. These project types include the following:

- Efficiency improvements to canals or laterals managed and paid for by an irrigation district;
- Water use efficiency upgrades;
- Implementation of water conservation of irrigation and other types of water uses;
- Implementation of water management plans or actions by water right holders;
- Water measurement devices and monitoring equipment and upgrades;
- Artificial recharge, funding the water transition assistance program, purchase of water rights and cost share for state or federal conservation programs that save water;
- Maintenance of the channel and the tributaries of the Republican River;
- Reservoir maintenance or purchase, lease, construction, or other acquisition of existing or new storage space in reservoirs;
- Purchase, lease, or other acquisition of a water right; and
- Expenses incurred to construct and operate off-stream storage.

Further, the bill permits any person or entity to apply to the Director of the Kansas Water Office for expenditure of moneys from either the Colorado Moneys Fund or Nebraska Moneys Fund. The Director and the Chief Engineer of the Division of Water Resources will review and approve each

proposed project for which moneys would be expended. Interest from those two funds is to be credited to the State General Fund.

Under the bill, priority will be given to those projects needed to achieve or maintain compliance with the Republican River Compact, those that achieve greatest water conservation efficiency for the general good, and those that have been required by the Division of Water Resources. Any project greater than $10,000 will be required to be a line item in an appropriation bill of the Legislature.

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Agriculture and Natural Resources

B-2 State Water Plan Fund, Kansas Water Authority, and State Water Plan

State Water Plan Fund

The State Water Plan Fund is a statutory fund (KSA 82a-951) that was created by the 1989 Legislature for the purpose of implementing the State Water Plan (KSA 82a-903).The Fund is subject to appropriation acts by the Legislature and may be used for the establishment and implementation of water-related projects or programs and related technical assistance. Funding from the State Water Plan Fund may not be used to replace full-time equivalent positions or for recreational projects that do not meet the goals or objectives of the State Water Plan.

Revenue

Revenue for the Fund is generated from the following sources:

- **Water Protection Fees.** A water protection fee of 3 cents per 1,000 gallons of water is assessed on the following:
  - Water sold at retail by public water supply systems;
  - Water appropriated for industrial use; and
  - Water appropriated for stockwatering.
- **Fees Imposed on Fertilizer and Pesticides.** A tonnage fee on fertilizer and a fee for the registration of pesticides is assessed and transferred to the State Water Plan Fund in the following amounts:
  - Inspection fees are imposed on each ton of fertilizer sold, offered or exposed for sale, or distributed in Kansas. Of that fee, $1.40 per ton is credited to the State Water Plan Fund.
  - Every agricultural chemical which is distributed, sold, or offered for sale within the state must be registered with an annual fee assessed for each registration. The law requires that $100 from each registration fee be credited to the State Water Plan Fund.
- **Sand Royalty Receipts.** A fee of $0.15 per ton of sand sold is deposited in the State Water Plan Fund.
- **Pollution Fines.** Certain fines and penalties are levied by the Kansas Department of Health and Environment for water-related pollution including:
  - Violation of terms or conditions relating to public water supply systems;

  - Commission of prohibited acts in relation to the operation of a public water supply system; and
  - Violations of law governing the disposal of solid and hazardous waste.
- **Clean Water Drinking Fee.** A Clean Water Drinking Fee of 3 cents per 1,000 gallons of water is assessed on retail water sold by a public water supply system and delivered through mains, lines, or pipes. Beginning in FY 2008, 101/106 of the Clean Water Drinking Fee receipts will be deposited in the State Water Plan Fund. Of the funding received from the fee, 85 percent is to be used to renovate and protect lakes which are used directly as a source of water for public water supply systems. The remaining 15 percent is to be used to provide on-site technical assistance for public water supply systems.
- **State General Fund Transfer.** By statute, $6 million annually is to be transferred from the State General Fund to the State Water Plan Fund. In recent fiscal years, this amount has been reduced in appropriations bills and was not made in FY 2013.
- **Economic Development Initiatives Fund (EDIF) Transfer.** By statute, $2 million is to be transferred from the Economic Development Initiatives Fund to the State Water Plan Fund.

STATE WATER PLAN FUND REVENUE

	FY 2014 Estimate	FY 2015 Estimate
Transfers		
State General Fund	$ 0	$ 0
Economic Development Initiatives Fund	0	0
Kansas Corporation Commission	(400,000)	(400,000)
Receipts		
Municipal Water Fees	3,356,638	3,485,674
Fertilizer Registration Fees	3,276,000	3,276,000
Industrial Water Fees	1,077,151	1,077,151
Pesticide Registration Fees	1,165,000	1,165,000
Clean Drinking Water Fees	3,229,289	3,229,289
Stockwater Fees	341,444	341,444
Pollution Fines and Penalties	250,000	250,000
Sand Royalties	77,210	77,210
TOTAL	$ 12,372,732	$ 12,501,768

Expenditures

Expenditures from the State Water Plan Fund are based on priorities of the State Water Plan. The State Water Plan is developed and approved by the Kansas Water Authority. The following table summarizes recent actual and approved expenditures from the State Water Plan Fund:

Actual FY 2012, Approved FY 2013, Approved FY 2014, and Approved FY 2015 Expenditures and Transfers from the State Water Plan Fund

Agency/Project	Actual Expenditures FY 2012	Approved Expenditures FY 2013	Approved Expenditures FY 2014	Approved Expenditures FY 2015
Department of Health and Environment				
Contamination Remediation	$ 789,972	$ 775,379	$ 768,076	$ 691,114
TMDL Initiatives	168,736	284,731	199,126	149,731
Nonpoint Source Program	369,800	302,750	295,943	294,131
Watershed Restoration and Protection Survey	716,351	625,000	619,214	555,884
Subtotal	*$ 2,044,8590*	*$ 1,987,860*	*$ 1,882,359*	*$ 1,690,860*
Department of Agriculture – Water Resources				
Interstate Water Issues	$ 522,898	$ 484,086	$ 497,351	$ 447,573
Subbasin Water Resources Management	490,007	671,695	690,023	620,961
Water Use Study	55,000	60,000	61,683	55,509
Subtotal	*$ 1,067,905*	*$ 1,215,781*	*$ 1,249,057*	*$ 1,124,043*
Department of Agriculture - Conservation				
Water Resources Cost Share	$ 2,272,977	$ 2,660,505	$ 2,164,973	$ 1,948,289
Nonpoint Source Pollution Assistance	2,903,799	2,202,666	2,065,031	1,858,350
Aid to Conservation Districts	2,263,609	2,260,000	2,325,375	2,092,637
Water Quality Buffer Initiative	267,416	282,656	277,573	249,792
Riparian and Wetland Program	299,412	165,000	169,628	152,651
Water Supply Restoration Program/ Multipurpose Small Lakes	252,172	195,496	286,868	258,156
Watershed Dam Construction	690,841	630,299	640,544	576,434
Water Transition Assistance Program/ Conservation Reserve Enhancement Program	851,682	801,581	499,578	449,577
Subtotal	*$ 9,801,908*	*$ 9,198,203*	*$ 8,429,570*	*$ 7,585,886*
Kansas Water Office				
Assessment and Evaluation	$ 467,510	$ 542,276	$ 499,166	$ 449,225
GIS Database Development	173,640	170,000	124,792	112,306
MOU - Storage Operations and Maintenance	366,802	360,364	321,562	289,389
Technical Assistance to Water Users	403,209	528,525	404,732	364,238
Streamgaging	0	448,663	479,230	431,282
Weather Stations	48,620	0	0	0
Water Resource Education	38,200	0	0	0
Weather Modification	97,935	200,000	0	0
Wichita Aquifer Recharge Project	657,459	500,000	499,166	449,225
Suspended Sediment Monitoring/ Reservoir Sustainability	0	100,000	0	0
Neosho River Basin Issues	44,773	347,297	0	0
Subtotal	*$ 2,298,148*	*$ 3,197,125*	*$ 2,328,648*	*$ 2,095,665*
Department of Wildlife, Parks and Tourism				
Stream Monitoring	$ 28,800	0	$ 0	$ 0
University of Kansas				
Geological Survey	26,841	26,841	26,841	26,841
STATEWIDE TOTAL	**$ 15,268,461**	**$ 15,625,810**	**$ 13,916,475**	**$ 12,523,295**

Kansas Water Authority

The Kansas Water Authority is a 24-member board which provides water policy advice to the Governor, Legislature, and the Director of the Kansas Water Office. The Authority is responsible for approving water storage sales, the State Water Plan, federal water contracts, and regulations and legislation proposed by the Kansas Water Office. The Authority meets quarterly. The Authority consists of 13 private citizens and 11 *ex officio* members.

Private citizen membership includes:

- One member appointed by the Governor (also serving as Chairperson);
- One member appointed by the President of the Senate;
- One member appointed by the Speaker of the House;
- A representative of large municipal water users;
- A representative of small municipal water users;
- A board member of a western Kansas Groundwater Management District (including districts 1, 3, and 4);
- A board member of a central Kansas Groundwater Management District (including districts 2 and 5);
- A member of the Kansas Association of Conservation Districts;
- A representative of industrial water users;
- A member of the State Association of Watershed Districts;
- A member with a demonstrated background and interest in water use, conservation, and environmental issues; and
- Two representatives of the general public.

Ex officio membership includes:

- The State Geologist;
- The Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture;
- The Secretary of the Kansas Department of Health and Environment;
- The Director of the Kansas Water Office (also serving as secretary);
- The Director of the Agricultural Experiment Station of Kansas State University;
- The Chairperson of the Kansas Corporation Commission;
- The Secretary of the Kansas Department of Wildlife, Parks and Tourism;
- The Secretary of the Kansas Department of Commerce;
- The Executive Director of the Division of Conservation of the Kansas Department of Agriculture;
- The Secretary of the Kansas Department of Agriculture; and
- The Director of the Kansas Biological Survey.

One primary responsibility of the Kansas Water Authority is to consider and approve policy for inclusion in the State Water Plan. The Plan includes policy recommendations that have specific statewide or local impact and priority issues and recommendations for each of the twelve river basins in Kansas.

Budgetary Process

In late spring each year, the State Water Plan Fund Consensus Revenue Estimating Group meets to review past and current receipts and expenditures from the Fund as well as to estimate sources and amounts of revenue for the upcoming budget year. The group consists of representatives of the Kansas Water Office, Department of Revenue, Department of Agriculture, Department of Health and Environment, Division of the Budget, and the Legislative Research Department.

Historically, the Division of the Budget has assigned allocations to each agency for the expenditure of State Water Plan Fund monies. Beginning with the FY 2008 budget cycle, the Kansas Water Authority and the Division of the Budget agreed to allow the Authority to develop a budget recommendation in lieu of the Division's allocation process. For the FY 2009 budget, the Authority agreed to develop and provide a budget to the Division prior to August 15, 2008.

A five-member budget subcommittee of the Authority meets in the summer to develop a State Water Plan Fund budget proposal. The budget is presented to the full Kansas Water Authority in August. The Authority-approved budget is then used by the state agencies to develop their budgets. The Governor's budget includes recommended expenditures for the State Water Plan Fund when it is presented to the Legislature each January.

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Water Litigation

B-2
State Water Plan Fund, Kansas Water Authority, and State Water Plan

B-3
Kansas Corporate Farming Law

B-4
Weights and Measures Program

B-5
Waters of the U.S.

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Agriculture and Natural Resources

B-3 Kansas Corporate Farming Law

The following summarizes former and current corporate farming statutes in Kansas and discusses legal challenges to other state corporate farming laws.

Background

The original Kansas law prohibited certain types of corporate farming in Kansas and was first passed in 1931. That law prohibited corporate farming for the purpose of growing wheat, corn, barley, oats, rye,or potatoes and the milking of cows. Following the enactment of the initial corporate farming law, several amendments were made, among which was an amendment to allow a domestic or foreign corporation, organized for coal mining purposes, to engage in agricultural production on any tract of land owned by the corporation which had been strip mined for coal.

In 1965, major amendments were made to the law. Grain sorghums were added to the list of crops that were restricted. In addition, these amendments made it possible for certain types of corporations, which met detailed specifications, to engage in agricultural production of those restricted crops and also the milking of cows. However, issues with the statute continued to exist. As a result, the Legislature had special interim committees study the issues with corporate farming in 1972, 1975, and 1978. As a result of the 1972 interim study, the 1973 Kansas Legislature passed additional reporting requirements for corporations which held agricultural land in the state. Neither the 1975 nor the 1978 study resulted in legislation being adopted. Additionally, discussions of the problems associated with the corporate farming statute were held throughout this time period. Numerous discussions continued between 1972 and 1981.

As a result of these concerns the 1981 Legislature introduced and enacted SB 298.

Since the 1981 enactment, the law has undergone numerous modifications. For the most part, these modifications have not impacted significantly the intent or policy of the 1981 legislation.

The law generally prohibits corporations, trusts, limited liability companies, limited partnerships, or corporate partnerships other than family farm corporations, authorized farm corporations, limited liability agricultural

companies, limited agricultural partnerships, family trusts, authorized trusts, or testamentary trusts from either directly or indirectly owning, acquiring, or otherwise obtaining or leasing any agricultural land in Kansas.

From the initial consideration of the 1981 legislation legislators recognized certain circumstances or entities which may have a legitimate need or situation which requires the acquisition of agricultural land in Kansas. As a result, exemptions to the general prohibitions have been included in the corporate farming law. Several of these exemptions have been added since the time of the 1981 enactment.

Permitting Corporate Hog Operations. One of the most significant issues of the Kansas Corporate Farming Law has been the issue of permitting corporate hog operations (sometimes referred to as "swine confinement facilities") to expand their acreages or to acquire agricultural land to establish new facilities. This issue was first brought to the Legislature in 1984 as a result of a desire on the part of Dekalb Swine Breeders to expand its operation near Plains in a partnership with the Seaboard Corporation and Pauls & Whites International. Legislation considered would have added an additional exemption to the provisions of the Corporate Farming Law to allow "swine confinement facilities" owned or leased by a corporation to own or acquire agricultural land. However, the legislation eventually died.

The next time the issue of corporate hog operations came before the Legislature was in 1987 as a result of entities involved with economic development. Again the Legislature heard from Dekalb Swine Breeders, Inc. indicating a need to expand its facilities in Kansas while being prevented from doing so because of the State's Corporate Farming Law. As a result, legislation was introduced to expand the Kansas Corporate Farming Law to permit a corporation to own or lease agricultural land for the purpose of operating a swine confinement facility. At this time the legislation included the expansion of the law to allow entities associated with the poultry industry.

During Conference Committee on the legislation, the swine confinement facility exemption was deleted. The Governor signed the version exempting poultry and rabbit confinement facilities and prohibiting them from taking advantage of certain tax exemptions.

Other bills were introduced during the 1987 Session designed to address, either directly or indirectly, the swine confinement facility issue. None of these bills were enacted.

Eventually, the 1987 Special Committee on Agriculture and Livestock was assigned to study the topic of corporate farming and its impact on Kansas swine producers. The legislation resulting from this study did not receive approval by the Legislature.

The 1988 Legislature, however, did approve amendments to the Kansas Corporate Farming Law, amending the definition of the terms "processor" and "swine confinement facility"; making it unlawful for processors of pork to contract for the production of hogs of which the processor is the owner or to own hogs except for 30 days before the hogs are processed; making pork processors violating the ownership of hogs restriction subject to a $50,000 fine; and clarifying that, except for the pork processors' limitation, agricultural production contracts entered into by corporations, other entities and farmers are not to be construed to mean the ownership, acquisition, obtainment, or lease of agricultural land. The bill also prohibited any "swine confinement facility" from being granted any economic development incentives.

Three bills were introduced during the 1989 Legislative Session that proposed amendments related to the corporate farming issue. None of these bills were enacted.

Limited Liability Companies—1991 and 1992 Proposals. The 1991 amendments were made to the law to add "limited liability companies" to the list of entities that are generally prohibited from indirectly or directly owning, acquiring, or otherwise obtaining or leasing any agricultural land. In addition, this legislation amended the exemptions to the general prohibitions by permitting certain limited liability *agricultural* companies to own and acquire agricultural land.

The 1992 Legislature considered but did not enact HB 3082, which would have eliminated the permission for limited liability agricultural companies to own, acquire, obtain, or lease, either directly or indirectly, any agricultural land in this state.

Legislative Actions and Amendments—1994. Two bills received approval during 1994. These bills, among other things, permitted the acquisition of agricultural land by corporations for the purposes of developing either swine production facilities or dairy production facilities. Both types of entities could be approved by either county resolution or by an affirmative vote upon petition.

Legislative Modifications—1996 and 1998. In 1996, the Legislature considered and approved additional amendments to the Kansas Corporate Farming Law by adding "family farm limited liability agricultural companies" to the list of entities which are permitted to hold agricultural land in Kansas.

In addition, the bill modified the definition of the term "authorized farm corporation," which is one of the recognized entities permitted to own and acquire agricultural land in Kansas. The incorporators of an "authorized farm corporation" could include "family farm corporations" and "family farm limited liability agricultural companies" as well as Kansas residents. Likewise, under the bill, the stockholders of "authorized farm corporations" could include "family farm corporations" and "family farm limited liability agricultural companies" as well as natural persons.

In addition, the bill modified the definition of the term "limited liability agricultural company," which is one of the recognized entities permitted to own and acquire agricultural land in Kansas. Under the bill, the members of a "limited liability agricultural company" could include "family farm corporations" and "family farm limited liability agricultural companies" as well as natural persons. The bill also restricted the requirement in this definition that at least one of the members of the "limited liability agricultural company" be a person residing on the farm or actively engaged in the labor or management of the farming operation to the situation where all of the members are natural persons.

In 1998, among numerous other provisions dealing with swine production, the Legislature modified provisions dealing with the issue of the authority of the board of county commissioners. The bill allowed a board of county commissioners, in any county which has conducted an advisory election on the question of rescinding a resolution allowing swine production facilities, to adopt a resolution rescinding a resolution adopted under the Corporate Farming Law. The resolution would be submitted to the qualified electors of the county at the next state or countywide regular or special election which occurs more than 60 days after the adoption of the resolution. The bill sunsetted this section on December 31, 1998.

Swine and Dairy Production Facilities—2012. Amendments to the provisions of law which permit certain dairy production facilities and swine production facilities to be established in counties under the Kansas Corporate Farming Law were aligned so that the approval process for the establishment of a swine production facility and that of a dairy production facility are the same.

The bill added that denial by the county commissioners of such a production facility, which had been an absolute rejection, also is subject to a petition protesting said denial following the guidelines of a petition protesting the establishment of such a facility.

Challenges to State Corporate Farming Laws

Throughout the Midwest and in Kansas, corporate farming laws exist which restrict corporations and other corporate farms, excepting family farm operations, from owning, acquiring, or leasing any agricultural land in the state for farming activities.[1] The purpose behind corporate farming laws was and is to protect local family farms from corporations coming in and creating competition that would have negative economic impacts on smaller family farms.[2]

1 *See* KSA 17-5904 (2011).
2 Pittman, Harrison M., *The Constitutionality of Corporate Farming Laws in the Eighth Circuit*, The National Agricultural Law Center, 1 (2004).

Since their inception, corporate farming laws have been challenged in the courts under the Equal Protection Clause, Due Process Clause, Privileges and Immunities Clause, and finally the Contract Clause of the *United States Constitution*.[3] They have been consistently upheld as constitutional until recently, when Nebraska's and South Dakota's corporate farming laws were struck down by the Eighth Circuit for violating the Dormant Commerce Clause of the *U.S. Constitution*.

Constitutional Challenges to Corporate Farming Laws. Corporate farming laws have been brought before the Eighth Circuit three times in recent years under the Dormant Commerce Clause. First in South Dakota where the Court struck down a constitutional amendment which had passed, second in Iowa where the Iowa Legislature amended the statute during the trial, and most recently in Nebraska where the Court struck down a corporate farming constitutional provision. The following is a summary of the Dormant Commerce Clause and the decisions made by the Eighth Circuit.

Dormant Commerce Clause. The Dormant Commerce Clause of the *U.S. Constitution* grants Congress the power to regulate interstate commerce and any state law that conflicts with a federal law enacted under the Commerce Clause will be held to be unconstitutional.[4] The Dormant Commerce Clause comes from this authority in that even if Congress has not expressly acted pursuant to its power under the Commerce Clause, states may still not enact laws that discriminate against or unduly burden interstate commerce.

In examining whether a state has violated the Dormant Commerce Clause, a court will look first to whether the enacted law discriminates against interstate commerce by examining whether in-state and out-of-state interests are treated differently, with the in-state interests benefiting at the cost of burdening out-of-state interests.[5] If a law is found to be discriminatory on its face, then it will be held to be unconstitutional.[6]

If a law is not found to be facially discriminatory through its purpose or effect, then it may still be held unconstitutional under a second analysis. Under the second analysis, a challenged law will be struck down if the burden it imposes on interstate commerce is clearly excessive when compared to its supposed local benefits.[7]

South Dakota. In 1998, South Dakota amended its state constitution to prohibit corporations and syndicates from acquiring or obtaining any interest in real estate used for farming and to engage in farming.[8] An exemption was created for a "family farm corporation or syndicate." Additionally, family members in a family farm corporation had to reside on or be actively engaged in the "day-to-day labor and management" of the farm; "day-to-day labor and management" requiring daily or routine substantial physical exertion and administration.[9] The Eighth Circuit ultimately found the amendment to be unconstitutional as a violation of the Dormant Commerce Clause.

Based on the evidence, the Eighth Circuit concluded that the constitutional amendment was motivated by a discriminatory purpose, thus making it unconstitutional unless the state could demonstrate that there were no other reasonable alternatives by which the state could achieve its legitimate local interest of promoting family farms and protecting the environment.[10]

Nebraska. In 1982, Nebraska passed a constitutional amendment which prohibited ownership of Nebraska farm or ranch land by any corporation, domestic or foreign, which was not a Nebraska family farm corporation.[11] The prohibition did not apply to family farm corporations or limited partnerships in which at least one family member resided on or engaged in the daily labor and management of the farm.[12] The Eighth Circuit found that because the prohibition on farming by corporations did not apply to the family farm corporations in which a family member resided,

3 *See id*.
4 *Id* at 3.
5 *Jones v. Gale*, 470 F.3d 1261, 1267 (8th Cir. 2006).
6 *See id* at 1270.
7 Pittman at 4.
8 S*outh Dakota Farm Bureau, Inc. v. Hazeltine*, 340 F.3d 583, 587 (8th Cir. 2003).
9 *Id* at 588.
10 *Id* at 597.
11 *Jones v. Gale*, 470 F.3d 1261, 1264 (8th Cir. 2006).
12 *Id* at 1265.

or engaged in the daily labor and management of the farm, the law essentially required a person to be within a physically and economically feasible commute of Nebraska farms and therefore favored Nebraska residents.[13]

After finding the constitutional amendment to be discriminatory, the Court then looked for whether the state could show that it had no other way to advance a legitimate local interest. Nebraska argued that the amendment was necessary to deal with absentee owners of land and negative effects on the social and economic culture of rural Nebraska.[14]

In 2009, the Nebraska Legislature attempted to pass a statute which found it to be in the public interest of the state to encourage ownership and control of agricultural production and agricultural assets by individuals and families engaged in day-to-day labor and management of farming or ranching operations.[15] However, the bill failed to receive enough support in the legislature, and since the finding of unconstitutionality of the constitutional amendment, Nebraska has been without a corporate farming law or constitutional provision.[16]

Comparing the Kansas Corporate Farming Law. KSA 17-5904 states that "no corporation, trust, limited liability company, limited partnership or corporate partnership [. . .] shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state." The statute exempts family farm corporations and authorized farm corporations, as well as other forms of limited liability family farm companies and partnerships.[17] Much like the corporate farming laws described above, Kansas' law requires family farm corporations, authorized farm corporations, and limited agricultural partnerships to have at least one stockholder or partner residing on the farm or actively engaged in the labor or management of the farming operations.[18] Additionally, all incorporators of "authorized farm corporations" must be Kansas residents.[19]

Kansas is in the Tenth Circuit, which has not yet addressed the constitutionality of corporate farming laws under the Dormant Commerce Clause. While the Tenth Circuit is not required to follow the Eighth Circuit's analysis, circuit courts often will look to the analysis of other circuits when considering an issue for the first time. Under the Eighth Circuit's analysis, Kansas could face potential problems with its statute because it requires at least one of the stockholders or partners to physically reside on the farm or be actively engaged in the labor or management of the farming operations. The statute could also run into problems with its requirement that all incorporators be Kansas residents in order to qualify as an authorized farm corporation. Any language that explicitly or implicitly favors in-state residents runs the risk of being found discriminatory by a court under the Dormant Commerce Clause.

However, there is some flexibility in the Kansas Corporate Farming Law in that it requires either physical residence on the farm or active engagement. Active engagement can be achieved through either physical labor or management.

While the initial question in determining whether the Kansas statute is discriminatory would focus on the differential treatment of in-state and out-of-state individuals, the second part of the analysis, if the court were to find discrimination, would be to look at whether the state has no reasonable alternative to achieve its legitimate local interest. Additionally, the State would need to provide a legitimate local interest that was acceptable in the Tenth Circuit. The Eighth Circuit found promoting family farms and protecting the environment to be an acceptable local interest, but maintaining the status quo in rural communities not to be.[20] It is unclear what the Tenth Circuit would consider to be acceptable, as the issue has yet to be considered in that circuit.

13 *Id* at 1268.
14 *Id* at 1270.
15 Anthony B. Schutz, *Corporate-Farming Measures in a Post-Jones World*, 14 Drake J. Agric. L. 97, 143 (2009).
16 *Id*.
17 *Id*.
18 KSA 17-5903(j).
19 KSA 17-5903(k).
20 *South Dakota Farm Bureau, Inc. v. Hazeltine* at 597; *Jones v. Gale* at 1270.

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Agriculture and Natural Resources

B-4 Weights and Measures Program

Weights and measures is one of the oldest government functions. It is specifically mentioned in the *Articles of Confederation* and the *U.S. Constitution*. The global and U.S. economies depend on uniform standards of mass, volume, and length. Thus, the Kansas Department of Agriculture's Weights and Measures program serves an important role in consumer protection and in facilitating trade.

Weights and Measures inspectors test all commercial weighing and measuring devices. They test scales used in grocery stores, grain elevators, livestock sale barns, pawn shops, and other locations. They test gas pumps and meters used to sell chemicals or to sell propane to home owners. They check packages containing edible and inedible products to ensure that the consumer receives the quantity stated on the label. They even verify that in-store scanners scan the correct price. Essentially, all consumer goods are subject, in one way or another, to the weights and measures law.

Kansas' Weights and Measures Program

Kansas requires every commercial weighing or measuring device to be tested by a licensed service company each year, excluding gas pumps, which are regulated specifically by Weights and Measures personnel. Service companies and technicians must be licensed by the Weights and Measures program. Licensed companies and technicians are authorized to repair, install, and certify commercial weighing and measuring devices. Kansas is believed to be the only state that allows service technicians to certify commercial weighing and measuring devices.

The Weights and Measures program provides oversight to these service companies and technicians. Computer-generated lists of scales recently tested by service companies are provided to inspectors of large and small scales. The inspectors retest the devices and compare results to ensure that the device was properly tested. Commercial scales found to be improperly tested by the service company are required to be retested. Compared to some other states, the number of devices tested by the Weights and Measures program is low, but Kansas' compliance rate for accuracy of these devices tends to be higher than other states.

Service companies in Kansas must pay a license fee of $50 each year, but there are no additional registration requirements for weights and measures devices in the state. Every technician must attend a continuing

education class and pass a test annually for each type of device for which they wish to be licensed. Each scale and propane meter is required to be tested every 365 days by a licensed service company or by the state. Every gas pump and vehicle tank meter must be inspected by the state every 18 months.

There are no registration requirements for weights and measures devices in Kansas; below are Kansas' definitions of weights and measures devices.

- Small Scales – Any scale with a capacity of 200 lbs. or less. Small scales can be mechanical or digital.
- Large Scales – Any scale with a capacity of more than 200 lbs.
- Scanners – The scanner reads the Uniform Price Code (UPC) on the package scanned and shows the price of the item scanned. Prices are entered into the scanner's computer by the store or by corporate headquarters.
- Bulk Fuel Meters – tank meters.
- Gas Pumps – retail gas pumps.
- Packages – Packages are classified into two categories: standard pack and random pack.
- Liquefied Petroleum Meters – tank meters and bottle gas meters.

Surrounding States Weights and Measures Programs

Included are the weights and measures policies of seven surrounding states (Colorado, Iowa, Missouri, Nebraska, Oklahoma, Arkansas, and Texas). While each state has a unique regulatory composition, there are some similarities that can be generalized.

Four states (Colorado, Iowa, Nebraska, and Texas) require devices be state registered by the device owners before they can be used in the state. Five states (Colorado, Iowa, Missouri, Nebraska, and Oklahoma) rely on state Weights and Measures employees to inspect and certify devices for use. Arkansas and Texas inspections and certifications are completed by privately licensed inspection companies.

In all seven states, some form of annual inspection or certification of devices in use is required. State weights and measures departments range in size from 13 to 63 employees. A majority of these states allow private scale companies to provide service, repairs, and recalibration of registered devices, as needed. The devices are then inspected and sealed by state employees. Annual device registration and service technician fees, when collected by a state, range from $5.00 to $100.00.

Arkansas

Scale inspections are completed by privately-licensed inspection companies, which inspect registered devices on an annual basis. It is unknown how many devices are in operation in the state. The Weights and Measures Department has 13 employees, of which 12 are field inspectors. There is no fee for registering devices in the state, nor are there any fees associated with registering as a licensed inspector in the state.

Colorado

Inspectors for the Colorado Department of Agriculture (CDA) are responsible for the inspection and certification of certain commercial devices for accuracy. Those devices are scales, textile meters, cordage meters, and grain moisture meters. CDA does not contract out such duties to the private sector. Devices are registered when instrument owners procure a license from the CDA for the operation of the devices listed above if they are used commercially. The license is acquired on an annual basis. Registration fees are determined by device capacity. Scale companies also must renew their certificate annually. Certification fees vary from year to year, depending upon the total number of service licenses requested. Registered device service providers (scale companies) repair, service, and replace in-service commercial devices.

Commercial devices are inspected once a year and as needed by CDA employees. At the end

of 2012, there were 25,832 scales, 254 grain moisture meters, and 788 length measuring devices registered in the state. CDA does not license or register scanning devices. Gas pumps and fuel meters are regulated by the Colorado Department of Labor and Employment, Division of Oil and Public Safety. There are 20 employees in the CDA's Weights and Measurements Division, including 17 field employees. CDA field inspectors certify that all devices are National Conference on Weights and Measures (NTEP) and National Institute of Standards and Technology (NIST) Handbook-compliant.

Iowa

Iowa Department of Agriculture (IDA) employees are responsible for conducting inspections of regulated devices. Scales in the state are inspected on a regular basis and fuel pump inspections are conducted annually. As of July 1, 2013, there were more than 39,000 fuel meters and 19,000 registered scales in the state. The IDA has 13 full-time employees in the Weights and Measures Department, 11 of which are field employees.

Service companies seal those devices in need of calibration, and state employees seal the devices after they are inspected. The state receives a phone call if a seal has been broken and registered service companies repair devices as needed. Owners register devices upon acquisition and pay an annual license fee. Registered services companies pay a $5.00 annual fee per company and a $5.00 annual fee per technician.

Missouri

Employees of the Missouri State Weights and Measures Department are responsible for conducting all inspections of regulated devices. The Department has 64 employees, including 45 field inspectors. As of July 1, 2013, there were 77,320 gas pumps, and 4,709 large capacity and 22,830 small capacity scales in operation throughout the state. Scales, propane meters, refined fuel tank delivery vehicle meters, and marinas are inspected annually, while retail fuel, including high flow dispensers and terminal rack meters, are inspected every six months. Registered technicians can make calibrations, repair, and place devices into service. Any device placed in service, repaired, or recalibrated must be followed by an official state inspector who will then replace the security seal with the state security seal.

There is no device registration requirement. The state has an inspection fee for scales. All petroleum inspections, including fuel quality, are funded by a petroleum inspection fee fund. Currently, the petroleum inspection fee is 2.5 cents per 50 gallon barrel. Scale and petroleum technicians must renew their licenses every two years. There is no fee except for certification of standards. Petroleum standards and test weight calibration is $60.00 per hours. This fee is scheduled to increase in the near future.

Nebraska

Nebraska relies primarily on state employees to complete annual inspections of the 23,616 devices registered in the state. The Weights and Measures Department consists of 20 employees, including 15 field inspectors and one metrologist. State employees and registered service companies are authorized to seal devices and ensure compliance with all categories of integrity. Only licensed service companies repair and install devices. Devices are registered in the state by device type, make, model, and serial number. Upon registration by device owners and payment of inspection fees, the devices are assigned a number by the Weights and Measures Department. Technicians and service companies are required to register annually with the state; the cost is $45.00 per registered service person.

Oklahoma

State employees annually inspect all commercial scales, conduct price inspections, and package check inspections. Oklahoma does not have a device registration requirement. In 2012, Oklahoma tested 9,808 scales and conducted 2,754 scanner inspections. Fuel pumps are regulated by the Oklahoma Corporation Commission. In 2012, the state tested 7,997 small capacity and platform

scales, 36 livestock scales, 107 ranch scales, and 1,668 vehicle scales. There are 14 employees in the Weights and Measures Division, including 12 field employees and two office employees.

Scale companies have the initial authority to place a scale into service. Once a scale is placed into service, state scale technicians and inspectors will follow-up to verify the scale is accurate. Scale owners can repair scales themselves or they can contact a licensed scale company for the repairs, when necessary. Company and technician licenses are renewed annually. The license is valid from July 1 to June 30 of each year. The company license fee is $100 and the technician license fee is $25.

Texas

Scale inspections are completed by privately licensed inspection companies, which inspect registered devices on an annual basis. As of July 1, 2013, there were more than 192,082 registered scales, gas pumps, fuel meters, and other devices registered in the state. When these devices are in need of repair, maintenance is performed by private companies who also can place the devices back into service. Owners of these devices pay a registration fee of between $8.00 to $172.00. Additionally, an annual fee of $100 is assessed to device owners, and registered technicians pay an annual licensing fee of $100.00 per device class certification.

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Agriculture and Natural Resources

B-5 Waters of the United States

United States Supreme Court decisions in 2001 and 2006, along with subsequent guidance issued by the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps), failed to resolve confusion over the definition of "waters of the United States," a key term in determining whether water is subject to the federal Clean Water Act (CWA). Whether specific waters are within the jurisdiction of the CWA is significant because those waters are subject to stringent water quality and pollution control requirements.

In 2011, the EPA and the Corps issued a joint draft guidance based on the agencies' interpretation of the CWA, implementing regulations, and relevant case law. Congress, industry organizations, environmental groups, states, and the public made requests to the agencies to forgo the guidance and pursue rulemaking to further clarify the requirements of the CWA consistent with the Supreme Court decisions.

In September 2013, the EPA and the Corps announced they jointly submitted a draft rule to the Office of Management and Budget (OMB) that attempts to define "waters of the United States" and the application of federal law.

History of the Clean Water Act and Waters of the United States

The Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), governs pollution of the nation's surface waters. It was originally enacted in 1948 and completely revised in 1972. In the 1972 legislation, a declaration was made to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The goals presented in the legislation were to achieve zero discharge of pollutants by 1985 and obtain water quality that was both "fishable and swimmable" by mid-1983. Even though the deadlines have passed, the efforts to attain those goals remain.

In 1987, multiple amendments were made to the CWA that turned the focus to nonpoint source pollution (storm water runoff from farm lands, forests, construction sites, and urban areas) and away from point source pollution (wastes discharged from discrete sources such as pipes and outfall). States were directed to develop and implement nonpoint pollution management programs. Under this direction, qualified states have the authority to issue discharge permits to industries and municipalities and

to enforce permits. Kansas is one of the states authorized to administer this permit program.

The CWA is carried out by both federal and state governmental agencies. The federal government sets the agenda and standards for pollution abatement, and states carry out day-to-day implementation and enforcement.

Jurisdiction is a point of uncertainty and contention when state and federal governments are required to enforce the CWA. The CWA defines the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source". Under the CWA, the term "navigable waters" means "the waters of the United States, including the territorial seas." A federal regulation expands the definition of "traditional navigable waters" as "waters subject to the ebb and flow of the tide, or waters that are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce." 33 CFR § 328.3(a)(1).

United State Supreme Court Cases

Two United States Supreme Court cases address the issue of jurisdiction as it pertains to navigable waters.

Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001)

The Supreme Court held that the Corps exceeded its authority in asserting CWA jurisdiction over isolated intrastate, non-navigable waters based on their use as a habitat for migratory birds. The *Solid Waste Agency of Northern Cook County* ruling eliminated CWA jurisdiction over isolated waters that are intrastate and non-navigable, where the sole basis for asserting CWA jurisdiction is:

- The actual or potential use of the waters as habitat for migratory birds that cross state lines in their migrations;
- Any of the factors listed in the Migratory Bird Rule, such as use of the water as habitat for federally protected endangered or threatened species; or
- Use of the water to irrigate crops sold in interstate commerce.

Rapanos v. United States, 547 U.S. 715 (2006)

The *Rapanos* case addressed whether a wetland or tributary is a water of the United States. The Justices issued five separate opinions with no single opinion commanding a majority of the Court; therefore, the EPA and the Corps issued a memorandum to provide clarification of the findings shared by a majority of Justices as it relates to jurisdiction. The findings of Rapanos are as follows:

The CWA has jurisdiction over the following waters:

- Traditional navigable waters;
- Wetlands adjacent to traditional navigable waters;
- Non-navigable tributaries to traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally; and
- Wetlands that directly abut such tributaries.

The CWA has jurisdiction over the following waters if a fact-specific analysis determines they have a significant nexus with a traditional navigable water:

- Non-navigable tributaries that are not relatively permanent;
- Wetlands adjacent to non-navigable tributaries that are not relatively permanent; and
- Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary.

The CWA does not have jurisdiction over the following features:

- Swales or erosional features; and

- Ditches excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water.

The significant nexus analysis should be applied as follows:

- Assessment of the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of the downstream traditional navigable waters; and
- Consideration of hydrologic and ecologic factors.

Current Status

No further action was taken on the 2011 draft guidance that was released and submitted to the OMB for review.

In September 2013, the agencies submitted a joint proposed rule to the OMB for interagency review. After the OMB reviews the proposed rule it will be released for public comment. Also in September 2013, the EPA released for public comment a draft scientific report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review of Synthesis of the Scientific Evidence*. The report made the following:

- Streams, regardless of their size or how frequently they flow, are connected to and have important effects on downstream waters;
- Wetlands in floodplains of streams and rivers and riparian areas are integrated with streams and rivers, and strongly influence downstream waters by affecting the flow of water, trapping and reducing nonpoint source pollution, and exchanging biological species; and

There was insufficient information to generalize about the wetlands and open waters located outside of riparian areas and floodplains and their connectivity to downstream waters.

In September 2013, EPA leadership, in its official blog, stated the final version of the report will serve as a basis for a joint EPA and Army Corps of Engineers rulemaking aimed at clarifying the jurisdiction of the CWA. The blog also explained the proposed joint rule will provide greater consistency, certainty, and predictability nationwide by providing clarity for determining where the CWA applies and where it does not.

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C-1
Liquor Laws

C-2
Lottery, State-Owned Casinos, Parimutuel Wagering, and Tribal Casinos

C-3
Charitable Gaming, Bingo, and Other Games

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Alcohol,Drugs, and Gaming

C-1 Liquor Laws

Kansas laws concerning alcoholic liquor are included in the Liquor Control Act, the Cereal Malt Beverage Act, the Club and Drinking Establishment Act, the Nonalcoholic Malt Beverages Act, the Flavored Malt Beverages Act, the Beer and Cereal Malt Beverages Keg Registration Act, the farm winery statutes, the microbrewery statutes, and the microdistillery statutes.

State and Local Regulatory Authority

The Division of Alcoholic Beverage Control (ABC) and the ABC Director, Kansas Department of Revenue (KDOR), have the primary responsiblitiy for overseeing and enforcing Kansas alcoholic liquor laws. As part of its regulatory authority under the different liquor acts, ABC issues 17 different licenses and 5 different permits for the manufacture, distribution, and sale of alcoholic liquor.

County and city governments also have considerable regulatory authority over alcohol in the state of Kansas. Article 15 §10 of the *Kansas Constitution* allows the Legislature to regulate alcoholic liquor, but assumes alcoholic liquor is prohibited in the state. Cities and counties have the option to remain “dry” and therefore exempt themselves from liquor laws passed by the state, or local units of government can submit a referendum to voters proposing the legalization of liquor in the local jurisdiction. If such a referendum is passed by a majority of the locality’s voters, alcoholic liquor becomes legal in the city or county and will be subject to state, county, and city laws, ordinances, and regulations.

The Liquor Control Act

The Liquor Control Act grants the state its regulatory power to control the manufacture, distribution, sale, possession, and transportation of alcoholic liquor and the manufacturing of beer. Cities and counties are able to regulate certain aspects, such as the time and days for the sale of alcoholic liquor, but local governments cannot adopt laws that conflict with the provisions of the Liquor Control Act.

Farm wineries, farm winery outlets, microbreweries, microbrewery packaging and warehousing facilities, and microdistilleries also are regulated by the Liquor Control Act.

The Cereal Malt Beverage Act

Local governments have additional authority under the Cereal Malt Beverage Act. According to statute, applications for cereal malt beverage licenses are made either to the city or county government, depending on where the business is located.

As long as any local regulations and ordinances adopted are consistent with the Cereal Malt Beverage Act, the board of county commissioners or the governing body of a city may set hours and days of operation, closing time, standards of conduct, and adopt rules and regulations concerning the moral, sanitary, and health conditions of licensed premises. If the local government does not set hours and days of operation, the default hours and days provided in the Cereal Malt Beverage Act govern the sale of cereal malt beverages. Counties and cities also can establish zoning requirements that regulate establishments selling cereal malt beverages and that may limit them to certain locations.

The Cereal Malt Beverage Act also allows local governments some discretion in revoking licenses and actually requires such action by local governments in specific situations.

The Club and Drinking Establishment Act

In Kansas, the sale of alcoholic liquor by the drink is controlled by the Club and Drinking Establishment Act.

The board of county commissioners can submit a proposition to voters to (a) prohibit the sale of individual alcoholic drinks in the county, (b) permit the sale of individual alcoholic drinks only if an establishment receives 30 percent of its gross receipts from food sales, or (c) permit the sale of individual alcoholic drinks only if an establishment receives some portion of gross receipts from food sales. If a majority of voters in the county vote in favor of the proposition, the ABC Director must respect the local results when issuing or denying licenses in that county.

Additionally, the county commissioners are required to submit a proposition to the voters upon receiving a petition if the petition is signed by 10 percent of voters who voted in the election for the Secretary of State the last time that office was on the ballot in a general election. The petition must contain the required language in KSA 41-2646(3)(b), and the petition must be filed with the county election officer.

The Nonalcoholic Malt Beverages Act

Retail sales of nonalcoholic malt beverages are controlled by the Liquor Control Act, the Club and Drinking Establishment Act, or the Cereal Malt Beverage Act, depending on which act the retailer is licensed under for selling or providing the nonalcoholic malt beverage.

The Flavored Malt Beverage Act

Kansas adopted the federal definitions of flavored malt beverages (FMB). However, the federal government does not offer FMB licenses or impose penalties in Kansas. The ABC is responsible for FMBs regulation and penalties associated with FMBs in the state. Since FMBs are cereal malt beverages, they are regulated under the Cereal Malt Beverage Act.

The Beer and Cereal Malt Beverage Keg Registration Act

Retailers selling kegs are regulated under the Liquor Control Act or the Cereal Malt Beverage Act, depending on the type of alcoholic beverage(s) the retailer is selling.

Although local governments have delegated authority under the Cereal Malt Beverage Act, city and county ordinances that conflict with the Beer and Cereal Malt Beverage Keg Registration Act are null and void.

Liquor Taxes

Currently, Kansas imposes three levels of liquor taxes. For more information see article V-2, Liquor Taxes.

Recent Changes to Liquor Laws

Sub. for HB 2689, L. 2012 Ch. 144

Railway Cars. The legislation allows railway cars to be licensed as drinking establishments under the Club and Drinking Establishment Act.

Free Samples. The legislation allows any person or entity who is licensed to sell alcoholic liquor in the original package at retail to conduct free, single-serving wine, beer, and distilled spirits tasting on licensed or adjacent premises.

Special Event Permit. The legislation allows a temporary permit for a special event for selling and serving alcoholic liquor for consumption at an unlicensed premise, not to exceed 30 days.

Repeal Salesperson's Permit. The legislation repeals the statutes that authorize issuance of a salesperson's permit for the sale of, or the taking or soliciting of orders for the sale of, alcoholic liquor or cereal malt beverages in Kansas.

Microdistilleries. The legislation creates a microdistillery license, which allows a licensee to manufacture and store not more than 50,000 gallons of spirits per year, sell spirits manufactured by the microdistillery, and serve free samples of spirits on the licensed premises and at special events.

Individual Drinks, "Happy Hour." The legislation allows clubs, drinking establishments, caterers, or temporary permit holders to sell an "individual drink" of 8 ounces of wine, 32 ounces of cereal malt beverage or beer, or 4 ounces of spirits at different prices throughout the day.

Public Venue License. The legislation creates a new class of license for a public venue, such as an arena or stadium, containing not less than 4,000 permanent seats and not less than 2 private suites. The licensee is allowed to sell and serve alcoholic beverages in designated areas by individual drinks, unlimited drinks for a fixed price, unlimited drinks in inclusive packages, and liquor in the original container for consumption in private suites.

Consumption in Certain Recreation Areas. The legislation allows a person to consume alcoholic liquor on the premises of certain land or water owned or managed by the Kansas Department of Wildlife, Parks, and Tourism.

Manufacturer Samples. The legislation allows the holder of a manufacturer's license to offer free samples of alcoholic liquor manufactured by the licensee on the licensed premise.

Farm Wineries. The legislation allows a farm winery licensee located in a county where the sale of alcoholic liquor is permitted in licensed drinking establishments to sell wine manufactured by the licensee for consumption on the licensed premise. The bill also allows the sale of wine from a farm winery in the original, unopened container at special events.

Percentage of Products Grown. The legislation requires not less than 30.0 percent of the products utilized in the manufacture of Kansas wine by a farm winery to be grown in Kansas. Previously there had been a statutory requirement of 60.0 percent.

Senate Sub. for HB 2199, L. 2013 Ch. 130

Administrative Notice and Orders. The legislation requires issuance of any written administrative notice or order imposing a fine or other penalty for an alleged violation of the Liquor Control Act or the Club and Drinking Establishment Act to be issued within 90 days after issuance of the citation.

Nonprofit Art Events. The legislation allows complimentary alcoholic liquor or cereal malt beverage to be served on unlicensed premises at events sponsored by a nonprofit organization promoting the arts if approved by ordinance or resolution of the governing body of the city, county, or township where the event will take place.

Rules and Regulations. The legislation directs that all rules and regulations adopted between July 1, 2012, and July 1, 2013, to implement provisions of certain alcoholic liquor laws remain effective until revised, revoked, or nullified by law.

Mixing of Samples. The legislation authorizes the preparing or mixing of samples at licensed retail premises for the purpose of conducting wine, beer, or distilled spirit tastings.

Employees. The legislation makes it unlawful for licensees to knowingly employ any person dispensing or serving alcoholic liquor or mixing drinks containing alcoholic liquor who has been adjudicated guilty of two or more violations of furnishing alcoholic beverages to minors or similar laws from other states or has been adjudicated guilty of three or more violations of any state's intoxicating liquor law.

Pitchers. The legislation allows the sale or serving of certain mixed alcoholic beverages in pitchers containing not more than 64 fluid ounces each.

Hotel Coupons. The legislation allows a hotel licensed as a drinking establishment to distribute coupons to its guests, redeemable on the hotel premises for drinks containing alcoholic liquor; requires those licensed hotels to remit liquor drink tax on each drink served based on a price not less than the acquisition cost of the drink; allows other hotels not licensed as drinking establishments to distribute coupons to their guests redeemable at clubs and drinking establishments, in accordance with rules and regulations adopted by the Department of Revenue; and requires each club or drinking establishment redeeming hotel coupons to remit liquor tax on each drink served based on a price not less than the acquisition cost of the alcohol in the drink.

Price Lists. The legislation deletes the requirement that clubs and drinking establishments provide price lists.

Free Samples. The legislation defines "sample" as a serving of alcoholic liquor containing not more than one-half ounce of distilled spirits, one ounce of wine, two ounces of beer or cereal malt beverage, or a mixed drink not containing more than one-half ounce of spirits; allows serving of free samples on premises of licensed Class A and Class B clubs, licensed drinking establishments, and licensed public venue clubs; allows Class A and B clubs to serve the samples free of charge to their members and their members' families and guests; prohibits licensees from serving more than five samples to any individual per visit and prohibited samples from being removed from the premises; prohibited licensees from collecting a cover charge or an entry fee at any time that free samples are provided for anyone; requires that samples come from the licensee's inventory; and requires the licensee to pay all associated excise and drink taxes for any alcoholic liquor served in free samples.

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C-1
Liquor Laws

C-2
Lottery, State-Owned Casinos, Parimutuel Wagering, and Tribal Casinos

C-3
Charitable Gaming, Bingo, and Other Games

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Alcohol, Drugs, and Gaming

C-2 Lottery, State-Owned Casinos, Parimutuel Wagering, and Tribal Casinos

State constitutional amendments permit three types of non-tribal gaming in Kansas:

- The Kansas Lottery (including state-owned casinos);
- Parimutuel wagering on dog and horse races; and
- Charitable bingo (discussed in section C-3).

Revenue. Kansas laws provided for the allocation of revenue to the State General Fund in FY 2013 of $74.5 million from the lottery, games, and casinos, and none from parimutuel wagering that was inactive.

State-tribal compacts were entered into in 1995 with four resident tribes to allow casino gaming in the state.

Revenue. Under the existing tribal gaming compacts, the state does not receive revenue from the casinos, except for paying its oversight activities. As of 2013, no new compacts with other tribes have been approved.

Kansas Regular Lottery

In 1986, Kansas voters approved a constitutional amendment to provide for:

- A state-owned lottery; and
- A sunset provision prohibiting the operation of the State Lottery unless a concurrent resolution authorizing such operation was adopted by the Kansas Legislature. (The 2007 Legislature extended the lottery until 2022. The bill also required that a security audit of the Kansas Lottery be completed at least once every three years.)

The 1987 Kansas Legislature approved implementing legislation that:

- Created the Kansas Lottery to operate the State Lottery;
- Established a five-member Lottery Commission to oversee operations;

- Required that at least 45 percent of the money collected from ticket sales be awarded as prizes and at least 30 percent of the money collected be transferred to the State Gaming Revenues Fund (SGRF);
- Exempted lottery tickets from the sales tax; and
- Allowed liquor stores, along with other licensed entities, to sell lottery tickets.

Receipts from the sale of lottery tickets are deposited by the Executive Director of the Kansas Lottery into the Lottery Operating Fund in the State Treasury. Statutorily, moneys in that fund are used to:

- Support the operation of the lottery;
- Pay prizes to lottery winners by transfers to the Lottery Prize Fund; and
- Provide funding for problem gamblers, correctional facilities, juvenile facilities, economic development, and the State General Fund (SGF) via transfers to the State Gaming Revenues Fund (SGRF).

Revenue. In FY 2013, revenue from the State Lottery was transferred from the SGRF in the following manner:

Problem Gambling Grant Fund	$	80,000
Correctional Institutions Building Fund		4,992,000
Juvenile Detention Fund		2,496,000
Economic Development Initiatives Fund		42,432,000
State General Fund		24,522,230
Total	$	74,522,230

Transfer of Revenue. No more than $50.0 million from both the State Lottery and parimutuel wagering revenue can be transferred to the SGRF in any fiscal year; amounts in excess of $50 million generally are credited to the SGF, except when otherwise provided by law.

The 2008 Legislature amended the Kansas Lottery Act in various ways:

- Senate Sub. for HB 2923 amended existing law to allow the Kansas Lottery to sell Veterans Benefit Game lottery tickets year round and to change the distribution of net profits for the Veterans Benefit Game. The bill required 40 percent of the net profits to be used for Kansas National Guard scholarships and 30 percent to benefit the Kansas Veterans Home, the Kansas Soldiers Home, and the Veterans Cemetery System. For FY 2009 and FY 2010, the bill directed 30 percent to the Museum of the Kansas National Guard for the expansion of its facility to include a 35th Infantry Division Museum and Education Center. In FY 2011, the 30 percent was to be redirected from the Museum to a veterans enhanced service delivery program.
- Senate Sub. for HB 2946 (Omnibus Appropriations bill) addressed the use of moneys from expanded gaming. The 2007 Legislature in SB 66, which established the expanded gaming provisions for state-owned racinos and casinos, also created the Expanded Lottery Act Revenues Fund (ELARF) to receive the state's share of the revenues after disposition of operating expenses and statutory transfers of all other money collected. SB 66 also provided for three statutory uses for money in the ELARF: property tax relief, infrastructure improvements, and debt relief.

State Casinos

Where can state casinos be located in Kansas?

The passage of 2007 SB 66 created gaming zones for casinos, and one casino may be built in each zone:

- Wyandotte County (Northeast Kansas Gaming Zone);
- Crawford and Cherokee counties (Southeast Kansas Gaming Zone);
- Sedgwick and Sumner counties (South Central Kansas Gaming Zone); and
- Ford County (Southwest Kansas Gaming Zone).

Who owns and operates the casinos?

The Kansas Lottery Commission is responsible for ownership and operational control. In addition, the Lottery is authorized to enter into contracts with the gaming managers for gaming at the exclusive and non-exclusive (parimutuel locations) gaming zones.

Who is responsible for regulation?

The Kansas Racing and Gaming Commission (KRGC) is responsible for oversight and regulation of lottery gaming facility operations.

What are the required provisions of any Lottery gaming facilities contract?

The law requires that each contract:

- Have an initial term of 15 years from the date of opening the gaming facility;
- Specify the amount to be paid to the manager;
- Establish a mechanism for payment of expenses;
- Include a provision for the lottery gaming manager to pay the costs of oversight and regulation of the operation of the lottery gaming facility by the KRGC;
- Provide for an investment in infrastructure, including ancillary lottery gaming facility operations, of at least $225 million in the Northeast, Southeast, and South Central gaming zones and $50 million in the Southwest gaming zone;
- Establish a gaming privilege fee of $25 million to be paid by the prospective lottery gaming manager, except the privilege for the Southwest gaming facility zone manager is $5.5 million; and
- Establish the disposition of revenues as follows:
  - 73 percent to the Lottery Gaming Facility Manager;
  - Not less than 22 percent of the gaming revenues to the state;
  - 2 percent to the Problem Gambling and Addictions Fund;
  - 1.5 percent to the city;
  - 1.5 percent to the county (3 percent if the casino is located in a gaming zone of only one county and is not located in a city);
  - 1 percent to the host county (2 percent if the casino is located in a gaming zone consisting of more than one county and is not located in a city); and
  - 1 percent to the non-host county if the casino is located in a gaming zone consisting of more than one county.

Who decides who receives the casino contracts?

The Lottery is to solicit proposals, approve gaming zone contracts, and submit the contracts to the Lottery Gaming Facility Review Board for consideration and determination of the contract for each zone. The Lottery Gaming Facility Review Board consists of three members appointed by the Governor, two members appointed by the President of the Senate, and two members appointed by the Speaker of the House. The Board is responsible for determining which lottery gaming facility management contract best maximizes revenue, encourages tourism, and serves the best interests of Kansas. The Board is under the control of the KRGC.

Contracts have been awarded and casinos are in operation in all gaming zones except the southeast gaming zone. No contracts have been submitted for the southeast gaming zone.

Tribal-State Gaming

In 1995, the State of Kansas and each of the four resident tribes in Kansas entered into tribal-state gaming compacts to permit Class III (casino) gaming at tribal casinos.

In accordance with the federal Indian Gaming Regulatory Act (IGRA), all four of the compacts approved by the Kansas Legislature were forwarded to the Bureau of Indian Affairs and were approved. At the present time, all four resident tribes have opened and are operating a casino gaming facilities:

- Kickapoo Tribe (the Golden Eagle Casino) in May 1996;
- Prairie Band Potawatomi Nation opened a temporary facility in October 1996, and then Harrah's Prairie Band Casino in January 1998 (in 2007 Harrah's relinquished operation of the casino to the Prairie Band Potawatomi Nation);
- Sac and Fox Tribe (Sac and Fox Casino) in February 1997;
- Iowa Tribe opened a temporary facility in May 1998, and then Casino White Cloud in December 1998.

Revenue. Financial information concerning the operation of the four casinos is confidential. Under the existing compacts, the state does not receive revenue from the casinos, except for its oversight activities.

The State Gaming Agency (SGA) was created by executive order in August 1995, as required by the tribal-state gaming compacts. During the 1996 Legislative Session, the agency was made a part of the Kansas Racing and Gaming Commission (KRGC) through the passage of the Tribal Gaming Oversight Act. The gaming compacts define the relationship between the SGA and the tribes: the actual day-to-day regulation of the gaming facilities is performed by the tribal gaming commissions. Enforcement agents of the SGA also are in the facilities on a daily basis and have free access to all areas of the gaming facility. The compacts also require the SGA to conduct background investigations on all gaming employees, manufacturers of gaming supplies and equipment, and gaming management companies and consultants.

The SGA is funded through an assessment process established by the compacts to reimburse the State of Kansas for the costs it incurs for regulation of the casinos.

As of 2012, no new Indian gaming compacts have been approved. The Wyandotte Nation of Kansas is currently negotiating a compact with the State of Kansas.

Racetrack Gaming Facilities

What racetrack facilities are permitted to have slot machines?

The Lottery may place slot machines at the Woodlands in Kansas City, Camptown Greyhound Park in Southeast Kansas, and Wichita Greyhound Park in Valley Center. Camptown closed in 2000, the Wichita Greyhound Park closed in 2007, and the Woodlands closed in 2008.

Who decides who receives the racetrack gaming facility management contract?

The Kansas Lottery is responsible for considering and approving proposed racetrack gaming facility management contracts with one or more prospective racetrack gaming facility managers. The prospective managers must have sufficient financial resources and be current in filing taxes to the state and local governments. The Lottery is required to submit proposed contracts to KRGC for approval or disapproval.

What are the required provisions of any racetrack gaming facilities contract?

The law requires the following main provisions:

- Authorize a maximum of 2,800 electronic gaming machines at all locations;
- Establish the number of live greyhound and horse races to be conducted at each parimutuel track prior to authorization of placement of electronic gaming machines; and
- Establish the distribution of electronic gaming revenue as follows:
  - 25 percent to the racetrack gaming facility manager;
  - 7 percent to the Live Greyhound Racing Purse Supplement Fund (not more than $3,750 per machine);
  - 7 percent to the Live Horse Racing Purse Supplement Fund (not more than $3,750 per machine);
  - 1.5 percent to the city;
  - 1.5 percent to the county (3 percent if the track is not in a city);
  - 2 percent to the Problem Gambling and Additions Grant Fund;
  - 1 percent to the Kansas Horse Fair Racing Benefit Fund;
  - 40 percent to the state;
  - 15 percent for expenses; and
  - $2,500 per electronic gaming machine to the state.

Parimutuel Wagering

In 1986, voters approved a constitutional amendment authorizing the Legislature to permit, regulate, license, and tax the operation of horse and dog racing by bona fide non-profit organizations and to conduct parimutuel wagering.

The Kansas Parimutuel Racing Act was created by legislation the following year, which:

- Created the Kansas Racing Commission, subsequently renamed the Kansas Racing and Gaming Commission, which is authorized to license and regulate all aspects of racing and parimutuel wagering;
- Permitted only non-profit organizations to be licensed and the licenses may be for an exclusive geographic area;
- Created a formula for taxing the wagering;
- Provided for simulcasting of both interstate and intrastate horse and greyhound races in Kansas and allowed parimutuel wagering on simulcast races in 1992; and
- Provided for the transfer from the State Racing Fund to the SGRF of any moneys in excess of amounts required for operating expenditures.

Revenue. In FY 2013, there was no revenue transfer to the SGRF from racetrack gambling or parimutuel racetracks..

Parimutuel Racetracks. As of 2013, there are no year-round parimutuel racetracks operating in Kansas.

Parimutuel horse racing is offered at two county fair locations for short periods during the year:

- Eureka Downs in Eureka, and
- Anthony Downs in Anthony.

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Alcohol, Drugs, and Gaming

C-3 Charitable Gaming, Bingo, and Other Games

In 1974, Kansas voters approved a constitutional amendment authorizing the Legislature to regulate, license, and tax the operation of games of "bingo" by bona fide non-profit organizations, including religious, charitable, fraternal, educational, and veterans. The constitutional amendment was amended in 1995 to authorize games of "instant bingo" (also known as "pull-tabs") as a similar type of bingo game.

The Legislature adopted implementing legislation in 1975 to regulate, license, and tax charitable bingo games and assigned the Department of Revenue to staff and operate the state's oversight of regulating, licensing, and taxing bingo games and bingo operators. An Administrator of Charitable Gaming supervises the agency's bingo program.

The 2011 Legislature amended the bingo laws by creating an alternative method to conduct instant bingo, raising the prices of instant bingo tickets, increasing the operating hours of instant bingo, increasing the number of mini-bingo games allowed, restricting the hours mini-bingo can be conducted, allowing a beneficiary organization to be licensed to conduct bingo, and removing the existing statutory prize limits for "progressive bingo" games.

Entities Regulated in the Charitable Bingo Industry

The types of organizations, businesses, and facilities that are regulated include:

- (1) Licensed non-profit organizations that conduct bingo games (any bona fide group that is eligible and licensed to conduct bingo games, such as a veterans group or a church group). (2) Registered premises lessors that provide facilities for bingo games (the owner or lessor of premises where a non-profit organization may conduct bingo games). (3) Registered bingo card distributors that provide such tickets (a person or entity may sell instant bingo tickets and bingo cards/disposable bingo faces to non-profit organizations).

To be eligible for a bingo license, an organization must meet all of the following requirements:

- Be a non-profit religious, charitable, fraternal, educational, or veterans organization with a tax exempt ruling from the Internal Revenue Service.

- Have been in continuous existence in Kansas for at least eighteen months prior to application (adult care homes are exempt from this requirement).
- None of the officers, directors, or officials of the organization, or any person employed on the premises where the bingo games are to be conducted, has been convicted of a felony or gambling violation in Kansas or any other jurisdiction.
- Membership in the organization is open to a person of any race, color, or physical handicap.

The entire gross receipts received from the operation of bingo games, except that portion used for the payment of prizes, license fees, and taxes, must be exclusively for the lawful purposes of the licensed organization. No person involved in the operation of bingo games for the licensed organization may receive any compensation or profit from such activity.

The Secretary of Revenue is vested with general administration of the bingo statutes and assistance is provided by the Administrator of Charitable Gaming. The Director of Taxation is charged with specific duties related to the taxation of bingo. Revenue field agents inspect the licensees, registered distributors, and registered facilities to periodically monitor the conduct of the games and to find unlicensed operators.

Variations of Call Bingo Game That Are Permitted

The following variations of call bingo games have been ruled legal:

- A wheel of fortune may be used to select the maximum quantity of balls or other objects that are to be selected in order to win the top prize in a special call bingo game.
- Because the statutory definition of call bingo does not specify a limit on the number of objects that may be selected by chance, games involving 90 numbers instead of 75 are legal.
- "U-pickum" cards are legal as long as they conform to the description of a card per KSA 79-4701(d), *i.e.*, 25 squares with a free space in the middle. They may be used for regular or special games, however if used for a regular game, the card must be included in the package of regular cards being sold. They may be used in the same game along with hard cards or paper faces, but the pattern to win must be the same for all types of cards used in the same game. A higher price may be paid to persons winning on the U-pickum cards as long as the statutory prize limits are not exceeded.
- A call bingo game may have the winning pattern determined by chance at the beginning of the game. The selection process may involve a wheel or the first ball selected for the game. One example is an odd-even game. In this game, the first number selected determines whether odd or even numbers are to be used in covering squares during the rest of the game. In other words, the announced pattern is all odd or all even squares, depending upon which number is selected first.
- Another variation is using the first ball selected to determine the numbers of the squares that must be "blacked out" as the winning pattern. For example, if the first ball selected ends in an "8", then the winning pattern is all squares on each face or hard card with numbers ending in "8." In each case, once the pattern is determined, then the game proceeds are usual.

Variations of Call Bingo Games Which Are Not Permitted

The following types of call bingo games have been determined to be illegal for the following reasons:

- Bonanza Bingo Game. This is a call bingo game in which some of the numbers are selected and posted in advance of the start of the actual bingo session and the remaining numbers are selected

(until someone wins) during the bingo session. The game is illegal when the initial numbers are not selected, called, displayed, and posted while all (or the majority) of the players are present to verify that the numbers are selected by chance and correctly posted.

- Wild Number Game. In this game, one or more numbers are designated as wild numbers and are covered or marked by the players on their cards even though the numbers were never actually selected (except for the number upon which the "wild" numbers are based). The numbers are usually derived from the first number actually selected in the game. For example, if "B13" is selected first, then all numbers ending in a "3" are designated as "wild", such as 3, 13, 23, 33, 43, etc.
- Good Neighbor Game. In this game, the players sitting on each side of the actual winner of a bingo game are given a small prize, such as a dollar. This practice is illegal because KSA 79-4701(f) states that the winner of a prize is the "player or players first properly covering a predetermined and announced pattern of squares."
- Pig Game. There are several variations of bingo games that are referred to as "pig games. Most are illegal but the particular characteristics must be analyzed before such a conclusion can be made. The most common type of "pig" game starts with selecting a number by chance at the beginning of the bingo session. This number is posted or displayed and each time that it is called throughout the session, a specific amount of money is placed or added to a pot or "pig" by the licensed organization. If any player wins on that number in any call bingo game conducted during that session, then that player is awarded the amount of money that has accumulated in the "pig" in addition to the regular prize for that game.

The Administrator of Charitable Gaming and the Kansas Department of Revenue do not regulate tribal bingo or other tribal gaming or bingo games conducted on reservation lands. They do not have any authority regarding bingo at military reservations and bases.

During the 2013 Session, there were several attempts to pass legislation to expand the type of games that could be played as charitable gaming. The Governor vetoed 2013 HB 2120, noting in the veto message that the language in the bill violates Article 15, Section 3 of the *Kansas Constitution*. The Governor further noted that he would support a policy goal of permitting certain limited raffles for charitable purposes. The Governor encouraged the Legislature to consider a constitutional amendment to accomplish such a goal.

Revenue. The bingo tax generated $389,029 in FY 2012, of which $259,366 was transferred to the State Gaming Revenues Fund according to statute. Of the bingo tax revenue, $259,366 was transferred to the State General Fund and $129,633 was transferred to the Bingo Regulation Fund. In addition, an annual transfer was made in FY 2012 shifting $20,000 from the Bingo Regulation Fund to the Problem Gambling Grant Fund.

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Children and Youth

D-1 Tobacco/Children's Initiatives Fund

In 1998, Kansas became one of 46 states to accept a tobacco settlement negotiated with four major tobacco companies. (The remaining four states settled individually.) The settlement, called the Master Settlement Agreement, is aimed at reducing the use of tobacco by young persons, settling legal claims by states against the tobacco industry, and reimbursing health care costs for treatment of Medicaid patients whose illnesses were caused by tobacco. Under terms of the agreement, the tobacco industry is prohibited from targeting youth in marketing and is subject to restrictions concerning sponsorships, advertising, and tobacco promotions.

> The tobacco industry is required to make payments to the states in perpetuity. Original estimates were that the industry would pay states $206 billion through the year 2025. Not all tobacco companies are parties to the settlement. Those that are not are required to put into escrow an amount of money equal to what they would pay under the settlement. This is to level the playing field so that non-participating manufacturers will not have a competitive advantage over participating manufacturers.

The allocation formula is based on each state's smoking-related health care costs, with equal weight given to Medicaid-related and non-Medicaid-related costs. Each state and territory gets the proportion of the settlement that its smoking-related health care costs bear to the total. Kansas' share of the recovery is 0.83 percent, which, based on the original estimate, was expected to exceed $1.5 billion over the first 25 years of the agreement. Payments are based on the tobacco companies' market share of tobacco product sales and are subject to an annual inflation factor of three percent, or the increase in the Consumer Price Index, whichever is greater.

The Master Settlement Agreement also provides that payments to states could be reduced if tobacco sales go down or if tobacco companies go out of business. It is this latter provision that is causing concern over future payments.

The Master Settlement Agreement does not impose any constraints on how the states may use their tobacco money. In Kansas, the 1999 Legislature enacted legislation that established a trust fund into which tobacco payments are credited and created the Kansas Children's Cabinet to advise the Governor and the Legislature on programs that will be funded from the tobacco money. The trust fund, named the "Kansas Endowment for Youth (KEY) Fund," is invested and managed by the Board of Trustees of the Kansas Public Employees Retirement System. The Legislature also created the Children's Initiatives Fund and provided that transfers would be made from the KEY Fund to the Children's Initiatives Fund on an annual basis. Transfers from the KEY Fund to the Children's Initiatives Fund are capped at $45 million, plus a 2.5 percent annual inflation factor.

Tobacco Payments to Kansas

Kansas received its first tobacco revenues in 1999. In general, payments have been less than originally estimated. In FY 2013, tobacco revenues and interest earnings totaled $68.0 million. Revenues are estimated to be $55.0 million in both FY 2014 and FY 2015.

It is important to note that beginning in FY 2008 revenues include funds from the "Strategic Contribution Fund" provisions of the Master Settlement Agreement. These provisions require the tobacco companies to pay, from 2008 through 2017, a total of $861 million into the Strategic Contribution Fund. Money from the Strategic Contribution Fund is to be allocated to states based on the percentage each state contributed to the original Master Settlement Agreement. Kansas' share of this amount is 1.85 percent. According to the Kansas Attorney General's Office, it is unclear how the Strategic Contribution Fund payments will be affected by recent actions of the tobacco companies to withhold payments under the agreement while they are disputing the basis of payments to be made.

Kansas Tobacco Revenues and Interest Earnings

FY 1999	$	49,705,586
FY 2000	$	52,935,158
FY 2001	$	61,465,211
FY 2002	$	61,511,858
FY 2003	$	52,531,729
FY 2004	$	53,453,765
FY 2005	$	49,463,355
FY 2006	$	47,515,501
FY 2007	$	46,900,000
FY 2008	$	66,347,833
FY 2009	$	72,278,198
FY 2010	$	60,838,465
FY 2011	$	57,091,087
FY 2012	$	57,985,065
FY 2013	$	68,034,311
FY 2014 est.	$	55,000,000
FY 2015 est.	$	55,000,000

Staff Note: FY 2009 revenues included receipts of $4.5 million from the disputed payments account of the Master Settlement Agreement.

Concern Over Future Payments

The amount of tobacco money the states will receive is affected by several factors, including an overall decrease in tobacco consumption, which results in diminished sales of tobacco products and lower payments to states. The market share of tobacco companies that are participating in the settlement also is being reduced by sales of nonparticipating manufacturers, and the possibility exists that one or more of the major participating manufacturers could declare bankruptcy. The most immediate and direct threat to the tobacco revenue stream is a clause in the Master Settlement Agreement that permits participating manufacturers to seek refund of money paid to the states when there is a drop in their market share below a threshold established in 1997.

That threshold was triggered in 2003, and 2006 was the first year for which revenues were affected. In 2006, R. J. Reynolds Tobacco Company and

Lorillard Tobacco Company withheld all or part of their payments to the states, contending that under the Master Settlement Agreement, the payments were not due because of declining market shares. The National Association of Attorneys General, which has played a leadership role among the states with regard to the tobacco settlement, takes the position that the tobacco companies owe the states the full payment until the industry can demonstrate that the states have failed to exercise due diligence in enforcing the tobacco settlement. (The Settlement is complicated, and there is disagreement between the industry and the states as to exactly how the downward adjustment clause should be interpreted or applied.) In June 2007, the state received $394,424 in funding from the disputed payments account. In March 2009, the state received $4.5 million from the disputed payments account.

Summary of Arbitration

In December 2012, through an arbitrated "settlement in principal", Kansas agreed to receive 54.0 percent, approximately $46.0 million, of the money remaining in the disputed payments account and the tobacco manufacturers received the other 46.0 percent of the money. The arbitration panel found the "settlement in principal" to be sufficient and issued an award to that effect. If the "settlement in principal" is allowed to stand, Kansas' liability for past allegations of failure to diligently enforce its obligation will be eliminated. A final agreement has not been signed, and several states have filed lawsuits seeking to set aside the "settlement in principal". If a final agreement is signed it will resolve the disputes for enforcement years 2003 to 2012.

Children's Initiatives Fund

The 1999 Legislature created the Children's Initiatives Fund to fund programs promoting the health and welfare of Kansas children. The Children's Initiatives Fund is administered by the Children's Cabinet, a 15-member committee consisting of appointees of the Governor and Legislature and *ex officio* members. The Cabinet is responsible for initiating audits and reviews of the programs receiving Children's Initiatives Fund money. Expenditures from the Children's Initiatives Fund are requested by the Children's Cabinet through the Department for Children and Families, recommended by the Governor, and approved by the Legislature.

The Kansas tobacco settlement is the revenue source for the Children's Initiatives Fund. The settlement payments are placed in the KEY Fund. In general, the KEY Fund has not served as the endowment fund that was envisioned. This is because of a combination of less tobacco payment revenue than expected and shortfalls to the State General Fund, which have resulted in transferring balances in the KEY Fund to the State General Fund rather than allowing them to accumulate.

Children's Initiatives Fund
FY 2012 - FY 2015

	Actual FY 2012	Final Approved FY 2013	Final Approved FY 2014	Final Approved FY 2015
Department of Health and Environment				
Healthy Start/Home Visitor	$ 237,914	$ 237,914	$ 237,914	$ 237,914
Infants and Toddlers Program (Tiny K)	5,700,000	5,700,000	5,700,000	5,700,000
Smoking Cessation/Prevention Program Grants	1,001,960	1,000,000	946,671	946,671
Newborn Hearing Aid Loaner Program	47,868	47,238	47,161	47,161
SIDS Network Grant	71,374	96,374	96,374	96,374
Newborn Screening	2,137,186	1,420,499	-	-
Subtotal - KDHE	*$ 9,196,302*	*$ 8,502,025*	*$ 7,028,120*	*$ 7,028,120*
Department for Aging and Disability Services				
Children's Mental Health Initiative	$ -	$ 3,800,000	$ 3,800,000	$ 3,800,000
Family Centered System of Care	-	4,750,000	-	-
Subtotal - KDADS	*$ -*	*$ 8,550,000*	*$ 3,800,000*	*$ 3,800,000*
Department for Children and Families				
Children's Cabinet Accountability Fund	$ 492,736	$ 519,325	$ $400,000	$ 400,000
Children's Mental Health Initiative	3,800,000	-	-	-
Family Centered System of Care	4,750,000	-	-	-
Child Care Services	5,033,679	5,033,679	5,033,679	5,033,679
Reading Roadmap (Kansas Reads to Succeed)	918,201	256,637	6,000,000^	6,000,000^
Kansas Reads to Succeed Incentive	-	-	-	-
Smart Start Kansas - Children's Cabinet	7,158,474	-	-	-
Family Preservation	3,106,605	2,154,357	2,154,357	2,154,357
Early Childhood Block Grants	10,563,966	-	-	-
Combined Block Grant (Early Childhood and Smart Start)	-	18,132,248	18,129,484	18,129,179
Early Childhood Block Grants - Autism	48,179	47,036	50,000	50,000
Early Head Start	62,211	66,584	70,000	70,000
Child Care Quality Initiative	479,257	500,000	500,000	500,000
Subtotal - DCF	*$ 36,413,308*	*$ 26,709,866*	*$ 32,337,520*	*$ 32,337,215*
Department of Corrections				
Judge Riddel Reimbursement Rate	$ -	$ -	$ 750,000	$ -
Department of Education				
Parents as Teachers	$ 7,237,635	$ 7,237,635	$ 7,237,635	$ 7,237,635
Pre-K Pilot	4,799,812	4,799,812	4,799,812	4,799,812
Subtotal - Dept. of Ed.	*$ 12,037,447*	*$ 12,037,447*	*12,037,447*	*$ 12,037,447*
TOTAL	**$ 57,647,057**	**$ 55,799,338**	**$ 55,953,087**	**$ 55,202,782**

^ Includes language requiring the funding be used to implement Lexia Reading Core5 if Kansas Reads to Succeed is not enacted into law.

Staff Note: The FY 2013 budget includes a transfer of $485,000 from the Kansas Endowment for Youth Fund to the Attorney General. In addition, it transfers $9.5 million from the KEY Fund to the State General Fund in FY 2013. The FY 2014 and FY 2015 budget includes a transfer from the KEY fund to the Attorney General of $460,000. In addition, it transfers $25,000 from the KEY fund to the Sexually Violent Predator Fund in the Attorney General's Office for FY 2014 and FY 2015

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Children and Youth

D-2 Juvenile Services

Pursuant to ERO 42, the jurisdiction, powers, functions, and duties of the Juvenile Justice Authority (JJA), which had been a cabinet-level agency, were transferred to the Department of Corrections (KDOC) and the Secretary of Corrections on July 1, 2013. The division of Juvenile Services within KDOC now oversees juvenile offenders in Kansas. Individuals as young as ten years of age and as old as seventeen years of age may be adjudicated as juvenile offenders. KDOC may retain custody of a juvenile offender in a juvenile correctional facility until the age of twenty-two and a half and in the community until the age of twenty-three.

Juvenile Services leads a broad-based state and local, public and private partnership to provide the state's comprehensive juvenile justice system, including prevention and intervention programs, community-based graduated sanctions, and juvenile correctional facilities.

Juvenile Services' operations consist of two major components:

- **Community-based prevention, immediate interventions, and graduated sanctions programs for nonviolent juvenile offenders.** Juvenile Services also administers grants to local communities for juvenile crime prevention and intervention initiatives. In addition to providing technical assistance and training to local communities, the division is responsible for grant oversight and auditing all juvenile justice programs and services.
- **Juvenile correctional facilities for violent juvenile offenders.** The two currently funded juvenile correctional facilities are located at Larned and Topeka. The funding for each facility is included in separate budgets. A third facility, Atchison Juvenile Correctional Facility, suspended operations on December 8, 2008; and a fourth facility, Beloit Juvenile Correctional Facility, suspended operations on August 28, 2009.

JJA's History and Community Focus

The juvenile justice reform process implemented in Kansas from 1997 to 2000 focused on prevention, intervention, and community-based services, and the premise that a youth should be placed in a juvenile correctional facility for rehabilitation and reform only as a last resort. Youth are more effectively rehabilitated and served within their own community.

Prior to the transition, juvenile justice functions were the responsibility of several state agencies, including: the Office of Judicial Administration; the Department of Social and Rehabilitation Services (SRS), which is now the Department for Children and Families (DCF); and the Department of Corrections. Other objectives included separating juvenile offenders from children in need of care in the delivery of services.

Because of the focus on serving youth in their community, each county or group of cooperating counties is required by statute to make themselves eligible to receive state funding for the development, implementation, operation, and improvement of juvenile community correctional services. Each county, or the designee of a group of counties, is referred to as an administrative county and directly receives funding from the agency for operation of community juvenile justice services.

Pivotal roles of the Community Programs Division include: ensuring the community service continuum is efficient and effective in addressing the needs of the youth; building upon established collaborations with local units of government and other key stakeholders; and monitoring programs along the continuum of services from prevention and intervention to rehabilitative service delivery.

Juvenile Justice Reform Timeline

1993 and 1994. Research began on the proposed transition with legislative review of juvenile crime and the creation of the Criminal Justice Coordinating Council, which was charged to study and develop policies and recommendations regarding juvenile justice reform.

1995. The Kansas Youth Authority (KYA) and JJA were created with the enactment of 1995 SB 312.

- The mission of KYA was to develop policies related to the scope and function of the JJA. Specific areas studied included confinement, diversion, fines, restitution, community service, standard probation, intensive supervision, house arrest programs, electronic monitoring, structured school, day reporting centers, community residential care, treatment centers, and sanctions.
- JJA was assigned to:
  - Control and manage the operation of the state youth centers (now referred to as Juvenile Correctional Facilities);
  - Evaluate the rehabilitation of juveniles committed to JJA and prepare and submit periodic reports to the committing court;
  - Consult with the state schools and courts on the development of programs for the reduction and prevention of delinquency and the treatment of juvenile offenders;
  - Cooperate with other agencies that deal with the care and treatment of juvenile offenders;
  - Advise local, state, and federal officials; public and private agencies; and lay groups on the needs for and possible methods of reduction and prevention of delinquency and the treatment of juvenile offenders;
  - Assemble and distribute information relating to delinquency and report on studies relating to community conditions which affect the problem of delinquency;
  - Assist any community within the state by conducting a comprehensive survey of the community's available public and private resources, and recommend methods of establishing a community program for combating juvenile delinquency and crime; and
  - Be responsible for directing state money to providers of alternative placements in local communities such as supervised release into the community, out-of-home placement, community services work, or other community-based service; provide assistance to such providers; and evaluate and monitor the performance of such providers relating to the provision of services.

1996. HB 2900, known as the Juvenile Justice Reform Act of 1996, was enacted and outlined the powers and duties of the Commissioner of

Juvenile Justice. The bill also addressed the areas of security measures, intake and assessment, dual sentencing, construction of maximum security facility or facilities, child support and expense reimbursement, criminal expansion, disclosure of information, immediate intervention programs, adult presumption, parental involvement in dispositional options, parental responsibility, school attendance, parental rights, and immunization. Further, the bill changed the date for the transfer of powers, duties, and functions regarding juvenile offenders from SRS and other state agencies to July 1, 1996. The bill stated the KYA must develop a transition plan that included a juvenile placement matrix, aftercare services upon release from a juvenile correctional facility, coordination with SRS to consolidate the functions of juvenile offender and children in need of care (CINC) intake and assessment services on a 24-hour basis, recommendations on how all juveniles in police custody should be processed, and the transfer from a state-based juvenile justice system to a community-based system according to judicial districts.

1997. The Legislature amended the Juvenile Justice Reform Act of 1996 with House Sub. for SB 69, including changes in the administration of the law. In addition, the amendments dealt with juvenile offender placements in an effort to maximize community-based placements and reserve state institutional placements for the most serious, chronic, and violent juvenile offenders. Also included in this bill was the creation of the Joint Committee on Corrections and Juvenile Justice and the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention (KAG), which took the place of the KYA. On July 1, JJA began operations and assumed all the powers, duties, and functions concerning juvenile offenders from SRS (now Department of Children and Families).

2013. ERO 42 abolished the Juvenile Justice Authority (JJA) and transferred the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice to the Department of Corrections (KDOC) and the Secretary of Corrections, effective July 1, 2013. All officers and employees of the JJA engaged in the exercise of the powers, duties, and functions transferred by the ERO were transferred to the KDOC, unless they were not performing necessary services. Pursuant to the ERO, KDOC assumed all jurisdiction, powers, functions, and duties relating to juvenile correctional facilities and institutions, as well as responsibility for rules and regulations; educational services; passes, furlough, or leave; institutional security plans; and a rigid grooming code and uniforms for such institutions. Finally, the ERO specified the KDOC is responsible for JJA-related duties in various other areas, including: juvenile intake; the Revised Kansas Juvenile Justice Code; regional youth care and rehabilitation facilities; supplemental youth care facilities; residential care facilities; community planning teams, juvenile justice programs, the Juvenile Justice Community Planning Fund, and the Juvenile Justice Community Initiative Fund; grants; community graduated sanctions and prevention programs and the community advisory committee; and the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention.

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Children and Youth

D-3 Child Custody and Visitation Procedures

In Kansas, "legal custody" is defined as "the allocation of parenting responsibilities between parents, or any person acting as a parent, including decision making rights and responsibilities pertaining to matters of child health, education and welfare." KSA 23-3211. Within that context, Kansas law distinguishes between "residency" and "parenting time." Residency refers to the parent with whom the child lives, compared to parenting time, which consists of any time a parent spends with a child. The term "visitation" is reserved for time nonparents are allowed to spend with a child.

Initial Determination

The standard for awarding custody, residency, parenting time, and visitation is what arrangement is in the "best interests" of the child. A trial judge can determine these issues when a petition is filed for:

- Divorce, annulment, or separate maintenance. KSA 23-2707 (temporary order); KSA 23-3206, KSA 23-3207, and KSA 23-3208;
- Paternity. KSA 23-2215;
- Protection, pursuant to the Kansas Protection from Abuse Act (KPAA). KSA 60-3107(a)(4) (temporary order);
- Protection, in conjunction with a Child in Need of Care (CINC) proceeding. KSA 38-2243(a) (temporary order); KSA 38-2253(a)(2)—for more information on CINC proceedings, see D-4;
- Guardianship of a minor. KSA 59-3075; or
- Adoption. KSA 59-2131 (temporary order) and KSA 59-2134.

Further, for a court to make a custody determination, it must have authority under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), KSA 23-37,101 to KSA 23-37,405. The first time the question of custody is considered, only a court in the child's "home state" may make a custody determination. The "home state" is the state where the child lived with a parent, or a person acting as a parent, for at least six consecutive months immediately before the beginning of a custody proceeding. For a child younger than six months, it is the state in which the child has lived since birth. Temporary absences are included in the six-month period, and the child does not have to be present in the state when the proceeding begins. Exceptions apply when there is no home state, there is a "significant connection" to another state, or there is an

emergency, *e.g.* the child has been abandoned or is in danger of actual or threatened mistreatment or abuse. After a court assumes home state jurisdiction, other states must recognize any orders it issues.

Legal custody can be either joint, meaning the parties have equal rights, or sole, when the court finds specific reasons why joint legal custody is not in the best interests of the child. KSA 23-3206. After making that determination the court will determine residency, parenting time, and visitation.

Residency may be awarded to one or both parents, or, if the child is a child in need of care and a court has determined neither parent is fit, to a third party (third parties are addressed in a later section). In determining residency, KSA 23-3207 requires parents to prepare either an agreed parenting plan or, if there is a dispute, proposed parenting plans for the court to consider. For more information on parenting plans, see KSA 23-3211 to KSA 23-3214.

Based on the principle that fit parents act in the best interests of their children, an agreed parenting plan is presumed to be in a child's best interests. Absent an agreement, however, or if the court finds specific reasons why the parenting plan is not in the best interests of the child, it will consider all relevant factors, including those outlined in KSA 23-3203, to make a determination:

- The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;
- The desires of the child and child's parents as to custody or residency;
- The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests;
- The child's adjustment to the child's home, school, and community;
- The willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;
- Evidence of spousal abuse;
- Whether a parent or a person residing with a parent is subject to the registration requirements of the Kansas Offender Registration Act, or any similar act; and
- Whether a parent or person residing with a parent has been convicted of abuse of a child.

Though not required, a court may appoint or authorize a lawyer or guardian *ad litem*, especially in contested cases, to ensure a child's interests are being represented. Guardians *ad litem* are regulated by Kansas Supreme Court Rules. They serve as an advocate for the best interests of the child and present cases in the same manner as any other attorney representing a client.

Modification

KSA 23-3218 provides that subject to the provisions of the UCCJEA, courts can modify custody, residency, visitation, and parenting time orders when a material change of circumstances is shown. Pursuant to KSA 23-37,202, a state that previously exercised jurisdiction will have continuing authority over subsequent motions until a court of that state determines that the child, the child's parents, and any person acting as a parent either:

- No longer have a significant connection with that state and substantial evidence is no longer available in that state concerning the child's care, protection, training, and personal relationships; or
- A court of that state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in that state.

While a state exercises continuing jurisdiction, no other state may modify the order. If the state that made the original determination loses this continuing jurisdiction, another state can modify an order only if it satisfies the "home state" requirements outlined above.

KSA 23-3219(a) provides that to modify a final child custody order, the party filing the motion must list, either in the motion or in an accompanying affidavit,

all known factual allegations that constitute the basis for the change of custody. If the court finds that the motion establishes a *prima facie* case, the facts of the situation will be considered to determine whether the order should be modified. Otherwise, the court must deny the motion.

KSA 23-3219(b) speaks to the requirements for modification of custody orders in alleged emergency situations. First, if the nonmoving party has an attorney, the court must attempt to have the attorney present before taking up the matter. Next, the court is required to set the matter for review hearing as soon as possible after issuance of the *ex parte* order, but within 15 days after issuance. Third, the court must obtain personal service on the nonmoving party of the order and the review hearing. Finally, it provides that the court cannot modify the order without sworn testimony to support a showing of the alleged emergency. Similarly, KSA 23-3218 states that no *ex parte* order can change residency from a parent exercising sole *de facto* residency of a child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances.

Custodial Interference and the Kansas Protection from Abuse Act

KSA 21-5409 outlines the crimes of "interference with parental custody" and "aggravated interference with parental custody." "Interference with parental custody" is defined as "taking or enticing away any child under the age of 16 years with the intent to detain or conceal such child from the child's parent, guardian, or other person having the lawful charge of such child." Joint custody is not a defense. This crime is a class A person misdemeanor if the perpetrator is a parent entitled to joint custody of the child; in all other cases, it is a severity level 10, person felony. Subsection (b) lists certain circumstances in which the crime of interference with parental custody will be considered "aggravated," including hiring someone to commit the crime of interference with parental custody; or the commission of interference with parental custody, by a person who:

- Has previously been convicted of the crime;
- Commits the crime for hire;
- Takes the child outside the state without the consent of either the person having custody or the court;
- After lawfully taking the child outside the state while exercising visitation rights or parenting time, refuses to return the child at the expiration of that time;
- At the expiration of the exercise of any visitation rights or parenting time outside the state, refuses to return or impedes the return of the child; or
- Detains or conceals the child in an unknown place, whether inside or outside the state.

This crime is a severity level 7, person felony.

These statutes highlight the fact that if a noncustodial parent believes his or her child needs protection from the custodial parent, he or she must take action under the Kansas Protection from Abuse Act (KPAA), KSA 60-3101 to KSA 60-3111. The KPAA allows a parent of a minor child to seek relief under the Act on behalf of the minor child by "filing a verified petition with any district judge or with the clerk of the court alleging abuse by another intimate partner or household member." The court must hold a hearing within 21 days of the petition's filing. Prior to this hearing, the parent who originally filed the petition may file a motion for temporary relief, to which the court may grant an *ex parte* temporary order with a finding of good cause shown. The temporary order remains in effect until the hearing on the petition, at which time the parent who filed the petition "must prove the allegation of abuse by a preponderance of the evidence." The other parent also has a right to present evidence on his or her own behalf. At the hearing, the court has the authority to grant a wide variety of protective orders it believes are necessary to protect the child from abuse, including awarding temporary custody.

Typically, the protective order remains in effect for a maximum of one year, but, on motion of the parent who originally filed the petition, may be extended for one additional year. Additionally, KSA 60-3107, as amended by 2012 HB 2613, requires courts to extend protection from abuse orders for at least two years and allow extension up to the

lifetime of a defendant if, after the defendant has been personally served with a copy of the motion to extend the order and has had an opportunity to present evidence at a hearing on the motion and cross-examine witnesses, it is determined by a preponderance of the evidence that the defendant has either previously violated a valid protection order or been convicted of a person felony or conspiracy, criminal solicitation, or attempt of a person felony, committed against the plaintiff or any member of the plaintiff's household. Violation of a protection order is a class A, person misdemeanor, and violation of an extended protection order is a severity level 6, person felony.

Military Child Custody and Visitation

If either parent is a member of the military, there are additional issues to consider in a custody proceeding. For instance, the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. §§ 501-596, a federal law meant to allow deployed service members to adequately defend themselves in civil suits, may apply. There are two ways the SCRA is used in military custody proceedings:

- When a service member fails to appear, the SCRA requires the court to appoint counsel to represent the service member; and
- Upon application by a service member, the court must grant a stay of the proceedings if the application contains the required documents. For a procedural stay, service members must show:
  - How military duties materially affect their ability to appear;
  - A date when they would be available to appear;
  - That military duties prevent their appearance; and
  - That they currently are not authorized for military leave.

State law also applies in these situations. KSA 23-3213 requires that if either parent is a service member, the parenting plan must include provisions for custody and parenting time upon military deployment, mobilization, temporary duty, or an unaccompanied tour. Further, KSA 23-3217 specifies that those circumstances do not necessarily constitute a "material change in circumstances," such that a custody or parenting time order can be modified. If an order is modified because of those circumstances, however, it will be considered a temporary order.

When the parent returns and upon a motion of the parent, the court is required to have a hearing within 30 days to determine whether a previous custody order should be reinstated. In the service member's absence, KSA 23-3217 also allows the service member to delegate parenting time to a family member or members with a close and substantial relationship to the child if it is in the best interests of the child, and requires that the nondeploying parent accommodate the service member's leave schedule and facilitate communication between the service member and his or her children.

Third Party Custody and Visitation

Custody

KSA 38-141 recognizes the rights of parents to exercise primary control over the care and upbringing of their children. This stance is consistent with the United States Supreme Court's recognition that a parent's fundamental right to establish a home and raise children is protected and will be disturbed only in extraordinary circumstances. *Troxel v. Granville*, 530 U.S. 57 (2000); *Meyer v. Nebraska*, 262 U.S. 390 (1923). As such, parents are generally awarded custody unless they have been determined unfit by a court under the Revised Kansas Code for the Care of Children (KCCC), KSA 38-2201 to 2286.

Under the KCCC, KSA 38-2286, enacted in 2012 as SB 262, requires substantial consideration of a grandparent who requests custody when a court evaluates what custody, visitation, or residency arrangements are in the best interests of a child who has been removed from custody of a parent and not placed with the child's other parent. The court must consider the wishes of the parents, child, and grandparent; the extent to which the grandparent has cared for the child; the intent and circumstances under which the child is placed with

the grandparent; and the physical and mental health of all involved individuals. The court is required to state this evaluation on the record. If the court does not give custody to a grandparent, but places the child in the custody of the Secretary of the Department for Children and Families (Secretary) for placement, then a grandparent who requests placement must receive substantial consideration in the evaluation for placement. If the grandparent is not selected for placement, the Secretary must prepare and maintain a written report with specific reasons for the finding.

If a parent is found to be unfit, the court may appoint a permanent custodian or if parental rights are terminated, the child can be adopted. The court must consider placing the child with the grandparents or other close relatives and may grant visitation to other individuals based on a determination of what is in the child's best interests. The child also might be placed in a shelter facility or foster home with the possibility of the child returning to his or her parents depending on parental compliance with the court's reintegration plan.

Aside from a proceeding conducted pursuant to the KCCC, a judge in a divorce case can award temporary residency to a nonparent if the court finds there is probable cause to believe that the child is a child in need of care or that neither parent is fit to have residency. KSA 23-3207(c). To award residency, the court must find by written order that:

- The child is likely to sustain harm if not immediately removed from the home;
- Allowing the child to remain in the home is contrary to the welfare of the child; or
- Immediate placement of the child is in the best interest of the child.

The court also must find that:

- 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 that threatens the safety of the child.

In awarding custody to a nonparent under these circumstances and to the extent the court finds it is in the best interests of the child, the court gives preference first to a relative of the child, whether by blood, marriage, or adoption, and then to a person with whom the child has close emotional ties. The award of temporary residency does not terminate parental rights; rather, the temporary order will last only until a court makes a formal decision of whether the child is a child in need of care. If the child is not found to be in need of care, the court will enter appropriate custody orders according to KSA 23-3207(c) as explained above. If the child is found to be in need of care, custody will be determined under the KCCC.

Visitation

KSA 23-3301(a) allows a court to grant grandparents and stepparents visitation rights as part of a Dissolution of Marriage proceeding. Further, KSA 23-3301(b) gives grandparents visitation rights during a grandchild's minority if a court finds that the visitation would be in the child's best interests, and a substantial relationship exists between the child and the grandparent. Kansas courts applying these statutes have placed the burden of proof for these two issues on the grandparents. See *In re Creach*, 155 P.3d 719, 723 (Kan. App. 2007). Further, the court must weigh grandparents' claims against the presumption that a fit parent acts in the best interests of the child and not substitute its judgment for the parent's, absent a finding of unreasonableness. *Id*.

Child Support and Enforcement

KSA 23-3001 requires the court to determine child support in any divorce proceeding, and allows the court to order either or both parent to pay child support, regardless of the custodial arrangement. Child support also can be ordered as part of a paternity proceeding. In determining the amount to be paid for child support as part of a divorce, KSA 23-3002 requires the court to consider "all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child." Similarly, in a parentage proceeding,

KSA 23-2215(g) requires a court to consider all relevant facts, as well as the following:

- The needs of the child.
- The standards of living and circumstances of the parents.
- The relative financial means of the parents.
- The earning ability of the parents.
- The need and capacity of the child for education.
- The age of the child.
- The financial resources and the earning ability of the child.
- The responsibility of the parents for the support of others.
- The value of services contributed by both parents.

Further, the Kansas Child Support Guidelines will be used to determine child support. KSA 20-165 requires the Kansas Supreme Court to adopt guidelines for setting child support and to consider the criteria listed above in establishing those guidelines. The Kansas Supreme Court has appointed an advisory committee made up of individuals with considerable experience in child support, including judges, attorneys, a law professor, an accountant, legislators, and parents. The Supreme Court also uses an independent economist to provide the advisory committee an analysis of economic changes in the state and the nation regarding the costs and expenditures associated with raising children. Though lengthy and complex, the guidelines are intended to be fair to all parties, easy to understand, and applicable to the many special circumstances that exist for parents and children. Additional information about the Supreme Court guidelines is available at http://www.kscourts.org/Rules-procedures-forms/Child-Support-Guidelines/2012-guidelines.asp.

Once established, enforcement of support orders is governed by the Income Withholding Act, KSA 21-3101 *et seq*.

The Kansas Department for Children and Families recently privatized Child Support Services (CSS), contracting with four vendors who began providing services September 16, 2013. Contractor information is available at http://www.dcf.ks.gov/services/CSS/Pages/Contractor-Information.aspx. CSS includes establishing parentage and orders for child and medical support, locating noncustodial parents and their property, enforcing child and medical support orders, and modifying support orders as appropriate. CSS automatically serves families receiving Temporary Assistance for Needy Families (TANF), foster care, medical assistance, and child care assistance. Assistance from CSS is also available to any family who applies for services, regardless of income or residency.

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Children and Youth

D-4 Child in Need of Care Proceedings

The Revised Kansas Code for the Care of Children (KCCC), KSA 38-2201 to KSA 38-2283, governs the "Child in Need of Care" (CINC) process in Kansas. CINC proceedings can be divided into two categories: (1) those concerning children who lack adequate parental care or control or have been abused or abandoned; and (2) those concerning children who commit certain offenses listed in KSA 38-2202(d)(6)-(10). The focus of this article is on the first group.

Preliminary Issues

CINC proceedings typically begin with a report to the Department for Children and Families (DCF), which may be made by anyone who suspects a child may be in need of care. The following types of people, however, are required to report any suspicions that a child is in need of care:

- Persons providing medical care or treatment;
- Persons licensed by the State to provide mental health services;
- Teachers and other employees of educational institutions;
- Licensed child care providers;
- Firefighters, emergency medical services personnel, and law enforcement officers;
- Juvenile intake and assessment workers, court services officers, and community corrections officers;
- Case managers (see KSA 23-3507 to KSA 23-3509) and mediators appointed to help resolve any contested issue of child custody, residency, visitation, parenting time, division of property, or other issue; and
- Persons employed by or working for an organization that provides social services to pregnant teenagers.

Reports can be made to local law enforcement when DCF is not open for business. A person who, without malice, participates in the making of a report; participates in any activity or investigation relating to the report; or participates in any judicial proceeding resulting from the report is immune from civil liability that might otherwise be incurred or imposed. It is a class B misdemeanor, however, to willfully and knowingly fail to make a report or to make a false report, as well as to intentionally prevent or interfere with the making of a report. KSA 38-2223.

Once a report is received, KSA 38-2226 requires DCF and law enforcement to investigate the validity of the claim and determine whether action is required to protect the child. When a report indicates that there is serious physical harm to, serious deterioration of, or sexual abuse of the child and that action may be required to protect the child, DCF and law enforcement conduct a joint investigation. As part of its preliminary inquiry, KSA 38-2230 provides that DCF must, when practicable, look at the circumstances reported to DCF suggesting that the child is in need of care, including the home and environmental situation and the previous history of the child. If there are reasonable grounds to believe abuse or neglect exist, DCF must take immediate steps to protect the health and welfare of the abused or neglected child, in addition to that of other children under the same care.

KSA 38-2231 requires law enforcement to place a child in protective custody when an officer reasonably believes the child will be harmed if not immediately removed from the situation where the child was found, or has probable cause to believe the child is a missing person and a verified missing person entry for the child is found in the national crime information center missing person system. Additionally, it requires law enforcement and court services officers to take a child into custody when an order commands it or there is probable cause to believe such an order has been issued in Kansas or another jurisdiction. KSA 38-2242 governs the issuance of one such order, an *ex parte* order for protective custody.

A court cannot enter an initial order removing a child from parental custody unless it finds there is probable cause to believe:

- The child is likely to sustain harm if not immediately removed from the home;
- Allowing the child to remain in home is contrary to the welfare of the child; or
- Immediate placement of the child is in the best interest of the child.

The court also must find there is probable cause to believe that reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home, or that an emergency exists which threatens the safety of the child. These findings must be included in any such order. Additional findings also may be necessary depending on the order. To issue an *ex parte* order, for example, the court also must find, based on the facts supplied in the application for an *ex parte* order, there is probable cause to believe the child is in need of care.

An *ex parte* order for protective custody must be served on the child's parents and any other person having legal custody of the child. At the time the order is issued, the court also may enter an order restraining any alleged perpetrator of physical, sexual, mental, or emotional abuse from residing in the child's home; visiting, contacting, harassing, or intimidating the child, another family member, or witness; or attempting to visit, contact, harass, or intimidate the child, another family member, or witness. This order also must be served on the alleged perpetrator.

The court may place the child in the protective custody of a parent or other person having custody of the child; another person, who is not required to be licensed under the Kansas law governing child care facilities; a youth residential facility; a shelter facility; or, under certain circumstances, the Secretary of DCF. Once issued, an *ex parte* order will typically remain in effect until the temporary custody hearing, which must be held within 72 hours, excluding weekends, holidays, and other days when the clerk of the court is not accessible. KSA 38-2242(b)(2).

When a court evaluates what custody, visitation, or residency arrangements are in the best interest of a child who has been removed from custody of a parent and not placed with the child's other parent, KSA 38-2286, enacted in 2012 as SB 262, requires substantial consideration of a grandparent who requests custody. The court must consider the wishes of the parents, child, and grandparent; the extent to which the grandparent has cared for the child; the intent and circumstances under which the child is placed with the grandparent; and the physical and mental health of all involved individuals. The court is required to state this evaluation on the record. If the court does not give custody to a grandparent, but places the child in the custody of the Secretary of DCF for placement,

then a grandparent who requests placement shall receive substantial consideration in the evaluation for placement. If the grandparent is not selected for placement, the Secretary shall prepare and maintain a written report with specific reasons for the finding.

Court Proceedings

CINC Petition

If DCF determines it is not otherwise possible to provide services necessary to protect the interests of the child, it must recommend that the county or district attorney file a CINC petition. Next, the county or district attorney must review the facts, recommendations, and any other evidence available and determine whether the circumstances warrant filing a petition. If warranted, the county or district attorney prepares and files the petition, the contents of which are outlined in KSA 38-2234, and appears and presents evidence at all subsequent proceedings. KSA 38-2214; KSA 38-2233. An individual also may file a CINC petition and be represented by the individual's own attorney in the presentation of the case. KSA 38-2233.

After a petition is filed, the court will do one of two things. If the child is in protective custody, the court can serve a copy of the petition to all parties and interested parties in attendance at the temporary custody hearing or issue summons to all those persons if not present. Otherwise, the court will serve the guardian *ad litem* (GAL) appointed to the child, custodial parents, persons with whom the child is residing, and any other person designated by the county or district attorney with a summons and a copy of the petition, scheduling a hearing within 30 days of when the petition is filed (grandparents are sent a copy of the petition by first class mail). KSA 38-2235; KSA 38-2236. KSA 38-2241 provides that in addition to receiving notice of hearings, parties and interested parties have a right to present oral or written evidence and argument, to call and cross-examine witnesses, and to be represented by an attorney. Grandparents are interested parties in CINC proceedings and have the participatory rights of parties, subject to the court's restriction on participation if such restriction is found to be in the best interest of the child. Other interested parties may include persons with whom the child has resided or that share close emotional ties to the child, and other persons as the court allows based on the child's best interests.

Jurisdiction

A court's jurisdiction is established by the filing of a CINC petition and, if a child is found to be in need of care, continues until: the child is 18, or, if the child is participating in a court-approved transition plan, 21; is adopted; or is discharged by the court. KSA 38-2203. The Indian Child Welfare Act, 25 U.S.C. § 1901 to 1963 and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), KSA 23-37,101 to KSA 23-37,405, also may affect jurisdiction. The UCCJEA governs jurisdiction in child custody proceedings and allows the state where a custody order is initially issued to exercise continuing jurisdiction until a court of that state determines that the child, the child's parents, and any person acting as a parent either:

- No longer have a significant connection with the issuing state and substantial evidence is no longer available there concerning the child's care, protection, training, and personal relationships; or
- A court of the issuing state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the issuing state.

Pursuant to KSA 23-37,204(a), however, a Kansas court may exercise temporary emergency jurisdiction if the child is present in this state and has been abandoned or it is necessary to protect the child because the child, or a sibling or parent of the child, is subject to or threatened with mistreatment or abuse.

Initial Court Proceedings

KSA 38-2247 provides that all CINC proceedings leading up to and including adjudication may be attended by anyone unless the court determines that closed proceedings or the exclusion of an

individual would be in the best interests of the child or is necessary to protect the privacy rights of the parents. Dispositional proceedings for a child determined to be in need of care, however, may be attended only by the GAL, interested parties and their attorneys, officers of the court, a court-appointed special advocate, the custodian, and any other person the parties agree to or the court orders to admit. Likewise, the court may exclude a person if it determines it would be in the best interests of the child or the conduct of the proceedings.

Within three business days of a child being placed in protective custody, a court must conduct a temporary custody hearing. KSA 28-2235. Notice of the hearing must be provided to all parties and nonparties at least 24 hours prior to the hearing. After the hearing, the court may enter an order directing who will have temporary custody if there is probable cause to believe the child is a danger to self or others, the child is not likely to be available within the jurisdiction of the court for future proceedings, or the health or welfare of the child may be endangered without further care. The court may modify this order during the pendency of the proceedings to best serve the child's welfare and, further, is allowed to enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. KSA 38-2243.

The court may place the child in the temporary custody of a parent or other person having custody of the child; another person who is not required to be licensed under the Kansas law governing child care facilities; a youth residential facility; a shelter facility; or, under certain circumstances, the Secretary of DCF. If the child is placed with a person other than the parent, the court will make a child support determination to provide for the child while in the nonparent's custody.

Short of removing the child, pursuant to KSA 38-2244, if no party objects, a court can enter an order for continuance and informal supervision at any time after the petition is filed, but prior to an adjudication. At that time, the court may place conditions on the parties, and may enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. Initially, the order can continue for up to six months, but may be extended for an additional six months. If the child is placed with a person other than a parent, the court will make a child support determination to provide for the child while in the nonparent's custody. Additionally, this custody determination will be subject to the requirements of KSA 38-2286, concerning substantial consideration of a grandparent who requests custody, as outlined above.

Adjudication, Disposition, and Permanency

A final adjudication or dismissal of a CINC petition must be entered within 60 days of when the petition was filed, unless good cause for a continuance is shown on the record. KSA 38-2251(c). At this stage, the petitioner must prove by clear and convincing evidence that the child is a child in need of care. KSA 38-2250. If that burden is not met, the court must dismiss the proceedings. KSA 38-2251.

If the child is found to be in need of care, however, the court will receive and consider information concerning the child's safety and well being and enter orders concerning custody and a case plan, which governs the responsibilities and timelines necessary to achieve permanency for the child. KSA 38-2253. This can be done either at a dispositional hearing, which must be held within 30 days of the adjudication, or at the time of adjudication, so long as, within ten days of the hearing, notice of the time and place of the hearing has been provided to the person having custody of the child, any foster parents, permanent custodians, or preadoptive parents; grandparents or the closest relative of each of the child's parents; and any person having close emotional ties with the child who is deemed by the court to be essential to the deliberations before the court. The dispositional hearing also may serve as a permanency hearing if, within ten days of the hearing, the persons listed above receive notice this will take place. KSA 38-2254.

KSA 38-2255(a) requires that prior to entering an order of disposition, the court must consider:

- The child's physical, mental, and emotional condition;
- The child's need for assistance;

- The manner in which the parent participated in the abuse, neglect, or abandonment of the child;
- Any relevant information from the intake and assessment process; and
- Evidence received at disposition concerning the child's safety and well-being.

Based on these factors, the court may place the child with a parent; a relative of the child; another person who is not required to be licensed under the Kansas law governing child care facilities; any other suitable person; a shelter facility; a youth residential facility; or, under certain circumstances, the Secretary of DCF. This placement will continue until further order of the court. Along with the dispositional order, the court may grant any person reasonable rights to visit the child upon finding that the visitation rights would be in the best interests of the child or may enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. KSA 38-2255(d).

If the child is placed with a parent, the court may impose terms and conditions to assure the proper care and protection of the child, including supervision of the child and parent, participation in available programs, and any special treatment the child requires. KSA 38-2255(b). If permanency is achieved with one parent without terminating the other's parental rights, the court may enter child custody orders, including residency and parenting time, that the court determines to be in the best interests of the child and must complete a parenting plan pursuant to KSA 60-1625. Orders issued pursuant to a CINC proceeding take precedence over an order entered in a civil custody case. KSA 38-2264(i).

If not placed with a parent, a permanency plan must be developed and submitted to the court within 30 days of the dispositional order by the person with custody of the child or a court services officer, ideally in consultation with the child's parents. The required contents of the plan are outlined in KSA 38-2263(c) and (d), and include descriptions of the child's needs and services to be provided in addition to whether the child can be "reintegrated," *i.e.* reunited with a parent or parents. Relevant factors in determining whether reintegration is a viable alternative include, among others, whether the parent has committed certain crimes, previously been found unfit, and worked towards reintegration. KSA 38-2255(e). If there is disagreement among the persons necessary to the success of the plan, a hearing will be held to consider the merits of the plan. KSA 38-2263(e).

If reintegration is not a viable alternative, within 30 days proceedings will be initiated to terminate parental rights, place the child for adoption, or appoint a permanent custodian. A hearing on the termination of parental rights or appointment of a permanent custodian will be held within 90 days. An exception exists when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian. KSA 38-2255(f). For more information, see KSA 38-2268. Notice of the hearing must be given at least ten days before the hearing to parties and interested parties; grandparents or the closest relative of each of the child's parents; and to foster parents, preadoptive parents, or relatives providing care. Additionally, the court is required to appoint an attorney to represent any parent who fails to appear. KSA38-2267.

The standard for determining fitness is by clear and convincing evidence that the parent is unfit by reason of conduct or condition that renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future. When the court determines a parent is unfit, it can authorize an adoption if parental rights were terminated, appoint a permanent custodian, or continue permanency planning. KSA 38-2270; KSA 38-2272; KSA 38-2269. Preference for placement is given to relatives and persons with whom the child has close emotional ties. KSA 38-2272.

Factors the court will consider to determine parental fitness are listed in KSA 38-2269. Additionally, a parent may be found unfit if the court finds that the parent has abandoned the child, the custody of the child was surrendered or the child was left under such circumstances that the identity of the parents is unknown and cannot be determined, in spite of diligent searching, and the parents have not come forward to claim the child within three months after the child is found. KSA 38-2269; KSA 38-2282.

Finally, KSA 38-2271 outlines circumstances that create a presumption of unfitness, including a previous finding of unfitness; two or more occasions in which a child in the parent's custody has been adjudicated a child in need of care; failure to comply with a reasonable reintegration plan; and conviction of certain crimes. Parents bear the burden of rebutting these presumptions by a preponderance of the evidence.

A permanency plan may be amended at any time upon agreement of the plan participants. If the permanency goal changes, however, a permanency hearing will be held within 30 days, as outlined in KSA 38-2264 and 38-2265. Even without a change in the permanency goal, KSA 38-2264 requires that a permanency hearing be held within 12 months after a child is removed from home and at least annually thereafter. If parental rights are terminated or relinquished, the requirements for permanency hearings will continue until the child is adopted or a permanent custodian is appointed. When permanency has been achieved with either a parent or nonparent to the satisfaction of the court, the court will close the case.

Children Subjected to Human Trafficking

2013 Senate Sub. for HB 2034 created a new section in and made amendments to the KCCC, which will take effect January 1, 2014. Specifically, when any child is in custody who has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or who has committed an act which, if committed by an adult, would constitute the crime of selling sexual relations, the court is required to refer the child to the Secretary of DCF. The Secretary is required to use a research-based assessment tool to assess the safety, placement, and treatment needs of the child, and make appropriate recommendations to the court.

The bill allows a law enforcement officer to take a child into custody if the officer reasonably believes the child is a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child. The officer is required to place the child in protective custody and is allowed to deliver the child to a staff secure facility. The officer is required to contact DCF to begin an assessment of the child via a rapid response team to determine appropriate and timely placement.

The requirements for a "staff secure facility" are added to statutes and include: no construction features designed to physically restrict the movements and activities of residents; written policies and procedures that include the use of supervision, inspection, and accountability to promote safe and orderly operations; locked entrances and delayed-exit mechanisms to secure the facility; 24-hour-a-day staff observation of all entrances and exits by a retired or off-duty law enforcement officer; screening and searching of residents and visitors; policies and procedures for knowing resident whereabouts, handling runaways and unauthorized absences; and restricting or controlling resident movement or activity for treatment purposes. Such a facility will provide case management, life skills training, health care, mental health counseling, substance abuse screening and treatment, and other appropriate services to children placed there. Service providers in the facility will be trained to counsel and assist victims of human trafficking and sexual exploitation.

The bill also allows the court to issue an *ex parte* order placing a child in a staff secure facility when the court determines the necessity for an order of temporary custody and there is probable cause to believe the child has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or if the child committed an act, which, if committed by an adult, would constitute selling sexual relations. If the court places the child with DCF, the agency has the discretionary authority to place the child in a staff secure facility if the above circumstances exist.

The bill allows the court to enter an order of temporary custody following a hearing if the court determines there is probable cause to believe the child has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or if the child committed an act, which, if committed by an adult, would constitute selling sexual relations. Under such circumstances, the court is authorized to

place the child in a staff secure facility. Similarly, if the court places the child with DCF, the agency has the discretionary authority to place the child in a staff secure facility if the above circumstances exist.

If a child has been removed from the custody of a parent, the court may award custody to a staff secure facility if the circumstances described above exist.

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Children and Youth

D-5 Adoption

Adoption establishes a legal parent-child relationship between a child and third persons and terminates the existing rights and obligations between a child and his or her biological parents. It is a privilege created by statute and is therefore governed by statutorily designated procedures for adoption. In Kansas, the Adoption and Relinquishment Act, KSA 59-2111 to 59-2143, (the Adoption Act) governs adoptions, including both the termination of parental rights and the transfer of legal custody to and creation of legal rights in the adoptive parents after an adoption hearing and decree.

KSA 59-2113 allows any adult or husband and wife to adopt, and KSA 59-2112 defines the different methods of adopting: "adult adoption," "agency adoption," "independent adoption," and "stepparent adoption." This article will concentrate on adoption of minors using those last three methods. Agency adoptions are those handled by either a public or private entity lawfully authorized to place children for adoption, consent to the adoption, and care for children until they are adopted or reach majority. In an independent adoption, the child's parent or parents, legal guardian, or nonagency person *in loco parentis* has the authority to consent to the adoption. "Person *in loco parentis*" means an individual or organization vested with the right to consent to the adoption of a child pursuant to relinquishment or an order or judgment by a district court. These adoptions can occur directly with an adoptive family or through an intermediary such as a doctor, lawyer, or friend. Independent adoptions do not include stepparent adoptions, the adoption of a minor child by the spouse of a biological parent, which requires termination of parental rights of only one of the natural parents as the rights of the custodial parent remain intact.

Jurisdiction and Venue

The district courts in Kansas have general jurisdiction to hear adoption petitions. Many judicial districts have a probate division that handles adoption cases. Jurisdiction must exist over the subject matter of the action as well as the parties. Generally Kansas will have jurisdiction if the birth mother and adoptive parents are all Kansas residents but would not have jurisdiction if the child was born to a non-Kansas birth mother to be placed with non-Kansas adoptive parents. If the child is of Indian heritage, the Indian Child Welfare Act (ICWA), 25 U.S.C.A. 1901 to 1963, may apply. If the child born in Kansas is to be placed with adoptive parents in another state, the parties may need to comply

with the Interstate Compact for the Placement of Children (ICPC), KSA 38-1201 to 1206, likewise if the child is born outside of Kansas and an agency will be involved in the adoption in Kansas. Additional requirements exist for intercountry adoptions as well and are summarized briefly at the end of this article.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), KSA 23-37,101 to 37,405, applies to adoption proceedings in Kansas such that, if at the time the petition is filed a proceeding concerning the custody or adoption of the minor is pending in another state exercising jurisdiction substantially in conformity with the UCCJEA or its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA), Kansas may not exercise jurisdiction unless the other state's court stays its proceeding. Similarly, if another state has issued a decree or order concerning custody, Kansas may not exercise jurisdiction unless it has jurisdiction and the court of the state issuing the order does not have continuing jurisdiction, has declined to exercise jurisdiction, or does not have jurisdiction. For more information on the UCCJEA, see briefing article D-3, Child Custody and Visitation Procedures.

KSA 59-2126(a) to (d) sets out venue as follows:

- Independent adoption. County of residence of petitioner or the child to be adopted.
- Agency adoption. County of residence of petitioner, the county in which the child to be adopted resided prior to agency custody, or where the agency is located.
- Stepparent adoption. County of residence in which the petitioner resides or where the child resides.
- If the petitioner resides on a military post or reservation and the child is residing with the petitioner, venue is in the district court of the county where the post or reservation is located or in any adjacent county.

KSA 59-2112(e) defines the residence of the child as the residence of: the child's mother if the parents are not married; the child's father if the parents are married; or the child's mother if the child resides with the mother and she has established separate legal residence from the father. When the residence of the child serves as the basis for venue, KSA 59-2126(e) requires a sworn affidavit to be filed with the petition, setting forth the factual basis for the child's residency. The burden to prove residency is upon the person asserting a particular residency has been established.

Petition

KSA 59-2128(a) lists the required contents of the petition. If any of the information is not included, subsection (b) allows the court to stay the proceeding until the information is provided. Subsection (f) requires the following items be filed with the petition:

- Written consents to adoption required by KSA 59-2129;
- Background information for child's biological parents required by KSA 59-2130;
- Accounting required by KSA 59-2121;
- Any affidavit concerning venue required by KSA 59-2126 (discussed above); and
- Consent, Relinquishment, and Termination of Parental Rights.

For an independent adoption, KSA 59-2129(a) requires the consent of:

- The living parents of a child; or
- One of the parents if the other's consent is unnecessary under KSA 59-2136; or
- The legal guardian of the child if both parents are dead or their consents are unnecessary under KSA 59-2136; or
- The court terminating parental rights under KSA 38-2270; and
- The judge of any court having jurisdiction over the child pursuant to the Revised Code for the Care of Children (KCCC), KSA 38-2201 to 2286, if parental rights have not been terminated; and
- Any child over fourteen sought to be adopted who is of sound intellect.

For stepparent adoptions, consent must be given by the living parents of a child; one of the parents if

the other's consent is unnecessary under KSA 59-2136; or the judge of any court having jurisdiction over the child pursuant to the KCCC if parental rights have not been terminated and any child over fourteen sought to be adopted who is of sound intellect.

KSA 59-2114 requires the consent to be in writing and acknowledged before a judge of a court of record or before an officer authorized to take acknowledgments, like a notary. If the consent is acknowledged before a judge, the judge must advise the consenting person of the consequences of the consent. The consent is final when executed, "unless the consenting party, prior to final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given." The consenting party carries the burden of proving the consent was not freely and voluntarily given. Minority of the parent does not invalidate the parent's consent, however; KSA 59-2115 mandates that birth parents under eighteen have the advice of independent legal counsel on the consequences of execution of a consent. Unless the minor is otherwise represented, the petitioner or child placement agency must pay for the cost of independent legal counsel. KSA 59-2116 provides that the natural mother cannot give consent until twelve hours after the birth of the child, but says nothing about the timing of the father's consent.

KSA 59-2117 provides that a consent signed outside the state in conformity either with Kansas law or the law of the state in which the consent was executed and acknowledged is valid. If signed in a foreign country, it must comply with the law and procedure of that country. If the parent is in military service, the consent or relinquishment may be acknowledged before a commissioned officer, and the signature must be verified or acknowledged before a notary public or by a procedure in effect in the parent's branch of the military.

For an agency adoption, KSA 59-2129(b) provides that once parents relinquish their child to an agency pursuant to KSA 59-2124, consent must be given by the authorized representative of the agency and any child over fourteen sought to be adopted who is of sound intellect. KSA 59-2124(b) states that relinquishments will be deemed sufficient if in substantial compliance with the form created by the Judicial Council and executed by both parents or one parent if the other is deceased or relinquishment is found unnecessary. Like consents, the relinquishment must be in writing and acknowledged by a notary or the court. (Again, the judge must advise the relinquishing person of the consequences of the relinquishment.) Additionally, KSA 59-2115 requires independent counsel for a minor relinquishing a child and KSA 59-2116 provides that the natural mother cannot relinquish the child until twelve hours after the birth. If the agency accepts the relinquishment, the agency stands *in loco parentis* for the child and has the rights of a parent or legal guardian, including the power to place the child for adoption. If a person relinquishes the child, all parental rights are terminated, including the right to receive notice in a subsequent adoption proceeding involving the child.

When parents consent to an adoption, they agree to the termination of their parental rights, although the rights are not terminated until the judge makes the final decree of adoption. If the parent does not sign a consent, a court can terminate parental rights pursuant to a separate petition filed under the KCCC alleging that the child is a "child in need of care" (CINC) or a motion to terminate parental rights can be made in an existing CINC proceeding. For more information on CINC proceedings, see briefing article D-4.

Additionally, KSA 59-2136 addresses circumstances where the necessity of a parent's consent or relinquishment is in question, and while it frequently refers to fathers, it specifies that insofar as it is practicable, those provisions applicable to fathers also apply to mothers. If a father is unknown or his whereabouts are unknown, subsection (c) requires the court to appoint an attorney to represent him, and if no person is identified as the father or possible father, the court must order publication notice of the hearing in such manner as it deems appropriate. Absent consent of the father, his parental rights must be terminated. The court must make an effort to identify the father, and if identified, he must receive notice of the termination proceedings. If no father is identified or if after receiving notice, he fails to appear or does not claim custodial rights, the court will terminate

his parental rights. If a father is identified to the court and asserts parental rights, subsection (h)(1) requires the court to determine parentage pursuant to the Kansas Parentage Act, KSA 23-2201 to 2225. Further, if the father is unable to employ an attorney, the court must appoint one for him. Thereafter, the court may terminate a parent's rights if it determines by clear and convincing evidence that:

- The father abandoned or neglected the child after having knowledge of the child's birth;
- The father is unfit or incapable of giving consent;
- The father has made no reasonable efforts to support or communicate with the child after having knowledge of this child's birth;
- The father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;
- The father abandoned the mother after having knowledge of the pregnancy;
- The birth of the child was the result of the rape of the mother; or
- The father has failed to assume the duties of a parent for two consecutive years preceding the filing of the petition to adopt.

In determining whether to terminate parental rights, KSA 59-2136(h)(2) allows the court to consider and weigh the best interests of the child and disregard incidental visitations, contacts, communications, or contributions.

In a stepparent adoption, KSA 59-2136(c) authorizes the court to appoint an attorney to represent a father who is unknown or whose whereabouts are unknown. Additionally, subsection (d) provides that if a mother consents to a stepparent adoption when the child has a presumed father, his consent is required unless he is incapable of giving such consent or has failed or refused to assume the duties of a parent for the two consecutive years preceding the filing of the petition for adoption. In determining whether consent is required, the statute allows the court to disregard incidental visitations, contacts, communications, or contributions. Further, there is a rebuttable presumption that if the father, after having knowledge of the child's birth, has knowingly failed to provide a substantial portion of court-ordered child support when financially able to do so for the two years preceding the filing of the petition for adoption, he has failed or refused to assume the duties of a parent. Finally, in determining whether a stepparent adoption should be granted, it allows the court may consider the best interests of the child and the fitness of the nonconsenting parent.

Accounting for consideration

KSA 59-2121(b) requires the petition for adoption to be accompanied by a detailed accounting for all consideration given or to be given and all disbursements made or to be made in connection with the adoption and placement of a child. Subsection (a) outlines the types of consideration allowed:

- Reasonable legal and other professional fees rendered in connection with the placement or adoption, not to exceed the customary fees for similar services by professionals of equivalent experience and reputation as judged by Kansas standards;
- Reasonable fees in the state of Kansas of a licensed child-placing agency;
- Actual and necessary expenses, based on expenses in Kansas, incident to placement or the adoption proceedings;
- Actual medical expenses of the mother attributable to the pregnancy and birth;
- Actual medical expenses of the child; and
- Reasonable living expenses of the mother incurred during or as a result of the pregnancy.

The court can disapprove any consideration it determines to be unreasonable. Knowingly and intentionally receiving or accepting clearly excessive fees or expenses is a severity level 9, nonperson felony. Knowingly failing to list all consideration or disbursements is a class B, nonperson misdemeanor.

Assessments

Pursuant to KSA 59-2132, the petitioner must obtain an assessment performed by a person authorized by the statute to do so in the manner it describes and file a report of the assessment with the court at least 10 days before the hearing on the petition, including the results of the investigation of the adoptive parents, their home, and their ability to care for the child. If the petitioner is a nonresident, KSA 59-2132(f) requires the assessment and report to be completed in the petitioner's state of residence by a person authorized in that state to conduct such assessments. The assessment and report are only valid if performed within a year of filing the petition for adoption.

Temporary Custody Order

In an independent or agency adoption, KSA 59-2131 allows the court to issue a temporary custody order pending the hearing. If the court places the child in a home not licensed to provide such care, it must first be assessed by a person or agency authorized to make assessments under KSA 59-2132, or the court may "expeditiously" conduct an evidentiary hearing, including testimony by the petitioners prior to making the placement.

Adoption Hearing and Final Decree

Upon filing an adoption petition, KSA 59-2133 requires the court to set the hearing within sixty days from the date of filing. Additionally, it requires notice to be given to birth parents in independent and stepparent adoptions, unless parental rights have been terminated. The court may designate others to be notified. In agency adoptions, notice must be served upon the consenting agency unless waived. After the hearing of the petition, the court considers the assessment and all evidence, and if the adoption is granted, makes a final decree of adoption.

KSA 59-2118(b) states an adopted child is entitled to the same personal and property rights as a birth child of the adoptive parents, who likewise are entitled to exercise all the rights of a birth parent and are subject to all the liabilities of that relationship. Both KSA 59-2118(b) and KSA 59-2136(i) allow children to inherit from their birth parents after parental rights have been terminated, although the birth parents' right to inherit is severed at that time.

Intercountry Adoptions

KSA 59-2144(b) provides that a foreign adoption decree will have the same force and effect as an adoption filed and finalized in Kansas if the person adopting is a Kansas resident; the adoption was obtained pursuant to the laws of the foreign country pertaining to relinquishment, termination of parental rights, and consent to the adoption; the adoption is evidenced by proof of lawful admission into the US; and the foreign decree is filed and recorded with any county within the state.

On April 1, 2008, the United States implemented the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which applies when a child habitually residing in one contracting state has been, is being, or will be moved to another contracting state after adoption in the state of origin by a person habitually residing in the receiving state or for purpose of an adoption in the receiving state. Article 4 of the Convention states that an adoption is to take place only if the competent authorities of the state of origin have established the child is adoptable; determined that an intercountry adoption is in the child's best interest; ensured the persons, institutions, and authorities whose consent is necessary have been counseled about the effects of consent and have given free, unconditional, and irrevocable written consent not influenced by the payment of money; and if the child is of an appropriate age and degree of maturity, ensured that he or she has been counseled on the effects of consent, expressed his or her opinion, and given consent when necessary. Additionally, Article 5 provides the competent authorities of the receiving state must have determined that the prospective adoptive parents are eligible and suited to adopt, have been counseled when necessary, and have authorized or will authorize the child to enter and reside permanently in the receiving state. More information on the Hague Convention is available at: http://www.hcch.net/index_en.php?act=text.display&tid=45. The U.S. Department of State also has a web page devoted to intercountry adoption: http://adoption.state.gov.

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Commerce, Labor, and Economic Development

E-1 Statewide STAR Bond Authority

What is a STAR Bond?

A state financing program that allows city governments to issue special revenue bonds that are repaid by all of the revenues received by the city or county from any transient guest taxes, local sales taxes, and use taxes that are collected from taxpayers doing business within that portion of the city's redevelopment district. In other words, a STAR Bond is a Sales Tax Revenue Bond with a 20-year repayment period. The exception to this is the Kansas Speedway facility which was granted a 30-year repayment period.

What type of project can use STAR Bond financing?

- A project with at least a $50 million capital investment and $50 million in projected gross annual sales revenues.
- A project located outside of a metropolitan statistical area that has been found by the Secretary of Commerce to be in an eligible area under Tax Increment Financing law and of regional or statewide importance.
- A major commercial entertainment and tourism area as determined by the Secretary of Commerce.
- Auto racetrack facilities, multi-sport athletic complexes, river walk canal facilities, historic theaters, Manhattan Discovery Center, Wyandotte County Schlitterbahn Project, museum facility, or a major motorsports complex in Shawnee County.

Is any project specifically excluded from use of STAR Bonds?

Projects including a gambling casino are specifically excluded from use of STAR bonds.

How does the STAR Bond Project work?

The law allows the governing body of a city to establish one or more special bond projects in any area in the city or outside of a city's boundaries with the written approval of the county commission. However, each special bond project must be approved by the Secretary of Commerce, based on the required feasibility study, prior to utilizing STAR bonds.

The city also is required to propose a project plan, hold a hearing on the plan, and adopt the project plan. One mandated component of the project plan is a marketing study conducted to examine the impact of the special bond project on similar businesses in the projected market area. A city that exercises eminent domain to acquire property must compensate the property owner with at least 200 percent of the appraised valuation, according to the eminent domain statute.

Finally, the city must do an extensive feasibility study which will include:

- Whether a project's revenue and tax increment revenue and other available revenues are expected to exceed or be sufficient to pay for the project costs;
- The effect, if any, the project will have on any outstanding special obligation bonds payable from the revenues used to fund the project;
- A statement of how the jobs and taxes obtained from the project will contribute significantly to the economic development of the state and region;
- Visitation expectations; the unique quality of the project; economic impact study; integration and collaboration with other resources or businesses;
- The quality of service and experience provided, as measured against national consumer standards for the specific target market;
- Project accountability, measured according to best industry practices;
- The expected return on state and local investment that the project is anticipated to produce;
- A statement concerning whether a portion of the local sales and use taxes are pledged to other uses and are unavailable as revenue for the project and, if the revenues are so committed, a detailed explanation of the commitment and the effect; and
- An anticipated principal and interest payment schedule on the bond issue.

The Secretary of Commerce places a limit on the total amount of STAR bonds that may be issued for any project. A city also is required to have an annual certified public accountant audit of each project.

What are the constraints placed on the developer?

The developer of a special bond project is required to commence work on the project within two years from the date of adoption of the project plan. If the developer does not commence work on the project within the two-year period, funding for the project ceases, and the developer has one year to appeal to the Secretary of Commerce for re-approval of the project. If the project is re-approved, the two-year period for commencement applies.

Also, the law requires that Kansas residents be given priority consideration for employment in construction projects located in a special bond project area.

What are eligible uses for STAR Bond proceeds?

- Property acquisition;
- Relocation assistance for property owners moving out of the project district;
- Site preparation work, including utilities relocations;
- Drainage conduits, channels, levees, and river walk canal facilities;
- Parking facilities, including multi-level parking structures devoted to parking only;
- Street improvements;
- Street light fixtures, connection, and facilities;
- Utilities located within the public right-of-way;
- Landscaping, fountains, and decorations;
- Sidewalks and pedestrian underpasses or overpasses; and
- Drives and driveway approaches located within the public right-of-way of an auto racetrack facility, major multi-sport athletic

complex, museum facility, and major motorsports complex.

What are ineligible uses for the STAR Bond proceeds?

Costs incurred in connection with the construction of buildings or other structures are not eligible. In addition, proceeds are not available for fees and commissions paid to real estate agents, financial advisors, or any other consultants who represent the developer or any other businesses considering locating in or located in a redevelopment district; salaries for local government employees; moving expenses for employees of the businesses locating within the redevelopment district; property taxes for businesses that locate in the redevelopment district; lobbying costs; bond origination fees paid to the city; any personal property as defined in KSA 79-102; or travel, entertainment, and hospitality.

Other important information

- All cities that have projects financed with STAR bonds are to prepare and submit an annual report to the Secretary of Commerce by October 1 of each year.
- The Department of Commerce compiles an annual report on all STAR bond projects and submits them to the Governor and the Legislature by February 1 of each year.
- Reauthorized in 2012, the STAR bond authority next will sunset on July 1, 2017, unless continued by an act of the Legislature.

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Commerce, Labor, and Economic Development

E-2 Kansas Bioscience Authority

The Kansas Economic Growth Act (KSA 74-99b01 to 74-99b89), comprised of a series of other acts, creates the Kansas Bioscience Authority. The mission of the Authority is to make Kansas a desirable state in which to conduct, facilitate, support, fund, and perform bioscience research, development, and commercialization. In addition, the Authority is to make Kansas a national leader in bioscience, create new jobs, foster economic growth, advance scientific knowledge, and, therefore, improve the quality of life for all Kansas citizens.

Governance

- The Kansas Bioscience Authority is governed by an 11-member Board of Directors.
  - Nine members are voting members, representing the general public who demonstrate leadership in finance, business, bioscience research, plant biotechnology, basic research, health care, legal affairs, bioscience manufacturing or product commercialization, education, or government. One of the nine members of the Board is to be an agricultural expert who is recognized for outstanding knowledge and leadership in the field of bioscience.
  - The Governor, the Speaker of the House, and the President of the Senate each appoints two Board members. The House and Senate Minority Leaders each appoints one member. The Secretary of the Department of Commerce is an *ex officio* voting member.
  - The voting members, subject to Senate confirmation, serve four-year terms after conclusion of the initial term, with no more than three consecutive four-year terms.
  - Two non-voting members of the Board, having research expertise, represent Kansas universities.
- The Authority's headquarters is located in Johnson County. A statutory provision requires the Authority to be located in the county with the greatest number of bioscience employees.
- The Authority, in conjunction with state universities, identify and recruit eminent and rising star scholars; jointly employ personnel to assist or complement those scholars; determine types of facilities and research; facilitate integrated bioscience research; and provide matching funds for federal grants.

Powers

The Authority has the following duties:

- Oversee the commercialization of bioscience intellectual property created by eminent and rising star scholars;
- Own and possess patents and proprietary technology, and enter into contracts for commercialization of the research;
- Incur indebtedness and enter into contracts with the Kansas Development Finance Authority (KDFA) for bonding to construct state-of-the-art facilities owned by the Authority. Neither the State of Kansas nor KDFA would be liable for the bonds of the Authority;
- Purchase, lease, trade, and transfer property. Architecture and construction requirements similar to those affecting the research universities also apply; and
- Solicit and study business plans and proposals.
    - A repayment agreement is required for any bioscience company that receives grants, awards, tax credits, or any other financial assistance, including financing for any bioscience development project, if the company relocates operations associated with the funding outside Kansas within 10 years after receiving such financial assistance. The Authority is required to specify the terms of the repayment obligation and the amount to be repaid.
    - The use of eminent domain is not allowed to be used to secure agricultural land for a bioscience project.

Revenues and Fund Uses

- The Emerging Industry Investment Act creates the Bioscience Development Investment Fund which is not a part of the State Treasury.
    - Funds in the Bioscience Development Investment Fund belong exclusively to the Authority. The Secretary of Revenue and the Authority establish the base year of taxation for all bioscience companies and all state universities conducting bioscience research in the state.
    - The Secretary of Revenue, the Authority, and the Board of Regents establish the number of bioscience employees associated with state universities and determine and report the incremental increase from the base annually for the following 15 years from the effective date of the Act.
    - All of the incremental state taxes generated by the growth of bioscience companies and research institutions over and above the base taxation year go into the Fund. The baseline amount of state taxes goes to the State General Fund each year. The Bioscience Development Investment Fund is to be used to fund programs and repay bonds.
- The Bioscience Development Financing Act allows the creation of tax increment financing districts for bioscience development.
    - One or more bioscience development projects could occur within an established bioscience development district (BDD).
    - The process for establishing the district follows the tax increment financing statutes. However, no BDD can be established without the approval of the Authority.
    - Counties are allowed to establish BDDs in unincorporated areas.
    - The KDFA may issue special obligation bonds to finance a bioscience development project. The bonds are to be paid off with ad valorem tax increments, private sources, contributions, or other financial assistance from the state or federal governments.
    - The Act creates the Bioscience Development Bond Fund which is managed by the Authority and is not

part of the State Treasury. A separate account is created for each BDD, and distributions will pay for the bioscience development project costs in a BDD.

- The Bioscience Tax Investment Incentive Act makes additional cash resources available to start-up companies.
  - The Act creates the Net Operating Loss (NOL) Transfer Program.
  - The Program allows the Authority to pay up to 50 percent of a bioscience company's Kansas NOL during the claimed taxable year.
  - The Program is managed by the Kansas Department of Revenue and is capped at $1.0 million for any one fiscal year.
- The Bioscience Research and Development Voucher Program Act establishes the Bioscience Research and Development Fund in the State Treasury.
  - The Fund may receive funding from any source.
  - The program requires that any Kansas companies conducting bioscience research and development apply to the Authority for a research voucher. After receiving a voucher, the company will then locate a researcher at a Kansas university or college to conduct a directed research project.
  - At least 51 percent of voucher award funds are to be expended with the university in the state under contract and cannot exceed 50 percent of the research cost.
  - The maximum voucher funds awarded cannot exceed $1.0 million, each year for two years, and cannot exceed 50 percent of the research costs. The company is required to provide a one-to-one dollar match of the project award for each year of the project.
- The Bioscience Research Matching Funds Act establishes the Bioscience Research Matching Fund to be administered by the Authority.
  - The recipients must be bioscience research institutions, and institutions are encouraged to jointly apply for funds. The funds are to be used to promote bioscience research and to recruit, employ, fund, and endow bioscience faculty, research positions, and scientists at universities in Kansas.
  - Application for the matching funds must be made to the Authority.

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Commerce, Labor, and Economic Development

E-3 Economic Development Initiatives Fund (EDIF) Overview

The statutes governing the EDIF provide that it shall be used to finance programs ". . . supporting and enhancing the existing economic foundation of the state and fostering growth . . . to the state's economic foundation." With the exception of a statutory $2.0 million transfer from the EDIF to the State Water Plan Fund, the Legislature annually appropriates the EDIF for individual projects and programs deemed to support and enhance the state's economic foundation.

The EDIF is funded through the State Gaming Revenues Fund (SGRF). A portion of state revenue from both the Lottery and parimutuel wagering is transferred to the SGRF. That Fund is used essentially as a holding fund from which further transfers are made on a monthly basis. In normal years no more than $50.0 million may be credited to the SGRF in any fiscal year. Amounts in excess of $50.0 million are credited to the State General Fund. However, for FY 2009 and FY 2010 no more than $47.9 million was credited to the SGRF. Beginning in FY 2011 and in successive years, the amount that may be credited to the SGRF shall not exceed $50.0 million.

The initial transfers from the SGRF, which began in 1986, were as follows:

- County Reappraisal Fund (until June 30, 1989) - 30.0 percent;
- Split between Juvenile Detention Facilities Fund and Correctional Institutions Building Fund (Actual amount to be determined by appropriations act) - 10.0 percent; and
- Economic Development Initiatives Fund (to be increased to 90.0 percent as of July 1, 1989) - 60.0 percent.

During the 1988 Session, the Legislature delayed the increase in the transfer to the EDIF until July 1, 1990.

During the 1994 Session, the Legislature changed the transfers as of July 1, 1995, to the following:

- Correctional Institutions Building Fund - 10.0 percent;
- Juvenile Detention Facilities Fund - 5.0 percent; and
- Economic Development Initiatives Fund - 85.0 percent.

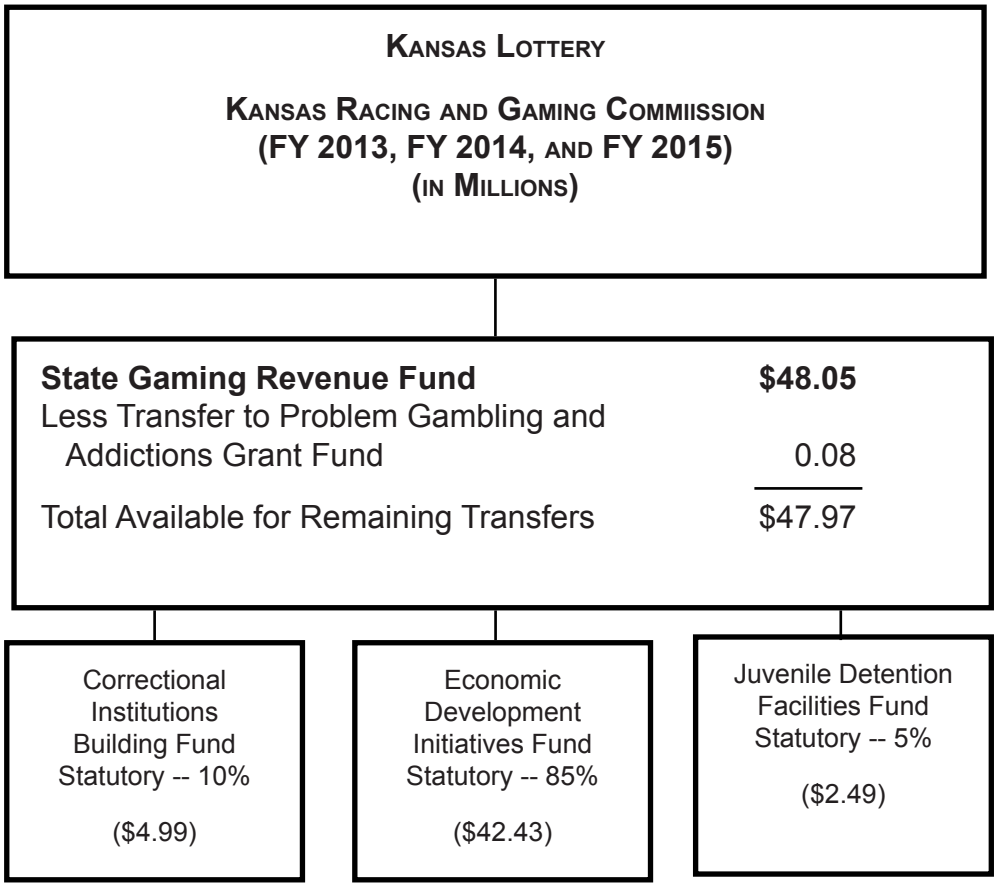
During the 2000 Session, the Legislature changed the transfers to the following:

- Economic Development Initiatives Fund—$42,432,000;
- Correctional Institutions Building Fund—$4,992,000;
- Juvenile Detention Facilities Fund—$2,496,000; and
- Problem Gambling Grant Fund—$80,000.

During the 2009 Session, the Legislature changed the transfers to the following for FY 2009 and FY 2010:

- Economic Development Initiatives Fund—$40,782,869;
- Correction Institutions Building Fund—$4,797,985;
- Juvenile Detention Facilities Fund—$2,398,992; and
- Problem Gambling Grant Fund—$80,000.

Current transfer sources and amounts:



Agency/Program	Actual FY 2012	Final Approved FY 2014	Final Approved FY 2015
Department of Commerce			
Operating Grant	$ 10,231,557	$ 7,416,069	$ 9,162,358
Older Kansans Employment Program	291,382	253,046	253,139
Rural Opportunity Zones Program	1,398,204	1,829,084	1,831,012
Senior Community Service Employment Prog.	4,782	8,071	8,100
Strong Military Bases Program	21,328	100,000	100,000
Small Technology Pilot Program	50,000	-	-
Entrepreneurial Centers	929,077	-	-
Centers of Excellence	1,340,992	-	-
Mid-America Mfg. Technology Center	1,025,000	-	-
Engineering Expansion Grants	999,999	-	-
Governor's Council of Economic Advisors	176,943	186,062	186,205
Airport Incentive Fund	-	-	-
Innovation Growth Program	-	1,567,983	1,568,648
Kansas Creative Arts Industries Commission	-	200,000	200,000
Medicaid Reform Employment Incentive	-	450,000	450,000
Subtotal - Commerce	$ 16,469,264	$ 12,010,315	$ 13,759,462
Department of Administration			
Public Broadcasting Grants	$ -	$ 600,000	$ 600,000
Board of Regents & Universities			
Vocational Education Capital Outlay	$ 2,547,726	$ 2,547,726	$ 2,547,726
Technology Innovation & Internship	229,837	179,284	179,284
EPSCoR	993,265	993,265	993,265
Community College Competitive Grants	500,000	500,000	500,000
KSU - ESARP	299,710	299,295	299,686
WSU - Aviation Classroom & Training Equipment	4,941,296	2,981,537	2,981,537
WSU - Aviation Research	115,055	-	-
Subtotal - Regents & Universities	$ 9,626,889	$ 7,501,107	$ 7,501,498
Department of Agriculture			
Agriculture Marketing Program	$ 395,300	$ 570,832	$ 575,110
Department of Wildlife, Parks & Tourism			
Tourism Division	$ 1,847,924	$ 1,739,098	$ 1,744,075
Parks Program	-	4,010,934	4,037,805
Subtotal Wildlife and Parks	$ 1,847,924	$ 5,750,032	$ 5,781,880
Total Expenditures	**$ 28,339,377**	**$ 26,432,286**	**$ 28,217,950**
Transfers to Other Funds			
Kansas Economic Opportunity Initiatives Fund	$ 1,250,000	$ -	$ -
KS Qualified Biodiesel Fuel Producer Incentive Fund	200,000	-	-
State Water Plan Fund	2,000,000	-	-
Manhattan Air Service Transfer	(2,000,000)	-	-
Public Use General Aviation Airport Development Fund	-	-	-
State Housing Trust Fund	-	2,000,000	2,000,000
State Fair	159,207	-	-
State Affordable Airfare Transfer	5,000,000	-	-
Greyhound Breeding Development Fund	-	(87,012)	-
State General Fund	5,785,830	13,700,000	11,700,000
Subtotal - Transfers	$ 12,395,037	$ 15,612,988	$ 13,700,000
TOTAL TRANSFERS AND EXPENDITURES	**$ 40,734,414**	**$ 2,045,274**	**$ 41,917,950**
EDIF Resource Estimate			
Beginning Balance	$ 4,500,496	$ 462,220	$ 948,946
Gaming Revenues	42,432,000	42,432,000	42,432,000
Other Income*	496,974	100,000	100,000
Total Available	$ 47,429,470	$ 42,994,220	$ 43,480,946
Less: Expenditures and Transfers	40,734,414	42,045,274	41,917,950
ENDING BALANCE	**$ 6,695,056**	**$ 948,946**	**$ 1,562,996**

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Unemployment Insurance Compensation Fund

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Commerce, Labor, and Economic Development

E-4 Department of Commerce

The Kansas Department of Commerce is the cabinet agency concerned with economic development. Under the Office of the Secretary, there are two divisions and two commissions: Business and Community Development, Workforce Services, the Athletic Commission, and the Creative Arts Industries Commission.

Business and Community Development Division

In 2012, the Department combined the Business, Rural, and Trade Development divisions into the Business and Community Development Division. The new Division works to improve the Kansas economy through the creation and retention of jobs and capital investment, as well as improve the quality of life in communities, particularly in rural areas. The Division is composed of seven program sections: Business and Community Development Assistance, Business and Community Finance and Incentives, Business Recruitment and Relocation, Rural Opportunity Zones, Minority and Women Business Development, the Innovation Growth Program, and Trade Development.

Business and Community Development Assistance

Business and Community Development Assistance determines the eligibility of various tax credits and loan funds for business clients Commerce staff may act as a liaison with other state agencies, such as the Departments of Revenue, Labor, or Health and Environment, to ensure that licensing requirements are met. Rural communities are assisted in developing community-driven strategic plans to attract businesses, workers, and investment. Financial and planning assistance may come from the following programs.

Kansas Downtown Redevelopment Act. This act encourages entrepreneurs to locate and invest their businesses in central business districts or distressed neighborhoods. Property tax relief is offered in available areas designated by local governments and which are subsequently reviewed and approved by the Commerce Department.

Kansas PRIDE. This is a community-initiated effort that helps local leaders prepare for and manage change, addressing such issues as planning, community services, and enrichment. The Department and Kansas State University Research and Extension co-administer PRIDE,

providing technical assistance and training opportunities for the local programs.

Business and Community Finance and Incentives

The Commerce Department determines the eligibility for several financial incentives and tax credits. The Department then monitors the compliance of businesses and individuals for the duration of the incentive or tax credit agreement. (The Department also administers the Sales Tax Revenue (STAR) Bond Program which is discussed in a separate article located in the Legislator Briefing Book.) The purposes and criteria for several financial incentives are outlined below.

Kansas Certified Development Companies (CDCs). These companies are not-for-profit corporations that contribute to the economic development of their communities or regions. CDCs work with the U.S. Small Business Administration and private lenders to provide financing to small businesses. The 12 CDCs in Kansas can be found at www.kscdc.com. CDCs' loan packages often contain multiple sources of project funding, providing the small business customer with an optimal combination of rates and terms.

Community Development Block Grant (CDBG) Program. This program distributes federal funds to Kansas cities and counties looking to improve their community. To receive funds, a project must meet at least one of the following federally-mandated criteria:

- The project benefits low- and moderate-income individuals;
- The project removes or prevents slum or blight conditions; or
- The project eliminates an urgent need created by a disaster when local funds are unavailable.

Kansas Community Service Program (CSP). This program gives not-for-profit organizations a way to improve capital fund-raising drives for community service, crime prevention, or health care projects. Tax credit awards are distributed through a competitive application process. Based on the scope and cost of the proposed project, applicants may request up to $250,000 in tax credits. Applicant organizations in rural areas, defined as having less than 15,000 in population, are eligible for a 70 percent credit. Applicant organizations in non-rural areas are eligible for a 50 percent credit.

Energy Incentives. Various incentives are offered to Kansas businesses and producers engaged in conventional and renewable energy production.

High Performance Incentive Program (HPIP). This program provides tax incentives to employers that commit to pay above-average wages and enhance their workers' skill development. HPIP offers employers four potential benefits:

- A 10 percent income tax credit for eligible capital investment at a company's facility that exceeds $50,000—or $1.0 million in the five metro counties of Douglas, Johnson, Sedgwick, Shawnee, and Wyandotte. The tax credit may be carried forward and used in any of the next 16 years in which the facility re-qualifies for HPIP;
- A sales tax exemption to use in conjunction with the company's capital investment at its facility;
- A training tax credit, worth up to $50,000; and
- Priority consideration for access to other business assistance programs.

Individual Development Account (IDA). The IDA promotes self-sufficiency for low-income Kansans in a matched savings program. The tax credits, approximately $500,000 awarded to selected community-based organizations, are used to leverage donations which will serve as a match for savings in an individual development account. Savings accrued in IDAs may be used for home ownership, residence repairs, business capitalization, and post-secondary education.

Kansas Industrial Training and Retraining Programs (KIT/KIR). These programs assist employers with training workers, whether on-site or in a classroom. The KIT Program may be used to

assist firms involved in both pre-employment and on-the-job training, allowing firms and prospective employees an opportunity to evaluate one another before making employment commitments. The KIR Program helps companies who are likely to terminate employees because of obsolete or inadequate job skills and knowledge. Eligible industries include basic enterprises that are incorporating new technology into their operations or diversifying production. At least one current employee must be trained to qualify for assistance.

Kansas Partnership Fund. Initially funded by legislative appropriation, this fund provides low-interest loans to cities and counties for infrastructure improvements that support Kansas basic enterprises, including manufacturing, mining, agriculture, and interstate transportation. Wholesale trade, financial services, business services, and tourism activities, if primarily undertaken for out-of-state markets, are also considered to be Kansas basic industries as well as research and development of new products or technologies. All city and county units of government, regardless of size, are eligible to apply for loans.

Other sources of income for this revolving loan fund are the sale of revenue bonds through the Kansas Development Finance Authority (KDFA) and contributions by public or private entities. Loan interest rates are adjustable, indexed annually to either the federal discount rate or the average interest rate earned by the Economic Development Initiatives Fund during the previous year, whichever is greater.

Private Activity Bonds (PABs). These bonds are federally tax-exempt bonds. The types of bonds that qualify for tax-exempt status include:

- Exempt facility bonds,
- Qualified mortgage bonds,
- Qualified veterans' mortgage bonds,
- Qualified small issue bonds,
- Qualified student loan bonds,
- Qualified redevelopment bonds, and
- Qualified 501(c)(3) bonds.

Under the federal volume cap for 2012, Kansas has a bond allocation of $284.6 million. The primary demand for bond allocation in Kansas has been for the issuance of exempt facility bonds, mortgage revenue bonds, and qualified small issue bonds, sometimes called industrial revenue bonds (IRBs). Exempt facility bonds are used to finance public infrastructure facilities pertaining to mass commuting, water, sewage, solid or hazardous waste, heating or cooling utilities, and qualified residential rental projects. Mortgage revenue bonds (MRBs) and mortgage credit certificates (MCCs) are issued to provide first-time homebuyers an enhanced opportunity to finance the purchase of a new home. Persons meeting certain financial and demographic guidelines are able to achieve substantial savings over the life of a home mortgage through the use of these programs. Kansas legislation allows cities, counties, or the KDFA to issue IRBs for industrial or other authorized purposes, such as to purchase land, pay the cost of constructing and equipping new facilities, or to purchase, remodel or expand existing facilities.

Promoting Employment Across Kansas Act (PEAK). This act gives qualified companies incentive to locate or expand business operations and jobs in Kansas by allowing them to retain Kansas payroll withholding. A company must commit to creating five new jobs in non-metropolitan counties—or 10 new jobs in the metropolitan counties of Shawnee, Douglas, Wyandotte, Johnson, Leavenworth and Sedgwick—over a two-year period. The company must also pay wages for the PEAK jobs that, when aggregated, meet or exceed the county median wage or North American Industry Classification System (NAICS) average wage for that industry. Qualified applicants may include for-profit companies in eligible NAICS codes, as well as headquarters for not-for-profit organizations. Applicants must offer adequate health insurance coverage, as defined by KAR 110-21-1, to their full-time employees and pay at least 50 percent of the premium.

Depending on the number of PEAK jobs to be filled in Kansas and their wage levels, the Secretary of Commerce may approve benefit periods for a maximum of 10 years. During the benefit period, participating PEAK companies may retain 95 percent of the payroll withholding tax of PEAK-eligible jobs.

After January 1, 2012, existing Kansas businesses which are creating new jobs are eligible to receive benefits. However, those benefits are capped at $4.8 million in FY 2012 and $6.0 million in each succeeding fiscal year. Commencing January 1, 2013, and ending December 31, 2014, the Secretary may utilize the PEAK Program to retain jobs of a qualified existing Kansas company. Benefits for retaining existing jobs are capped at $1.2 million in FY 2013, $2.4 million in FY 2014, and $1.2 million in FY 2015.

Small Communities Improvement Program (SCIP). This program sets aside $500,000 annually for small communities that are undertaking improvement projects through self-help and volunteerism. The competitive program is designed to assist communities with populations of 5,000 or less which are ineligible for other assistance and may not have the capacity to provide matching funds. The maximum award for a single project is $125,000. Self-help and volunteerism must result in savings of at least 40 percent of the project's marketplace price. Communities must validate the impact the project will have on the quality of life for their residents.

State Small Business Credit Initiative (SSBCI). This initiative provides federal matching funds to eligible businesses through a network of partners The Kansas Capital Multiplier Loan Fund provides businesses with matching loans, up to 9.0 percent of the private capital invested. Loans may range from $25,000 to $500,000. The Fund provides businesses with matching equity, up to 9.0 percent of the private equity invested. Eligible businesses include technology and bioscience companies working with a state entrepreneurial center, a university center of excellence, or the Kansas Bioscience Authority (KBA). Rural businesses, businesses in distressed urban areas, or businesses with local angel investment may qualify. Equity investment may range from $25,000 to $250,000. Additional information may be found at www.NetWorkKansas.com.

Work Opportunity Tax Credit (WOTC). This tax credit encourages private employers to hire within one of several targeted groups of job candidates who traditionally face barriers to employment, such as public assistance recipients, unemployed or disabled veterans, or ex-felons. The tax credit reduces an employer's federal income tax liability by as much as $2,400 per qualified new worker in the first year of employment, with employers hiring disabled veterans saving up to $9,600 in the first year of employment.

Job Creation Program Fund (JCPF). This Fund, administered by the Secretary of Commerce in consultation with the Secretary of Revenue and the Governor, is to promote job creation and economic development by funding projects related to: the major expansion of an existing commercial enterprise, the relocation to Kansas of a major employer, the award of a significant grant that has a financial matching requirement, the potential departure from the state or the substantial reduction of an existing employer's operations, training activities, the potential closure or substantial reduction of a major state or federal institution, projects in counties with at least a 10 percent decline in population over the last decade, or other unique economic development opportunities.

The 2.0 percent of withholding tax receipts, which was previously dedicated to the Investments in Major Projects and Comprehensive Training (IMPACT) Program, is deposited in the JCPF, provided the current debt services, including administrative expenses, of the IMPACT Program have been met. Starting on July 1, 2014, the Secretary of Revenue shall annually estimate the amount of net tax savings realized under the provisions of 2011 House Sub. for SB 196, and that amount will be deposited in the JCPF The Commerce Secretary is required to annually report to legislative leadership and the tax and commerce committees of the House and Senate on the expenditures from the Fund.

Business Recruitment and Relocation

The Recruitment and Relocation Section, working with site consultants and out-of-state businesses, promotes Kansas as a locale for businesses to move a portion or all of their operations. In each of five regions of the country (the East coast, the Great Lakes, the Mid-Central, Missouri, and the West coast), a regional office engages in

recruitment activities: identifying client needs, possible site locations, and available state and local resources. Emphasis is placed upon attracting businesses, both domestic and foreign, involved in the industries of alternative energy, distribution, bioscience, and advanced manufacturing.

Rural Opportunity

Started in 2011, Rural Opportunity Zones (ROZs) are designed to reverse population declines in rural areas of Kansas. Statute designates 73 counties as ROZs, including Allen, Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Decatur, Doniphan, Edwards, Elk, Ellsworth, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jewell, Kearny, Kingman, Kiowa, Lane, Lincoln, Linn, Logan, Marion, Marshall, Meade, Mitchell, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Republic, Rice, Rooks, Rush, Russell, Scott, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Trego, Thomas, Wabaunsee, Wallace, Washington, Wichita, Wilson, and Woodson.

The program has two incentives:

- A state income tax exemption for up to five years to individuals who move to an ROZ county from outside the state. Individuals must not have lived in Kansas for the past five years, nor have income of more than $10,000 per year over the past five years from a Kansas source; and
- Student loan forgiveness, up to $3,000 per year with a $15,000 maximum benefit, for individuals who graduate from an accredited post-secondary institution and move to a ROZ county. The incentive is a county-state partnership, and counties must choose to participate.

As of September 2013, 51 counties joined the student loan forgiveness program. Those counties which do not participate include Allen, Anderson, Bourbon, Brown, Chase, Cheyenne, Clay, Coffey, Comanche, Ellsworth, Haskell, Jackson, Linn, Marshall, Nemaha, Neosho, Sheridan, Wabaunsee, and Washington.

Minority and Women Business Development

The Office of Minority and Women Business Development encourages the development of minority and women-owned businesses. Information and referrals are provided in the areas of procurement, contracting and subcontracting, financing, and business management. The Office partners with other business advocates to sponsor business education workshops and seminars.

Kansas Statewide Certification Program. This Office also administers the Kansas Statewide Certification Program, where women and minority businesses can be certified as a Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), or Women Business Enterprise (WBE). Certification may increase opportunities for those businesses to gain contracts and subcontracts from governmental and private entities committed to the inclusion of less-advantaged. Program services are free.

Innovation Growth Program

The Innovation Growth Program provides Kansas entrepreneurs and technology companies with technical expertise, research, and other services designed to help those businesses grow and succeed. The Program, comprised of elements of the former Kansas Technology Enterprise Corporation (KTEC), offers expertise in four basic areas.

Research to Support Industry. University-based centers of excellence provide access to research and technical expertise for companies and entrepreneurs seeking to develop new products or solve problems with new technologies.

Entrepreneurial Centers. These business incubators provide services to technology companies in their early-stage development phase. Services range from preparing entrepreneurs to approach capital partners, to forming joint ventures

and new companies around technologies, to accessing expertise housed at state universities.

Mid-America Manufacturing Technology Center (MAMTEC). MAMTEC works to increase the competitive position of small and mid-sized Kansas manufacturers, helping to improve their productivity and expand their capacity.

Angel Investment Resources. Regional networks of angel investors and angel tax credits help to meet the financing needs of Kansas entrepreneurs by serving as a catalyst to stimulate the flow of private investment capital to promising early-stage ventures. Angel networks identify and fund promising start-up business opportunities. Kansas income tax credits are available to individuals who provide seed-capital financing for emerging Kansas businesses engaged in the development, implementation, and commercialization of innovative technologies, products, and services.

Trade Development. The Trade Development Section works to increase the international sales of goods and services produced in Kansas. Private companies can receive counseling services regarding exports, marketing, international regulations, and searches for agents or distributors. International trade representatives are utilized on a contractual basis to provide contacts in Brazil, China, Korea, India, Japan, Mexico, Taiwan, and other counties in Asia, Europe, and Latin America. Kansas vendors are recruited to attend international trade shows. The Division organizes trade missions and hosts foreign delegations when they visit Kansas.

Workforce Services Division

KANSASWORKS. The Commerce Department is responsible for the State's workforce system called KANSASWORKS. Established through the federal Workforce Investment Act (WIA) of 1998 and Gubernatorial Executive Order No. 01-06, KANSASWORKS links businesses and employers with job seekers and educational institutions that provide training. KANSASWORKS' goal is to provide persons looking for work a "one-stop shop" to find employment, training, and information about Unemployment Insurance benefits. Workforce Services determines employers' eligibility for several of the employee-related incentives and training programs previously mentioned in this article. If a business faces mass layoffs, a rapid response team can be sent out to the employer's facility to provide job counseling services for soon-to-be displaced workers. The Division also administers the following programs.

Business Executive and Industry Liaisons (BEILs). Liaisons work closely with the Business Development Division to identify the workforce demands of companies either planning to expand or locate to Kansas.

Federal Bonding Program. This program provides individual fidelity bonds to employers for applicants who are denied coverage because of a criminal record, history of chemical abuse, lack of employment history, or dishonorable discharge. Each bond's coverage is for $5,000 for six months. The program is free to employers and job applicants.

Older Kansans Employment Program (OKEP). This program assists Kansans over 55 years of age with employment placement services.

Kansas Registered Apprenticeship. This program combines classroom instruction with on-the-job training. Apprenticeships may last one to six years, depending upon the occupation and the industry's standards. A specialized form the Apprenticeship Program is the Early Childhood Association Apprenticeship Program (ECAAP) which, in partnership with community colleges, certifies people working in childcare and early education.

Incumbent Worker Training Program. Financed by WIA, this program provides grants to employers for training expenses associated with: avoidance of mass layoff, the development of a best practice model, industries endorsed by a local workforce board, or a significant occupational demand.

Foreign Labor Certification. This certification qualifies an employer to hire foreign or alien workers if an employer cannot find qualified U.S. workers available to fill vacancies.

Workforce Services works with an advisory State Board, appointed by the Governor and comprised of 19 members, including employers, HR specialists, higher education administrators, and state officials. At the local level, the state is divided into five areas. Each area has a local board of directors with headquarters in Great Bend (Area I), Topeka (Area II), Kansas City (Area III), Wichita (Area IV), and Pittsburg (Area V). The five areas provide workforce services at 28 workforce centers across the state.

Commissions

The Kansas Athletic Commission and the Kansas Creative Arts Industries Commission, both statutorily created, are organized within the Commerce Department.

Kansas Athletic Commission. This Commission, comprised of five members appointed by the Governor and serving four-year terms, administers the laws governing wrestling and regulated sports, including professional boxing, kickboxing, and mixed martial arts. The Commission, in cooperation with the Boxing Commissioner, works to ensure the health and safety of contestants, fair and competitive bouts, and the protection of the general public. Regulatory responsibilities include the licensing and supervision of referees, judges, physicians, managers, contestants, timekeepers, seconds, promoters, and matchmakers for contests as well as event oversight.

Creative Arts Industries Commission. This Commission merged the former Kansas Film Commission with the Kansas Arts Commission. The new Commission, composed of 11 members appointed by legislative leaders and the Governor, is charged with promoting, supporting, and expanding artistic-related jobs in the creative industries in the state. The Commission is further discussed in a separate article located in the Legislator Briefing Book.

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Commerce, Labor, and Economic Development

E-5 Unemployment Insurance Compensation Fund

Overview

The Kansas Unemployment Insurance (UI) Trust Fund was created in 1935 as the state counterpart to the Federal Unemployment Insurance Trust Fund. For the past 78 years, the Fund has provided income stability for Kansas citizens during times of economic difficulty while stimulating economic activity. The Legislature has modified the provisions of the Kansas Unemployment Insurance law several times over the past two decades to address the accumulation of excess balances in the Fund. (Note: UI moratoriums and rate cuts began to be enacted in mid to late 90s.) The recent economic crisis, culminating in 2009, resulted in the rapid depletion of the Fund's reserves, despite measures to ensure the Fund's adequacy.

State Fund Contributions

Contributions to the UI Trust Fund are made by Kansas employers and are governed by KSA 44-710a. The Fund is designed to be self correcting. When unemployment rates increase, contribution rates increase, and contribution rates decline during better economic times. The State charges a fee on the first $8,000 of wages paid to each employee, called the taxable wage base. Starting in calendar year 2015, the taxable wage base increases from the current $8,000 to $12,000. In calendar year 2016, the wage base increases again, from $12,000 to $14,000. The fee amount collected from employers varies, depending upon the presence or absence of several factors or conditions.

New employers in the construction industry with less than three years of employment history are charged a fee amount equal to 6.0 percent of their taxable wage base. For new employers who are not in the construction industry, have fewer than 24 months of payroll experience, and who pay all contributions by January 31, the contribution rate may be 2.7 percent if the Fund's balance is sufficient, as specified by law.

Employers with an employment history of at least three years qualify for experience-based ratings. Employers are classified as positive balance when their total contributions to the Fund exceed the amount withdrawn by qualified recipients of unemployment. Positive balance employers are grouped into 51 categories depending upon their unemployment experience. In combination with the Reserve Fund ratio and the planned yield, a specific contribution rate is determined for the employer.

Positive balance employers are eligible to receive a fee discount of 25.0 percent if all reports are filed and contributions are made by January 31. This discount does not apply if other discounts provided by law are in effect or if the Fund's balance is insufficient.

Employers are classified as negative balance when their total contributions to the Fund fail to exceed the amount withdrawn by qualified recipients. Grouped into 20 categories, all negative balance employers are charged a base contribution rate of 5.4 percent. The surcharge rate for the first negative balance group is 0.1 percent, and the surcharge rate for each subsequent group increases by 0.1 percent. The surcharge rate for the twentieth group is 2.0 percent. The surcharge ceases to apply after calendar year 2014. Employers have the choice to make additional contributions to the Fund in order to become positive balance employers and qualify for an experience-based rating with lower contribution rates.

The 2011 Legislature enacted SB 77 which extends the tax rate caps for three more years, from 2012 to the end of 2014. However, the bill does not extend the 90-day extension to file contributions. SB 77 increased the number of reserve ratio groups for negative balance employers from 10 to 20. The surcharge rate applied to negative balance employers increased from 2.0 percent to 4.0 percent. For those employers in the top ten negative reserve ratio groups, there is a temporary 0.1 percent surcharge increase for 2012, 2013, and 2014. The additional surcharge revenue is deposited in the Employment Security Interest Assessment Fund.

Federal Unemployment Trust Fund

In addition to the contributions to the Kansas UI Trust Fund, employers also contribute to the Federal Unemployment Insurance Trust Fund (FUTF). Employers pay a rate of 6.2 percent on the first $7,000 of income; however, the federal government provides a tax credit of 5.4 percent against this rate for states with an unemployment insurance program in compliance with federal requirements. This yields an effective contribution rate of 0.8 percent for Kansas employers. The FUTF is used for administrative purposes and to fund loans to state unemployment insurance programs when they become insolvent.

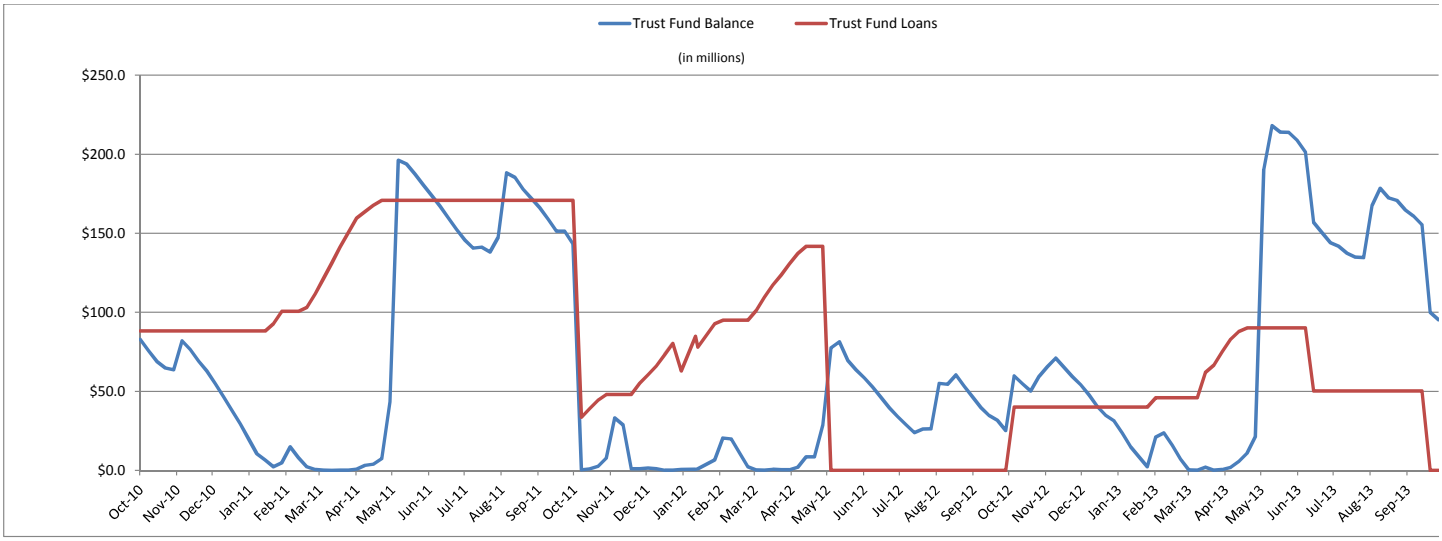
2009 Economic Crisis

Between January 2007 and December 2008, the UI Trust Fund maintained a balance between $600 million and $700 million. Benefit payments began a sharp rise starting in January 2009, increasing from an average of $6.0 million per week to $19.0 million per week in July of the same year. The tripling of benefit payments over this period resulted in accelerated depletion of Fund resources. The Kansas Department of Labor uses the Average High Cost Multiple (AHCM) system recommended by the U.S. Department of Labor in order to ensure Trust Fund adequacy. The AHCM is the number of years a state can pay benefits out of its current Trust Fund balance if it were required to pay benefits at a rate equivalent to an average of the three highest 12-month periods in the past 20 years.

The last time Kansas experienced a period of unemployment exceeding 6.5 percent was in 1982. This means that there was no equivalent three-month period of unemployment included in the AHCM calculation. The unemployment rate is not the only variable impacting the Trust Fund balance. The primary determinants of the Trust Fund depletion rate are the average weekly benefit, the number of persons to whom unemployment is paid, and the amount of time for which benefits are paid.

Current Status of the Fund

For the first time since the passage of the Kansas Employment Security Law, the State of Kansas has been required to borrow funds from the Federal Unemployment Account to make unemployment benefit payments. The State borrowed up to $170.8 million in April 2011, but paid down the amount to $33.7 million in October 2011. The State then borrowed amounts weekly up to $141.7 million in April 2012. The State paid the federal loan balance in May 2012, with a goal to not borrow



any additional funds from the federal government going forward.

The UI Trust Fund's balance is expected to be zero through December 2012. The Kansas Department of Labor plans to borrow amounts from the Pooled Money Investment Board (PMIB) as necessary. Weekly loans may continue until April 2013, when the employers' payments begin to be deposited in the UI Trust Fund.

The federal government began assessing interest on the loans on January 1, 2011. The Kansas Department of Labor paid $4,601,743.91 interest in September 2011. The Kansas Department of Labor expects to pay approximately $1.1 million in interest for the loan amount borrowed through September 2012 with no additional interest payments in the future since the loan is currently paid off.

SB 77—An Act Concerning the Employment Security Act

SB 77 took effect in 2011 and authorized the creation of the Employment Security Interest Assessment Fund which pays interest owed to the U.S. Department of Labor for advances received by the UI Trust Fund. In addition to increasing the surcharge rate negative balance employers pay from 2.0 percent to 4.0 percent and creating a temporary 0.1 percent increase for 2012, 2013, and 2014, there are additional changes to improve the UI Trust Fund's solvency.

The law repealed the provision that allowed an unemployed individual to receive compensation for the waiting period of one week. The bill also modifies the "trailing spouse" provision so that it applies only to the spouses of personnel in the U.S. armed forces or military reserves. Under previous law, a person could receive UI benefits if that person left a job because the person's spouse had to transfer to another location for employment.

The Pooled Money Investment Board (PMIB) may make long-term loans to the Kansas Department of Labor in order to fund debt obligations owed to the federal government. The interest rate for a PMIB loan may not exceed 2.0 percent. The loan period cannot exceed three years unless the PMIB and the Secretary of Labor agree to the extension.

The law grants an unemployed individual who receives UI benefits the discretion to have state income tax withheld from the payments. Federal law currently allows an unemployed individual to have federal income tax withheld.

Employee Benefits

The amount of money an employee can receive in unemployment compensation will vary depending

on the level of compensation the employee received during employment and the length of time which the employee can receive benefits. However, there are strict upper and lower limits on benefit payments to prevent over-and under-compensation. If the Department of Labor determines a person made a false statement or representation when applying for benefits, that person is disqualified from receiving benefits for five years.

Calculating the Weekly Benefit

The weekly benefit amount is what the claimant will receive each week in unemployment compensation. The weekly benefit amount is determined by multiplying 4.25 percent times the highest earning quarter in the first four of the last five completed calendar quarters. KSA 44-704(c) limits the weekly benefit amount to 60.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year. Subsection (d) of the same statute guarantees that employees will receive at least 25.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year.

Calculating the Length of Compensation

During a standard or non-recessionary period, an employee's duration of benefit is calculated in one of two ways, whichever is less. First, an employee can receive weekly compensation for 26 weeks or second, the duration of benefits is determined by multiplying 1/3 times the total benefits received in the first four of the last five completed calendar quarters. The weekly benefits amount is divided into the total benefits received in order to determine the number of weeks an employee can receive compensation.

Starting in benefit year 2014, if the unemployment rate for Kansas is equal to or greater than 6.0 percent, a person is eligible for a maximum of 26 weeks of benefits. If the unemployment rate is less than 6.0 percent but greater than 4.5 percent, a person is eligible for 20 weeks of benefits. A person is eligible for 16 weeks of benefits if the unemployment rate is equal to or less than 4.5 percent. For purposes of this provision, the law calculates the unemployment rate at the beginning of a benefit year, using a three-month, seasonally adjusted average.

The Federal Emergency Unemployment Compensation Act of 2008 extends an employee's duration of benefit by 20 weeks and has an additional Tier 2 trigger to provide 13 weeks of compensation when unemployment exceeds 6.0 percent, for a total of 33 weeks above the 26 weeks of unemployment compensation in non-recessionary periods. All benefits paid under the Emergency Unemployment Compensation Act are paid from federal funds and do not impact the Kansas UI Trust Fund balance. The federal government recently approved an additional 14 weeks of Tier 3 unemployment compensation for Kansas. Kansas citizens are able to receive a total of 47 weeks in federal unemployment compensation separate from their state benefits.

Under KSA 44-704(a), Kansas will provide an additional 13 weeks of unemployment compensation when the Kansas economy hits one of several indicators, including an unemployment rate of at least 6.5 percent for the previous three months. An applicant can receive less than 13 weeks of extended state benefits in the event his or her original eligible benefit period was less than 26 weeks based on the 1/3 calculation. Under state law, Kansas extended benefits are paid 50.0 percent from the Kansas UI Trust Fund and 50.0 percent from the FUTF.

Enforcement of the UI System

In 2013, the Legislature authorized the Secretary of Labor to hire special investigators with law enforcement capabilities to investigate UI fraud, tax evasion, and identity theft.

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Kansas Legislative Research Department

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Statewide STAR Bond Authority

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Kansas Bioscience Authority

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Economic Development Initiatives Fund Overview

E-4
Department of Commerce

E-5
Unemployment Insurance Compensation Fund

E-6
Kansas Creative Arts Industries Commission

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Commerce, Labor, and Economic Development

E-6 Kansas Creative Arts Industries Commission

The Kansas Creative Arts Industries Commission (KCAIC) is charged with growing the creative industries sector of the Kansas economy. The KCAIC is housed within the Kansas Department of Commerce. Arts and cultural program funding in Kansas also is provided by the Kansas State Historical Society, the Kansas Humanities Council, and the Kansas Department of Education.

History and Structure

The Legislature passed and the Governor signed into law Senate Sub. for HB 2454, which created the KCAIC within the Kansas Department of Commerce in May 2012. The bill merged the powers, functions, and duties of the Kansas Arts Commission and the Kansas Film Commission, and made the KCAIC responsible for measuring, promoting, supporting, and expanding the creative industries in Kansas. Both the Kansas Arts Commission and the Kansas Film Commission were abolished.

The KCAIC is governed by an 11-member commission with members who serve for terms of three years. Members may be reappointed to a term of three years; however, members may not serve more than two terms and are not eligible for reappointment following the end of the member's second term of office. The members of the commission include: Two members appointed by the President of the Senate; one member appointed by the Minority Leader of the Senate; two members appointed by the Speaker of the House of Representatives; one member appointed by the Minority Leader of the House of Representatives; and five members appointed by the Governor. Additionally, all members appointed by the Governor have terms of three years, except that in the initial appointment three of the appointments were for two-year terms and two of the appointments were for three-year terms. The Governor designated the term for which each of the members first appointed would serve. The commission is required to convene annually by the 20th day of the legislative session and elect a chairperson and vice-chairperson from among its members. Under the provisions of the statute governing the KCAIC, the Commission is required to meet not fewer than four times during each calendar year and the Commission must meet on the call of the chair, with the meetings taking place in various locations across Kansas.

The statutes governing the KCAIC indicate the Commission should be "broadly representative" of the major fields of the arts and related creative industries. Members shall be appointed from among private citizens

who are widely known for having competence and experience in connection with the arts and related creative industries, or business leaders with an interest in promoting the arts. Additionally, the members should have knowledge of community and state interests.

Programs

The KCAIC offers two programs which are designed to support the creative arts industries in Kansas. The programs include the Creative Economy Project Support and the Creative Arts Industry Incentives.

The Creative Economy Project Support Program provides funding to help communities and organizations complete initiatives addressing a wide variety of goals and objectives and project planning may be funded at the planning or implementation state. This program supports initiatives that encourages partnerships between public, private, and cultural sectors that create jobs, generate income, promote economic development, revitalize communities, and attract cultural tourists. According to the KCAIC, successful applications must include at least one primary partner from each sector. The Creative Economy Project initiatives must leverage the assets of the creative sector that are intrinsic in Kansas communities, generate real income, and enhance the quality of life.

The Creative Arts Industry Incentives offers three financial incentives for creative professionals and businesses that are looking to expand in Kansas. The three programs include:

- Workforce Expansion – The program requires a qualified company or organization to commit to creating at least one new FTE (full-time equivalent) positions over a one-year period and either the organization or position must be in the creative sector. Applicants may request up to 10.0 percent of the employee's wages, up to a maximum of $5,000 per eligible job.
- Capital Investment Assistance – This program awards investments to companies or organizations willing to expand or alter a new or existing facility or purchase equipment or materials to expand or improve an applicant's business or organization. Applicants may request up to 50.0 percent of the cost of the facility enhancements with a maximum award of $10,000 and applicants may request a maximum of $5,000 for equipment purchases or technology upgrades and all requests require a one-to-one match.
- Workforce Training Assistance – This program is used to assist companies and organizations involved in pre-employment and on-the-job training of new employees, the training of existing employees, the training of existing employees on new technologies that will result in increased revenue and an expanded client base, the training and education of future employees using creative arts integrated programs to address emerging technologies, areas of skills shortages, and science, technology, engineering, and mathematics curriculum. The maximum amount of funding per trainee is $500 with a maximum award of $5,000 per applicant.

Funding

State Funds. When the KCAIC was created in FY 2013, the Governor recommended $200,000, all from the Economic Development Initiatives Fund (EDIF). The 2012 Legislature added an additional $500,000, all from the EDIF, and 3.0 FTE positions, for the operation of the KCAIC.

Federal Funds. The National Endowment for the Arts determined in August 2011 that the Kansas Arts Commission would not comply with the National Endowment for the Art's eligibility requirements and therefore would not receive a National Endowment for the Arts FY 2011 Partnership Agreement. The partnership agreement would have provided the Kansas Arts Commission with approximately $709,000 in grant funds. Kansas subsequently met the partnership criteria for a later period and obtained a $560,800 award for FY 2014. Grants will be awarded by the end of the fiscal year from the funding.

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Corrections

F-1 Sentencing

The Kansas Sentencing Guidelines Act (KSGA) became effective July 1, 1993. Two grids, which contain the sentencing range for drug crimes and nondrug crimes, were developed for use as a tool in sentencing. The sentencing guidelines grids provide practitioners in the criminal justice system with an overview of presumptive felony sentences. The determination of a felony sentence is based on two factors: the current crime of conviction and the offender's prior criminal history. The sentence contained in the grid box at the juncture of the severity level of the crime of conviction and the offender's criminal history category is the presumed sentence. See KSA 21-6804(c).

Off-Grid Crimes

The crimes of capital murder (KSA 21-5401), murder in the first degree (KSA 21-5402), terrorism (KSA 21-5421), illegal use of weapons of mass destruction (KSA 21-5422), and treason (KSA 21-5901) are designated as off-grid person crimes.

Kansas law provides for the imposition of the death penalty, under certain circumstances, for a conviction of capital murder. See KSA 21-5401 and KSA 21-6617. Where the death penalty is not imposed, a conviction of capital murder carries a life sentence without possibility of parole. See KSA 21-6620(a).

The remaining off-grid person crimes require life sentences with varying parole eligibility periods. Persons convicted of premeditated first-degree murder are eligible for parole after serving 25 years of the life sentence, unless the trier of fact finds there were aggravating circumstances justifying the imposition of the "Hard 50" sentence (requiring 50 years to be served before parole eligibility).

Persons convicted of felony murder, terrorism, illegal use of weapons of mass destruction, or treason are parole eligible after serving 20 years of the life sentence. See KSA 22-3717(b)(2).

Also included in the off-grid group are certain sex offenses against victims under the age of 14: aggravated human trafficking (KSA 21-5426(b)), rape (KSA 21-5503), aggravated indecent liberties (KSA 21-5506(b)), aggravated criminal sodomy (KSA 21-5504(b)), commercial sexual exploitation of a child (KSA 21-6422) and sexual exploitation of a child (KSA 21-5510). Offenders sentenced for these off-grid crimes are parole eligible after 25 years in confinement for the first offense,

parole eligible after 40 years in confinement for the second offense, or sentenced to life without parole if they have been convicted of two or more of these offenses in the past.

Drug Grid and Nondrug Grid

The drug grid is used for sentencing on drug crimes described in KSA Chapter 21, Article 57. The nondrug grid is used for sentencing on other felony crimes. In both grids, the criminal history categories make up the horizontal axis, and the crime severity levels make up the vertical axis. Each grid contains nine criminal history categories.

The drug grid contains five severity levels; the nondrug grid contains ten severity levels. A thick, black dispositional line cuts across both grids. Above the dispositional line are unshaded grid boxes, which are designated as presumptive prison sentences. Below the dispositional line are shaded grid boxes, which are designated as presumptive probation sentences.

The grids also contain boxes that have a dark-shaded color through them, which are referred to as "border boxes." A border box has a presumptive prison sentence, but the sentencing court may choose to impose an optional nonprison sentence, which will not constitute a departure. The nondrug grid contains three border boxes, in levels 5-H, 5-I, and 6-G. The drug grid contains seven dark shaded border boxes, in levels 4-E, 4-F, 4-G, 4-H, 4-I, 5-C, and 5-D. See KSA 21-6804 and KSA 21-6805.

Grid Boxes

Within each grid box are three numbers, representing months of imprisonment. The three numbers provide the sentencing court with a range for sentencing. The sentencing court has discretion to sentence within the range. The middle number in the grid box is the standard number and is intended to be the appropriate sentence for typical cases. The upper and lower numbers should be used for cases involving aggravating or mitigating factors insufficient to warrant a departure, as explained in the next paragraph. See KSA 21-6804 and 21-6805.

The sentencing court may depart upward to increase the length of a sentence up to double the duration within the grid box. The court also may depart downward to lower the duration of a presumptive sentence. See KSA 21-6815, 21-6816, and 21-6817. The court also may impose a dispositional departure, from prison to probation or from probation to prison. See KSA 21-6818.

In *State v. Gould*, 271 Kan. 394, 23 P.3d 801 (2001), the predecessor to KSA 21-6815 was found to be "unconstitutional on its face" for the imposition of upward durational departure sentences by a judge and not a jury. In the 2002 Legislative Session, the departure provisions were amended to correct the upward durational departure problem arising from *Gould*, and this change became effective on June 6, 2002. The jury now determines all of the aggravating factors that might enhance the maximum sentence, based upon the reasonable doubt standard. The trial court determines if the presentation of evidence regarding the aggravating factors will be presented during the trial of the matter or in a bifurcated jury proceeding following the trial. See KSA 21-6817.

Sentencing Considerations

The sentencing court should consider all available alternatives in determining the appropriate sentence for each offender. The sentencing guidelines seek to establish equity among like offenders in similar case scenarios. Rehabilitative measures are still an integral part of the corrections process, and criminal justice professionals continue efforts to reestablish offenders within communities. The guidelines do not prohibit sentencing courts from departing from the prescribed sentence in atypical cases. The sentencing court is free to choose an appropriate sentence, or combination of sentences, for each case. See KSA 21-6604.

Postrelease Supervision

Once offenders have served the prison portion of a sentence, most must serve a term of postrelease

supervision, plus the amount of good time earned while incarcerated. For crimes committed on or after July 1, 2012, offenders sentenced for drug severity levels 1-3 or nondrug severity levels 1-4 must serve 36 months of postrelease supervision, those sentenced for drug severity level 4 or nondrug severity levels 5-6 must serve 24 months, and those sentenced for drug severity level 5 or nondrug severity levels 7-10 must serve 12 months. These periods may be reduced based on an offender's compliance and performance while on postrelease supervision. See KSA 22-3717(d)(1).

While on postrelease supervision, an offender must comply with the conditions of post release supervision, which include reporting requirements; compliance with laws; restrictions on possession and use of weapons, drugs, and alcohol; employment and education requirements; restrictions on contact with victims or persons involved in illegal activity; and other conditions. A "technical violation" of the conditions of post release supervision (such as failure to report) will result in imprisonment for six months, reduced by up to three months based upon the offender's conduct during the imprisonment. A violation based upon conviction of a new felony will result in imprisonment for the remaining balance of the postrelease supervision term, even if the new conviction does not itself result in a new prison term. A violation based upon conviction of a new misdemeanor will result in a period of confinement as determined by the Prisoner Review Board, up to the remaining balance of the postrelease supervision period. See KSA 75-5217.

Recent Notable Sentencing Guidelines Legislation

In 2006, the Kansas sentencing guidelines law dealing with upward departures was amended to add a new aggravating factor when the crime involved two or more participants and the defendant played a major role in the crime as an organizer, leader, recruiter, manager, or supervisor.

The law was amended further to add a new mitigating factor for defendants who have provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense. In considering this mitigating factor, the court may consider the following:

- The significance and usefulness of the defendant's assistance;
- The truthfulness, completeness, and reliability of any information;
- The nature and extent of the defendant's assistance;
- Any injury suffered, any danger of risk of injury to the defendant, or the defendant's family; and
- The timeliness of the assistance.

In 2008, the Kansas sentencing guidelines were amended to provide the following:

- No downward dispositional departure can be imposed for any crime of extreme sexual violence. A downward durational departure can be allowed for any crime of extreme sexual violence to no less than 50 percent of the center of the grid range of the sentence for such crime; and
- A sentencing judge cannot consider social factors as mitigating factors in determining whether substantial and compelling reasons exist for a downward departure.

In 2010, the Kansas Criminal Code, including the sentencing guidelines, was recodified. The recodification took effect July 1, 2011. The citations in this article are to the recodified code.

In 2012, the Legislature passed Senate Sub. for Sub. for HB 2318, which changed the drug grid from a four-level grid to a five-level grid, adding a new level 2 with penalties falling between the existing first and second levels of the grid. The new grid also expanded the presumptive imprisonment boxes and the border boxes.

In June 2013, the U.S. Supreme Court's decision in *Alleyne v. U.S.,* 570 U.S. ___, 133 S. Ct. 2151, 186 L. Ed. 2D 314 (2013), called the constitutionality of Kansas' "Hard 50" sentencing statute (KSA 21-6620) into doubt. Since 1994, in cases where a

defendant was convicted of premeditated first degree murder, the statute had allowed the sentencing court to impose a life sentence without eligibility for parole for 50 years when the judge found one or more aggravating factors were present. The *Alleyne* decision indicated that such determinations must be made by the trier of fact (usually a jury) using a reasonable doubt standard, rather than by the sentencing judge.

In response to the *Alleyne* decision, Kansas Attorney General Derek Schmidt requested Governor Sam Brownback call the Kansas Legislature into Special Session "for the purpose of repairing" the Hard 50 sentence. The Governor subsequently called the Legislature into Special Session starting September 3, 2013, to respond to *Alleyne*.

Before the 2013 Special Session, the Special Committee on Judiciary met to review *Alleyne*, receive testimony, and report preliminary findings to the House and Senate Judiciary Committees at the commencement of the Special Session. The Special Committee recommended language for a bill that would institute a jury procedure for the Hard 50 determination.

At the Special Session, the Legislature considered and passed HB 2002, which was an amended version of the language proposed by the Special Committee. HB 2002 went into effect upon its publication in the Kansas Register (September 6, 2013).

The source for the attached sentencing range grid for drug offenses and nondrug offenses is the *Kansas Sentencing Commission Guidelines, Desk Reference Manual, 2013*.

SENTENCING RANGE- DRUG OFFENSES

Categories→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felony	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 23	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

Presumptive Probation
Border Box
Presumptive Imprisonment

- Fines not to exceed $500,000 (SL1-SL2), $300,000 (SL3-SL4), $100,000 (SL5)
- Severity level of offense increases one level if controlled substance or analog is distributed or possessed w/ intent to distribute on or w/in 1000 ft of any school property.

	Distribute or Possess w/ intent to Distribute								
Levels	Cocaine	Meth & Heroin	Marijuana	Manufacture (all)	Cultivate	Dosage Units	Postrelease	Probation	Good Time
I	≥ 1 kg	≥ 100 g	≥ 30 kg	2nd or Meth	>100 plants	>1000	36	36	15%
II	100 g - 1 kg	3.5 g - 100 g	450 g - 30 kg	1st	50-99 plants	100-999	36	36	15%
III	3.5 g - 100 g	1 g - 3.5 g	25 g - 450 g		5-49 plants	10-99	36	36	15%
IV	< 3.5 g	< 1 g	< 25 g			<10	24	≤ 18	20%
V	Possession		Possession-2nd offense				12	*≤12	20%

* ≤ 18 months for 2003 SB123 offenders

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 + Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:
36 months recommended for felonies classified in Severity Levels 1-5
24 months recommended for felonies classified in Severity Levels 6-7
18 months (up to) for felonies classified in Severity Level 8
12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:
36 months for felonies classified in Severity Levels 1-4
24 months for felonies classified in Severity Levels 5-6
12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:
24 months for felonies classified in Severity Levels 1-6
12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

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Kansas Legislative Research Department

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Sentencing

F-2
Kansas Prison Population and Capacity

F-3
Prisoner Review Board

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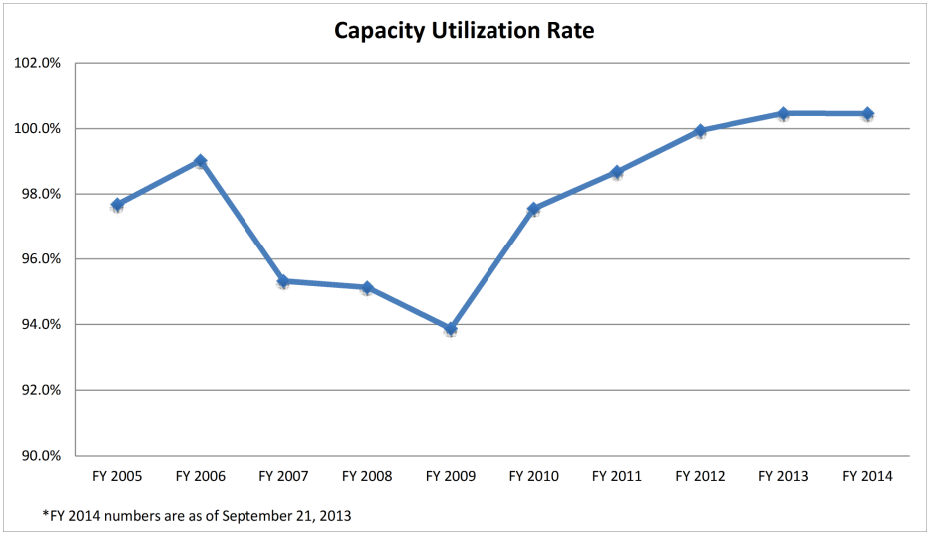
Kansas Legislator Briefing Book 2014

Corrections

F-2 Kansas Prison Population and Capacity

Historically, the Kansas Department of Corrections' (DOC) managers and state policymakers have had to address the issue of providing adequate correctional capacity for steady and prolonged growth in the inmate population. In the late 1980s, capacity did not keep pace with the population, which, along with related issues, resulted in a federal court order in 1989 dealing, in part, with mentally ill inmates and developing a long-term plan to address the capacity issue. The order did not mandate any new construction in its terms, but the immediate, direct result was construction of a new facility which became El Dorado Correctional Facility. The court order was terminated in 1996 following numerous changes to the correctional system, including the construction of Larned Correctional Mental Health Facility. During the last half of the 1990s, increases in the inmate population were matched by capacity increases, but capacity utilization rates (average daily population divided by total capacity) remained consistently high.

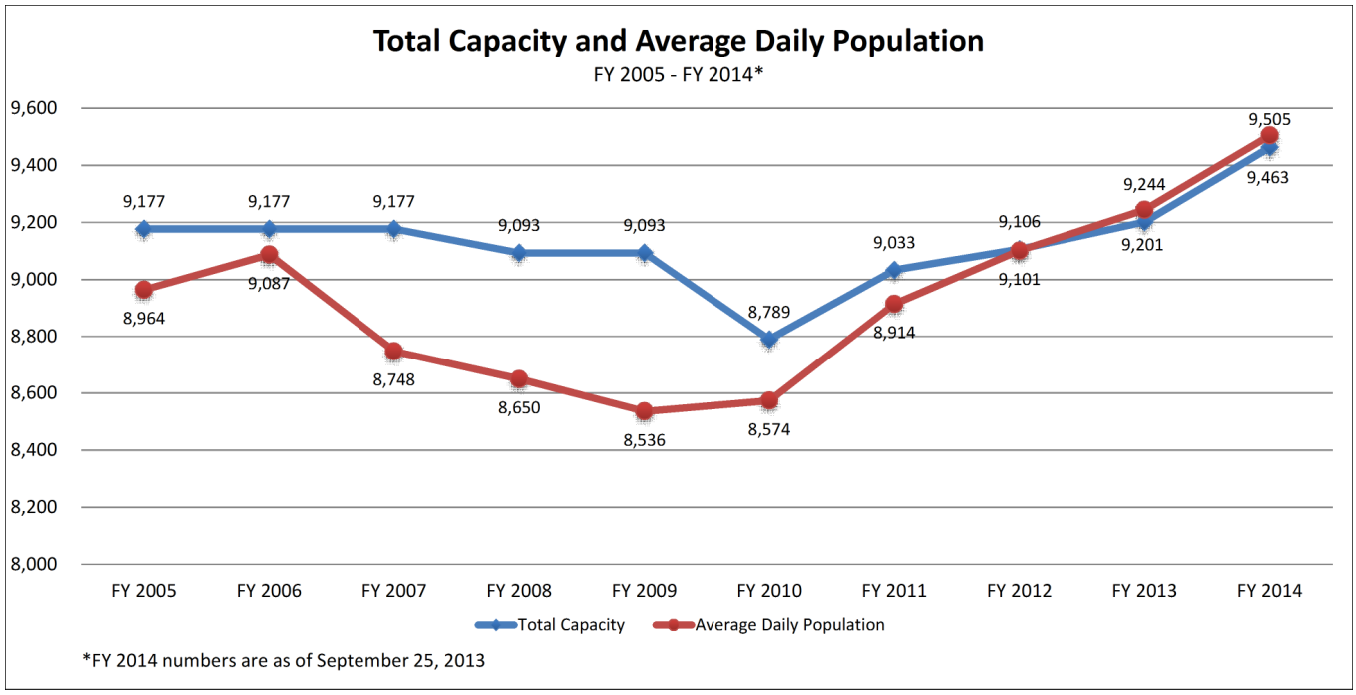
The population and capacity concerns continued into the early part of the 2000s. The utilization rate reached a peak of 99.0 percent in FY 2006. Between FY 2006 and FY 2009, the average daily population decreased by 551 inmates to 8,536 while the total capacity increased by 73 to 9,317 beds, and utilization reached a recent low at 93.9 percent. The average daily population (ADP) has increased consistently since, and the utilization rate reached 100.5 percent in FY 2013.



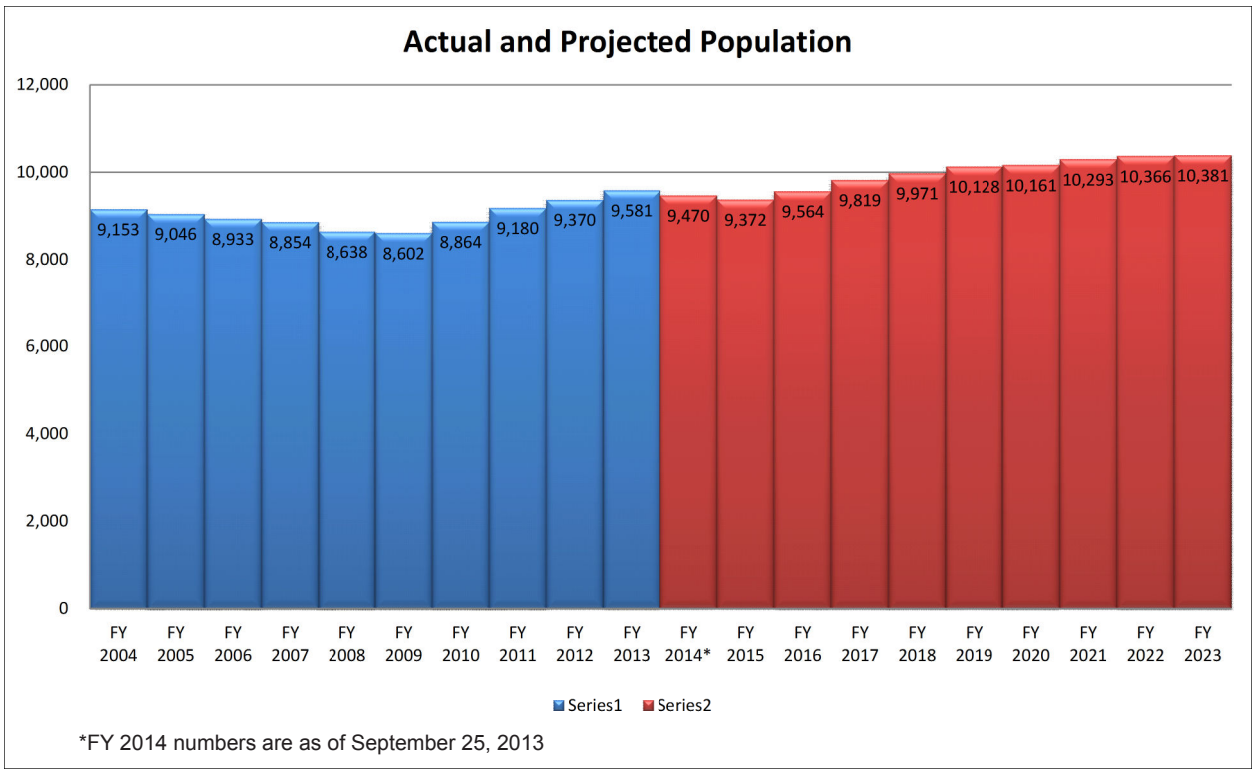
The budget reductions that occurred during FY 2009 prompted the DOC to suspend operations at three smaller minimum-custody facilities (Stockton, Osawatomie, and Toronto) and close the men's and women's conservation camps in Labette County. The Osawatomie facility since has been taken over by the Kansas Department for Aging and Disability Services. These suspensions and closings resulted in a decrease in total capacity by 447 beds.

Due to the increasing inmate population, the 2010 Legislature included a State General Fund appropriation for FY 2011 to reopen the Stockton Correctional Facility, which was reopened on September 1, 2010. In addition, prison beds at Larned Correctional Mental Health Facility and Lansing Correctional Facility that were unavailable due to renovation work have been opened again. During the 2012 Session, the Governor recommended the Labette facilities be repurposed as a 262-bed geriatric facility set to house inmates beginning in January 2013, and the DOC purchased a property to serve as a 95-bed minimum-security unit in Ellsworth that began housing inmates in September 2012. These additional beds brought the capacity of DOC facilities to 9,463 in FY 2013.

The increasing inmate population trend has continued into FY 2014. On September 25, 2013, the average daily inmate population for FY 2014 was 9,505, a utilization rate of 100.5 percent. An additional 192 inmates on average have been held in non-DOC facilities during FY 2014, primarily at Larned State Hospital and county jails. The DOC has a limited number of prison beds that are not counted in the official capacity, such as infirmary beds, that allow the population to exceed the official capacity.

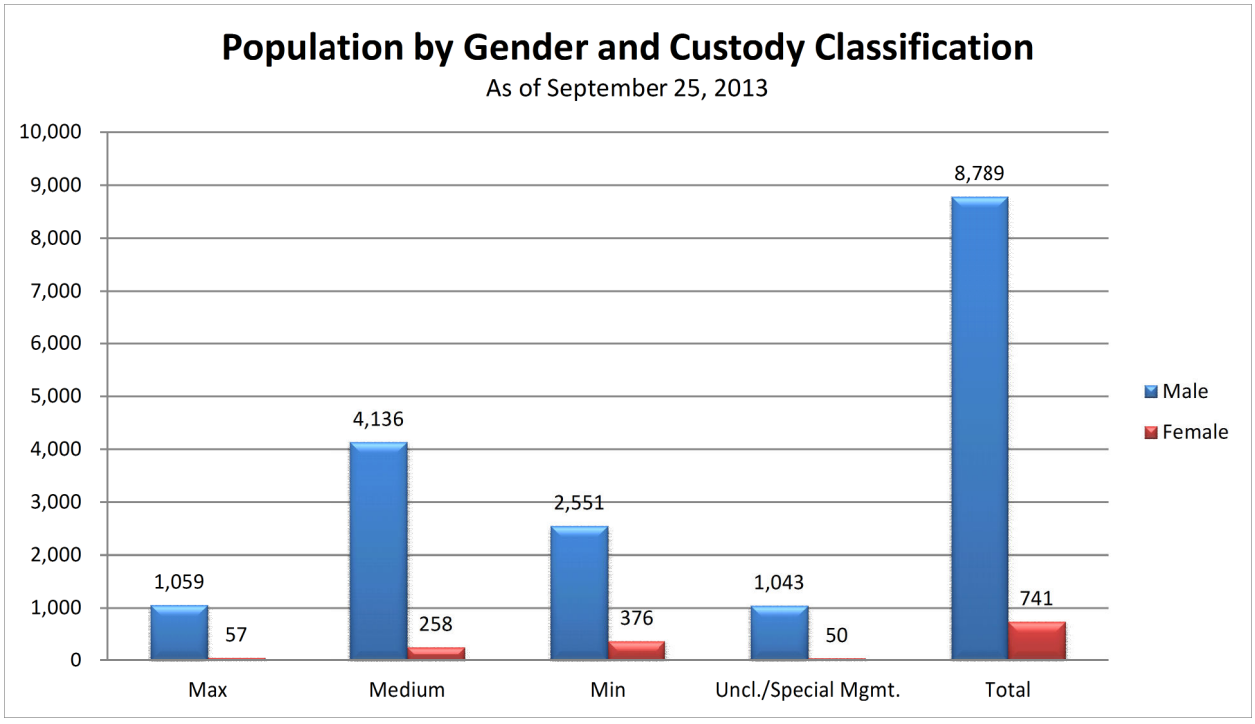


Budget reductions have prompted the DOC to reduce parole and post-release services and offender program services systemwide. The DOC continues to express concern that these reductions will create an increase in the average daily population even after the addition of $1.2 million in FY 2012 and FY 2013 for programs. The FY 2014 prison population projections released by the Kansas Sentencing Commission project the inmate population to exceed capacity by up to seven inmates by the end of FY 2014 and by up to 918 inmates by the end of FY 2023.



Population and Capacity by Gender and Custody Classification

In addition to total capacity, consideration also must be given to gender and custody classification. The following chart displays capacity and average daily population by gender and custody classification for FY 2013, to date.



Issues with inadequate capacity are more common among the higher custody levels of inmates. This is due to the fact that higher custody level inmates cannot be placed in a lower custody level cell (e.g., maximum inmates cannot be placed in medium or minimum cells). That is not the case for the lower custody level inmates, which can be placed in higher custody level cells. In addition, capacity in all-male or all-female facilities are not available for housing inmates of the opposite gender.

Consequences of Operating Close to Capacity

The following list illustrates some of the consequences of operating close to capacity:

- Excessive inmate movement;
- More difficult to manage emergencies;
- More difficult to separate inmates with conflicts (gangs, grudges);
- Greater reliance on segregation;
- Greater reliance on contract jail beds; and
- Cannot keep inmates nearer to their families, which creates more problematic releases.

Options for Increasing Capacity

If the need to increase inmate capacity arises, there are several options available. Two of the minimum-custody facilities that were "moth-balled" in FY 2009 to achieve budget savings remain closed under DOC ownership. The facility at Toronto has a capacity of 70 male inmates with an approximate annual operation cost of $966,500, and the north unit at El Dorado Correctional Facility has a capacity of 102 male inmates with an approximate annual operation cost of $1.2 million.

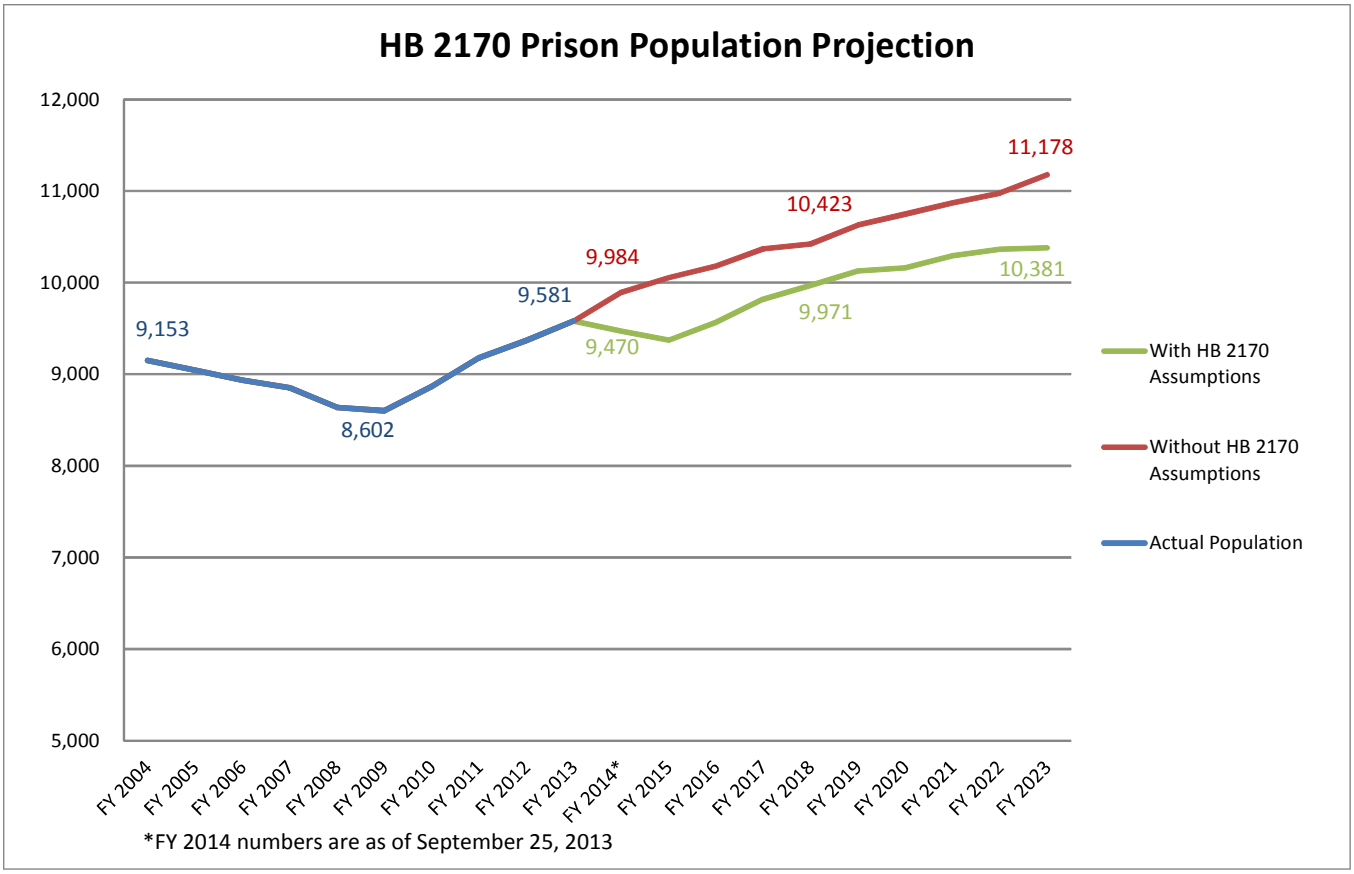
There also is the option of new construction to expand the inmate capacity. During the 2007 Legislative Session, the DOC received bonding authority totaling $40.5 million for new construction including adding cell houses at El Dorado, Stockton, and Ellsworth correctional facilities and a new facility in Yates Center. The Department issued $1.7 million in bonds for architectural planning at the four proposed sites, but the balance of the bonding authority was rescinded during the 2008 and 2009 Legislative Sessions. Planning was completed for the expansion of El Dorado Correctional Facility. The Department included plans for construction on the new cell houses at El Dorado in its five-year capital improvement plan beginning in FY 2014 at a cost of $23.2 million. The cell houses will have up to 256 beds each depending upon the combination of single- and double-occupancy cells.

HB 2170, Justice Reinvestment Act

The 2013 Legislature made several changes to sentencing, post-release supervision, and probation statutes through HB 2170, also known as the Justice Reinvestment Act. The Act was the result of the work of the Justice Reinvestment Working Group, which was established in 2012 to develop options to increase public safety and reduce corrections spending, including spending due to prison population. The four main objectives of HB 2170 are:

- Provide for swift and certain responses to offender non-compliance in the community;
- Provide graduated sanctioning options for judges;
- Establish presumptive discharge from supervision for certain low-risk offenders; and
- Mandate post-release supervision for offenders who would otherwise complete their underlying sentence while serving time on a sanction.

According to DOC, the financial savings for implementation of HB 2170 are $362,640 in FY 2014 and $1.5 million for FY 2015. The savings are a result of DOC closing three living units at three facilities during the fourth quarter of FY 2014 and throughout FY 2015. The agency also states HB 2170 averts over $53.0 million in additional spending needed to accommodate prison population growth for FY 2014 through FY 2018.



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Kansas Legislative Research Department

F-1
Sentencing

F-2
Kansas Prison Population and Capacity

F-3
Prisoner Review Board

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Corrections

F-3 Prisoner Review Board

The Prisoner Review Board (Board) is the releasing authority for incarcerated offenders who have committed the most serious, heinous, and detrimental acts against society. The Board also performs a variety of additional functions in the Kansas criminal justice system. As an integral part of the Kansas criminal justice system and consistent with the agency mission, the Board continually strives to provide for public safety through its work with offenders, corrections professionals, victims, families, the public, law enforcement officials, and other criminal justice stakeholders.

The Board was created by Executive Reorganization Order (ERO) No. 34 in 2011 and succeeds to the powers, duties, and functions of the Kansas Parole Board, which was abolished by the same ERO. The Prisoner Review Board consists of three members appointed by the Secretary of Corrections who serve at the pleasure of the Secretary. The Board currently consists of one full-time member and two part-time members. The ERO required these members to be then-existing employees of the Department of Corrections.

Parole Suitability

Parole suitability determinations extend to two populations, those with offenses occurring prior to July 1, 1993, and those sentenced under the Kansas Sentencing Guidelines Act for crimes so detrimental to social well-being that they are sentenced to life with a mandatory minimum term. Offenders with pre-guidelines offenses are parole eligible after serving the court-imposed minimum sentence, less good time credits as awarded by the Department of Corrections pursuant to statute and regulation.[1] An offender who earns all available good time may be eligible for parole no sooner than upon completion of one-half of the court-imposed minimum sentence. For offenders convicted of very serious crimes and sentenced to "Off Grid" terms pursuant to the Kansas Sentencing Guidelines Act, a life sentence is prescribed by the Guidelines with a fixed, mandatory minimum term (*i.e.*, no good time is available to this group). Examples of this type of sentence include the "Hard 50" sentence and sentences for "Jessica's Law" offenses. Upon serving the mandatory minimum term, these offenders also see the Board for determination of parole suitability.

1 Good time credits are calculated according to statute. For this group, good time is earnable at a rate of one day for every day served for sentences with a maximum of two years.

Kansas law stipulates that the Board may release to parole an offender who satisfactorily has completed the Program Agreement, required by KSA 75-5210a, when the Board believes he or she is able and willing to fulfill the obligations of a law-abiding citizen, and when the Board is of the opinion that there is a reasonable probability that the inmate can be released without detriment to the community or to the inmate [KSA 22-3717(g)]. Satisfaction of these conditions constitutes "parole suitability."

KSA 22-3717(h) directs the Board to consider whether the inmate has completed programs identified on a program agreement [KSA 75-5210a] and to consider "all pertinent information regarding such inmate, including, but not limited to" the following:

- Circumstances of the offense;
- Previous criminal history of the offender;
- Programs and program participation;
- Conduct, employment, attitude, and disciplinary history during incarceration;
- Reports of physical and mental examinations, including but not limited to any risk factors revealed by any risk assessments;
- Comments from public officials, victims or their families, offender family and friends, or any other interested member of the general public;
- Capacity of state correctional facilities;
- Input from staff where the offender is housed;
- Proportionality of time served to the sentence that would have been received under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and
- Pre-sentence report.

The Board conducts a parole hearing with each eligible inmate the month prior to the inmate's parole eligibility date. These hearings consist of interviews and reviews of all available reports and material pertinent to the case. The Board may parole the inmate if it believes the inmate is suitable for release. The Board also may decide to "continue," which postpones the parole decision for further deliberation or additional information. Finally, the Board may "pass" the inmate, which is a denial of parole for a specific period of time.

Imposition of Special Conditions of Supervised Release

For those offenders being released to postrelease supervision (rather than parole), the Board reviews the offender's release plan and may impose any conditions it deems necessary in the interests of public safety or the reintegration of the inmate into the community [KSA 22-3717(i)].

Alleged Violations of Post-Incarceration Conditions

The Board hears testimony and weighs evidence for offenders who stand accused of allegedly violating community supervision conditions and then renders decisions regarding necessity of withdrawal of community-based liberties for those offenders. This hearing provides the second stage in the two-stage process consistent with the U.S. Supreme Court's determinations found in *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

If an offender sentenced to an indeterminate term of incarceration violates parole after being granted such privilege by the Board, the term of revocation is made at the Board's discretion, within the boundaries of the sentence imposed by the court.

If an offender sentenced under the determinate sentencing guidelines is found to have violated the conditions of postrelease supervision, the Board may impose a revocation term of up to six months, unless the offender has acquired new convictions. This period of confinement may be reduced by up to three months based on the offender's conduct, work, and program participation during the incarceration. If the violation and revocation result from a new felony or misdemeanor conviction, the Board may require the offender to be confined for a period up to the remaining balance of the period of postrelease supervision.

Executive Clemency Applications

Executive clemency applications made to the Governor come before the Board for a recommendation before being decided upon by the Governor. Each application and all file material is reviewed by the Board prior to making any recommendation for or against the clemency application [KSA 22-3701(4)].

Public Comment Sessions

Public comment sessions are open meetings where the Board may receive comments regarding an offender's potential release on parole. These are held every month in Wichita, Topeka, and Kansas City. Victims, family of victims, offender friends and family members, and volunteers who work with the offender in prison are some of the most common participants at these meetings. These meetings conform to the Kansas Open Meetings Act requirements [KSA 75-4318].

Additional Roles and Responsibilities

Additional roles and responsibilities of the Board include:

- Review and rule on release requests from inmates who are functionally incapacitated [KSA 22-3728];
- Review and rule on release requests from inmates who are terminally ill [KSA 22-3729];
- Review and rule on early discharge requests [KSA 22-3722 and KSA 22-3717]; and
- Serve as a member of the Kansas Sentencing Commission [KSA 74-9102].

Recent Legislation

SB 411 (2008). The Legislature adopted the recommendation of the 2007 Special Committee on Judiciary by adding three factors to those that must be considered by the Board when making parole suitability determinations:

- Risk factors revealed by any risk assessment of the inmate;
- Recommendations by staff at the facility where the offender is housed; and
- Proportionality of time the inmate has served to the sentence a person would have been received under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration.

HB 2060 (2009). This bill required that the Board make available to the then-newly created Joint Committee on Parole Board Oversight redacted documents, records, and reports concerning 30 cases selected by the Secretary of Corrections. It also required the Board to provide to the Joint Committee a summary of each case, listing the factors and rationale used to grant or deny parole. The Joint Committee was required to submit a final report to the Legislature on or before January 1, 2010. These provisions expired on January 1, 2010.

SB 434 (2010). This bill required that any offender sentenced for a class A or B felony who had not had a parole board hearing in the five years prior to July 1, 2010, be reviewed by the parole board on or before July 1, 2012, if the review could be done within the Board's existing resources or with funding subject to appropriation.

Senate Resolution 1817 (2011). This resolution would have disapproved ERO No. 34 abolishing the Kansas Parole Board and establishing the Prisoner Review Board. Thus, passage of the resolution would have maintained the Kansas Parole Board as it existed prior to the ERO. The resolution failed to pass the Senate, and therefore ERO No. 34 went into effect on July 1, 2011.

House Sub. for Sub. for SB 159 (2012). This bill updated statutory references to reflect the transfer of duties from the Kansas Parole Board to the Prisoner Review Board. It also required the Board to order parolees or persons on postrelease supervision to agree to new search provisions established by the bill.

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G-1
School Finance

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Kansas Legislator Briefing Book 2014

Education

G-1 School Finance

School District Finance and Quality Performance Act; Bond and Interest State Aid Program

2013-2014 School Year

The School District Finance and Quality Performance Act provides the formula for computing General State Aid and Supplemental General State Aid for the 286 unified school districts in Kansas.

General State Aid Formula

Base State Aid Per Pupil x Adjusted Enrollment = State Financial Aid

According to KSA 72-6410, the Base State Aid Per Pupil (BSAPP) is $4,492. However, appropriations have only been made to fund a BSAPP of $3,838 for the 2013-2014 school year.

- *Enrollment Adjustments*
  - **Low Enrollment.** This weight applies to school districts having unweighted full-time equivalent enrollments of under 1,622. The low enrollment factors were adjusted during the 2006 Session. Note: a district cannot receive both low enrollment and high enrollment weighting.
  - **High Enrollment (Correlation).** This weight applies to districts having unweighted full-time equivalent enrollments of 1,622 and over. It is determined by multiplying the full-time equivalent enrollment by a factor of 0.029942. Note: a district cannot receive both low enrollment and correlation weighting.
  - **Transportation.** This weight helps compensate school districts for providing transportation to public school pupils who reside 2.5 miles or more by the usually traveled road from the school attended.
  - **Vocational Education.** This weight is determined by multiplying the full-time equivalent enrollment in vocational education programs approved by the State Board of Education by a factor of 0.5. Revenue generated by the weight must be spent for vocational education.

- **Bilingual Education.** This weight is determined by multiplying the full-time equivalent enrollment in bilingual education programs approved by the State Board of Education by a factor of 0.395. Revenue generated by the weight must be spent either for bilingual or at-risk education.
- **At-Risk Pupil.** This weight is determined by multiplying the number of pupils of a district who qualify for free meals under the National School Lunch Program by a factor of 0.456.

  Pupils who receive services are determined on the basis of at-risk factors determined by the school district board of education and not by virtue of eligibility for free meals.
- **High Density At-Risk Weighting.** This weight is determined by multiplying the number of pupils of a district who qualify for free meals under the National School Lunch Program by the following factors:
  - Those districts that have free meal student percentages of 50.0 percent or more would use a 0.105 factor; or
  - Those districts that have a density of 212.1 students per square mile and a free lunch percentage of at least 35.1 percent and above would use 0.105 factor.
  - For those districts having between 35.0 percent to less than 50.0 percent at-risk pupils, the district will subtract 35.0 percent from the percentage of at-risk enrollment in the district and multiply that result by 0.7. The product of this calculation multiplied by the at-risk student enrollment is the high-density at-risk weighting.
- **Non-Proficient At-Risk Weighting.** This weight is determined by calculating the number of pupils in a school district who are not eligible for the federal free lunch program and who scored below proficiency, or failed to meet the standard established by the State Board of Education, on either the reading or math state assessments in the preceding school year. This number is then multiplied by 0.0465. The product is the non-proficient at-risk weighting for the preceding school year.

  If the State Board determines that students in a school district are unable to take the state assessments as a result of a natural or manmade disaster, the non-proficient at-risk weighting for the school district will be equal to the school district's non-proficient at-risk weighting for the preceding school year.
- **School Facilities.** This weight is assigned for costs associated with beginning operation of new school facilities. The enrollment in the new school is multiplied by a factor of 0.25 to produce the weight adjustment. This weight is available for two school years only–the year in which the facility operation is commenced and the following year.
- **Ancillary School Facilities.** The law permits a school district to appeal to the State Court of Tax Appeals for permission to levy an *ad valorem* tax for ancillary school facilities for two years to continue to levy for up to six years. This tax is designed to defray costs associated with commencing operation of a new facility beyond the costs otherwise financed under the law.
- **Special Education and Related Services.** The amount of special education services state aid a school district receives is divided by BSAPP to produce this weighting. This procedure does not increase the school district general fund state aid requirement; it only increases the computed size of this budget for the benefit of the Local Option Budget provision of the law. Special education funding remains a separate

categorical aid program distributed on the basis of a statutory formula.

- **Cost-of-Living Weighting.** The law permits a local school board to levy a local tax for the purpose of financing the cost-of-living weighting in a district which has higher than the average statewide cost-of-living based on housing cost. The State Board of Education is required to determine which districts are eligible to apply for this weighting. The district will be deemed eligible if its average cost of living is at least 25.0 percent higher than the statewide average. In addition, to be eligible, the district must have adopted a local option budget in an amount equal to at least 31.0 percent of the state financial aid for the district. The cap that can be levied is 5.0 percent of the district's state financial aid calculation. The local school board is required to pass and publish a resolution authorizing the levy, and the resolution is subject to protest petition. If a school district already was authorized to levy a tax to finance the cost-of-living weighting in the 2006-07 school year, the law allows the district to continue to levy the tax at a rate that generates the same amount of revenue that was generated during the 2006-07 school year. The law allows this as long as the district adopts a local option budget which equals or exceeds the amount of local option budget adopted in the 2006-07 school year.
- **Declining Enrollment Weighting.** Any school district that has adopted a local option budget in an amount that equals at least 31.0 percent of the state financial aid for the district and has declining enrollment from the prior year may seek approval from the State Court of Tax Appeals to make a levy for up to two years, capped at 5.0 percent of the district's general fund budget. The levy is equalized up to the 75th percentile. An amount equal to the levy approved by the State Court of Tax Appeals is converted to the ancillary school facilities weight. The weight is calculated each year by dividing the amount of the levy authority approved by the State Court of Tax Appeals by BSAPP.

- **Decreasing Enrollment Provisions.** When a district's enrollment in the current school year has decreased from the preceding school year, the district may base its budget on the greater of unweighted full-time equivalent enrollment of the preceding year or the three-year average of unweighted full-time equivalent enrollment (current school year and two immediately preceding school years).

  In a school district for which the State Board of Education has determined that the enrollment of the district in the preceding school year had decreased from the enrollment in the second preceding school year and that a disaster had contributed to the decrease, the enrollment of the district in the second school year following the disaster is determined on the basis of a four-year average of the current school year and the preceding three school years. However, if the enrollment decrease provisions of the general law (above) are more beneficial to the district than the four-year average, the general law will apply.

- **Virtual School Act**

  The 2008 Legislature passed the Virtual School Act. For each school year that a school district has a virtual school, the district is entitled to Virtual School State Aid, which is calculated by multiplying the number of full-time equivalent pupils enrolled in a virtual school times 105.0 percent of the unweighted Base State Aid Per Pupil.

  In addition, virtual schools receive a non-proficient weighting of 25.0 percent multiplied by the full-

time equivalent enrollment of non-proficient pupils in an approved at-risk program offered by the virtual school. Advanced placement course funding of 8.0 percent of the BSAPP is paid to virtual schools for each pupil enrolled in at least one advanced placement course if the pupil is enrolled in a resident school district that:

- Does not offer advanced placement courses;
- Contains more than 200 square miles; or
- Has an enrollment of at least 260 pupils.

In addition, a pupil with an Individualized Education Plan (IEP) and attending a virtual school is counted as the proportion of one pupil, to the nearest tenth that the pupil's attendance at the non-virtual school bears to full-time attendance. Any student enrolled in a virtual school is not counted in the enrollment calculation. The law requires school districts to provide adequate training to teachers who teach in virtual schools or virtual programs. The definition of a virtual school requires that students make academic progress toward the next grade level and demonstrate competence in subject matter for each class in which a student is enrolled, and it requires age-appropriate students to complete state assessment tests.

- **Capital Outlay**

A 2013 change in state law authorizes a school district to use capital outlay funds for school district property maintenance, various equipment for academic uses, computer software, and performance uniforms; however, prior to such authorization, the law requires the Director of the Budget and the Director of Legislative Research to jointly certify to the Secretary of State that capital outlay state aid is fully funded at 100.0 percent of the amount a district is entitled to receive. (Capital outlay state aid has not been funded since the 2008-09 school year.)

The Local Option Budget and Supplemental General State Aid

The law provides that in addition to General State Aid, a school district board may approve Local Option Budget (LOB) spending in any amount up to 30.0 percent (and an additional 1.0 percent, subject to approval of the voters) of its State Financial Aid in the current school year.

Statute provides an alternative formula for the calculation of the LOB of a school district. State law authorizes a school district to calculate its LOB using a base state aid per pupil (BSAPP) of $4,433 in any school year in which the BSAPP is less than that amount. The bill also authorizes a school district to calculate its LOB using an amount equal to the amount appropriated for state aid for special education and related services in school year 2008-2009 or the current year's special education state aid, whichever amount is greater. This alternative provision expires on June 30, 2014.

School District Bond Principal and Interest Obligation State Aid Payments

Bond and interest state aid is based on an equalization principle which is designed to provide state aid in an amount inversely related to school district assessed valuation per pupil. One matching rate is applicable for the duration of bond and interest payments associated with bonds issued prior to July 1, 1992. A different matching rate applies during the life of bonds issued on or after July 1, 1992.

For the school district having the median assessed valuation per pupil, the state aid ratio is 5.0 percent for contractual bond and interest obligations incurred prior to July 1, 1992, and 25.0 percent for contractual bond and interest obligations incurred on July 1, 1992, and thereafter.

This factor increases (or decreases) by 1 percentage point for each $1,000 of assessed valuation per pupil of a district below (or above) the median.

Base State Aid Per Pupil History	
2005-06	$4,257
2006-07	$4,316
2007-08	$4,374
2008-09	$4,400 (originally $4,433)
2009-10	$4,280 (following adjournment of the 2009 Legislature)
2009-10	$4,012 (after the Governor's November 2009 allotment)
2010-11	$3,937
2011-12	$3,780
2012-13	$3,838
2013-14	$3,838
2014-15	$3,852 (approved by the 2013 Legislature)

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Energy and Utilities

H-1 Renewable Portfolio Standards, Wind Generated Electricity in Kansas, and Production Tax Credit

Renewable Portfolio Standards (RPS)

Beginning in 2007, utility companies throughout the state reached an informal, voluntary agreement, negotiated by the Governor's office, to adopt the goal of producing 10 percent of Kansas' energy from wind by 2010 and 20 percent by 2020. The agreement also called for a 10 percent statewide reduction in overall energy use.

The 2009 Legislature enacted the Renewable Energy Standards Act, which requires electric public utilities, except municipally-owned electric utilities, to generate or purchase specified amounts of electricity generated from renewable resources. The Kansas Corporation Commission (KCC) adopted regulations implementing the standards in Fall 2010. Legislation passed in 2012 requiring the KCC to determine the annual statewide retail rate impact from utilities meeting the renewable portfolio requirement.

Kansas' RPS requires utilities to obtain net renewable generation capacity constituting at least the following portions of each affected utility's peak demand based on the average of the three prior years:

- 10 percent for calendar years 2011 through 2015;
- 15 percent for calendar years 2016 through 2019; and
- 20 percent for each calendar year beginning in 2020.

Renewable energy credits may only be used to meet a portion of the requirement in 2011, 2016, and 2020, unless otherwise authorized by the KCC.

Each megawatt of eligible renewable capacity installed in Kansas after January 1, 2000, counts as 1.10 megawatts (MW) for purposes of compliance with the RPS. The capacity of any systems interconnected with the affected utilities under the Net Metering and Easy Connection Act or the parallel generation statute also count toward compliance with the renewable energy requirement.

Renewable energy may be generated by wind; solar thermal sources; photovoltaic cells and panels; dedicated crops grown for energy production; cellulosic agricultural residues; plant residues; methane from landfills or from wastewater treatment; clean and untreated wood products such as pallets; hydropower; fuel cells using hydrogen produced by one of the other renewable energy resources; energy storage connected to renewable generation by means of energy storage equipment; and other sources of energy, not including nuclear

power, that become available and are certified as renewable under rules and regulations of the KCC.

As of Fall 2013, 29 states, the District of Columbia, and two territories had adopted a renewable portfolio standard, while another eight states and two additional territories had adopted a renewable portfolio goal. While the specific guidelines of each state's legislation vary, the most common forms of renewable energy cited in RPS legislation are wind, solar, geothermal, biomass, and hydropower. More information about individual states can be found at www.dsireusa.org, the website for the Database of State Incentives for Renewables & Efficiency.

During the 2013 legislative session, HB 2241 was introduced. The bill would amend the state's existing RPS by allowing utilities additional time to meet the 10 percent and 15 percent standards and would eliminate the 20 percent standard. The bill passed the House Committee on Energy and Environment. The House Committee of the Whole did not vote on the bill and the bill was referred to the House Committee on Utilities and Telecommunications. From there the bill was referred to the House Committee on Appropriations and then back to the House Committee on Energy and Environment, where it remains.

Wind-Generated Electricity

Nearly all of Kansas' renewable generation of electricity comes from wind power. Ranked second in the nation for wind energy potential, Kansas doubled its wind generation in 2012, reflecting $3.0 billion in new investment. Currently, Kansas has over 2,700 MW of wind generate capacity in operation. An additional wind project is expected to be completed by the end of 2013 which will add 250 MW. In contrast, landfill gas and hydroelectric combined have about 14 MW of generation capacity.

In November 2012, Kansas Governor Sam Brownback joined governors of Colorado, Iowa, and Oregon to urge immediate extension by Congress of the PTC. Governor Brownback stated he strongly supports extension of the PTC so Kansas can continue to build wind energy and the jobs and electricity associated with it.

In Spring 2011, Governor Sam Brownback announced a voluntary agreement that would designate nearly 11,000 square miles of the Flint Hills as the "Tallgrass Heartland", an area that would be free of further development of commercial wind farms. Wind farms within the area with power purchase agreements would continue, but could not expand. Tallgrass Heartland runs from Riley and Pottawatomie counties in the north to the state's southern border.

Production Tax Credit

The Production Tax Credit (PTC) is a federal, per kilowatt-hour (kWh) tax credit for electricity generated by certain energy sources. The PTC ranges from 1.1 cents to 2.2 cents per kWh, depending upon the type of renewable energy source. The amount of the credit was established at 1.5 cents per kWh in 1993 dollars (indexed for inflation) for some technologies and half of that amount for others. Generally, facilities are allowed to claim the credit for ten years after being placed into service. The first PTC was created by the Energy Policy Act of 1992 and has been allowed to expire for short periods of time since 1992. The PTC is currently authorized by the American Taxpayer Relief Act of 2012, which extended the tax credits through January 1, 2014. In addition to extending the PTC, this legislation removed the "placed in service" deadlines and replaced them with deadlines that use the beginning of the construction as a basis for determining facility eligibility.

To qualify for the credit, the renewable energy produced must be sold by the taxpayer to an unrelated person during the taxable year. While the credit is the primary financial policy for the wind industry, other renewable energies also qualify. Eligible renewable sources include landfill gas, wind energy, biomass, hydroelectric energy, geothermal electric energy, municipal solid waste combustion, hydrokinetic power, anaerobic digestion, small hydroelectric energy, tidal energy, wave energy, and ocean thermal energy.

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H-1
Renewable Portfolio Standards, Wind Generated Electricity in Kansas, and Production Tax Credit

H-2
Electric Transmission in Kansas

H-3
Keystone Pipeline System in Kansas

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Energy and Utilities

H-2 Electric Transmission in Kansas

At its most basic level, the transmission system (or "grid") is an interconnected assembly of high-voltage transmission lines and associated equipment for moving electric energy at high voltages (typically 110 kilovolts [kV] or above) between points of supply and points of delivery. Transmission lines typically operate at higher voltages than distribution lines in order to minimize the amounts of energy lost during transmission.

Kansas is experiencing tremendous growth in new transmission lines. There was no significant build-out of transmission from the mid-1980's until about 2007. Since that time, the following high-voltage projects have been initiated or completed:

- Westar Energy completed new 345 kV transmission lines from Salina to Wichita, and from Rose Hill to the Kansas-Oklahoma border. From there, the line continues south to Sooner, Oklahoma;
- ITC Great Plains constructed a 345 kV line from Spearville to the Kansas-Nebraska border. From there, the line continues north to Axtell, Nebraska;
- ITC Great Plains and Prairie Wind Transmission (a joint venture between Westar Energy and Electric Transmission America, LLC) are jointly constructing a dual 345 kV project often referred to as the "Y-Plan". The line, which is scheduled to go into service in December 2014, will run from Spearville to Medicine Lodge to Wichita, with a connection south from Medicine Lodge to the Kansas-Oklahoma border. From the border, it continues south to Woodward, Oklahoma;
- ITC Great Plains and Westar Energy are jointly constructing a 345 kV line from Salina to Concordia, which is estimated to go into service in March 2018; and
- Clean Line Energy Partners is proceeding with planning for the Grain Belt Express, which would be the first high-voltage, direct current (HVDC) transmission line in Kansas, with a voltage of +/- 600 kV. The project proposes to gather wind-generated electricity from western Kansas at a point near Spearville and transport it to the energy markets of the central United States, with the line terminating in western Indiana. The Kansas Corporation Commission (KCC) issued a siting permit for the Kansas portion of the line on November 7, 2013, but required Clean Line to obtain siting approval in Missouri, Illinois, and Indiana before beginning construction in Kansas.

Funding for New Transmission

Kansas belongs to the Southwest Power Pool (SPP) regional transmission organization. The SPP covers a geographic area of 370,000 square miles, and manages transmission in all or parts of nine states: Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

One of SPP's responsibilities is regional transmission planning, which includes approving transmission projects that will benefit all or portions of the SPP region by strengthening reliability and reducing congestion on transmission lines. Projects approved by SPP are most often paid for under the Highway/Byway methodology which spreads the costs of projects with a voltage of 300 kV or greater (highway projects) across the entire SPP region. The costs of lower voltage projects are either split between the region and local zone (greater than 100 kV but less than 300 kV), or are borne entirely by the local zone (100 kV or less, called byway projects). Thus the costs of the transmission projects described on the previous page (except Grain Belt Express) are shared by all ratepayers in SPP; by the same token, Kansas ratepayers share in the costs of SPP-approved higher voltage projects in other states in the region.

The Grain Belt Express proposed project would not be funded under the Highway/Byway methodology. It is a "merchant" project. Under this model, Clean Line Energy, LLC incurs all costs of building the project and is solely responsible for recovering those costs. Clean Line expects to recover its costs by selling the electricity on the line in the energy markets of the central United States.

Siting Transmission in Kansas

Under Kansas law, electric utilities must obtain a siting permit from the KCC before they can begin site preparation for a transmission line or exercise the right of eminent domain to acquire land for the line. Initial SPP support for a transmission line addresses the general route, but states control the actual siting of the line. Kansas statutes define a transmission line as a line that is at least five miles long and which is used for bulk transfer of 230 kV or more of electricity.

The general process for siting a transmission line in Kansas is as follows:

- The utility hires a company to conduct a siting study. The purpose of the study is to gather data and analyze prospective routes;
- The utility then schedules open houses in multiple cities along the proposed routes to provide information, answer questions, and get feedback from interested parties. The utility uses this information to help choose between various routes;

[Note: The actions in the first two bullets are typical, but are not required by Kansas statutes.]

- The utility must submit an application for a siting permit to the KCC, identifying the proposed route. Submission of an application triggers the start of the 120-day period for the KCC to rule on the route;
- The KCC must hold a public hearing on the siting application within 90 days in one of the counties where the line is proposed to be built. The purpose of the hearing is to determine the necessity for and the reasonableness of the location of the proposed line;
    - A notice of the hearing must be published in newspapers; and
    - Written notice, including a copy of the siting application, must be provided via certified mail at least 20 days before the hearing to landowners whose land is proposed to be acquired in connection with the construction of or is located within 660 feet of the center line of the easement where the line is proposed to be located.
- The KCC may conduct an evidentiary hearing on a siting application;
- The KCC must issue a final order on the application within 120 days after the application was filed. The decision of

the KCC can be appealed to the Kansas Court of Appeals in accordance with the Kansas Judicial Review Act; and,

- If the KCC approves the siting application, the utility begins land acquisition along the approved route. Utilities can exercise the power of eminent domain if agreement cannot be reached with a landowner on compensation.
  - To exercise eminent domain, the utility must file a petition in district court and the court will appoint three appraisers to determine the fair market value of the property. Private property cannot be taken without just compensation. KSA 26-513 details the factors to be considered in determining fair market value.
  - The appraisers must view the land and must take oral and written testimony from the plaintiff and interested parties in a public hearing prior to submitting a report to the court of their appraisal of the value of the land and their determination of damages and compensation to the interested parties resulting from the taking.
  - The plaintiff or any defendant dissatisfied with the appraisers' award may file an appeal in the district court.

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Energy and Utilities

H-3 Keystone Pipeline System in Kansas

The Keystone Pipeline System includes several crude oil pipelines proposed or built by TransCanada, a Canadian energy company. The first phase of the Keystone Pipeline System originates in Hardisty, Alberta, and connects to Steele City, Nebraska, before turning east to serve refineries in Illinois. A portion of this pipeline crosses Kansas for approximately 100 miles, running through Marshall, Brown, Nemaha, and Doniphan counties. This first phase of the Keystone Pipeline System went into service in June 2010.

Keystone Cushing, the second phase of the Keystone Pipeline System, connects Steele City, Nebraska to Cushing, Oklahoma. The extension crosses Kansas for approximately 210 miles, through Washington, Clay, Dickinson, Marion, Butler, and Cowley counties. Keystone Cushing went into service in February 2011.

Keystone XL

In 2008, TransCanada proposed a major pipeline referred to as the Gulf Coast Expansion Project or Keystone XL, which would be a 1,179 mile, 36-inch diameter crude oil pipeline beginning in Hardisty, Alberta, and extending southeast through Saskatchewan, Montana, South Dakota, and Nebraska. It would incorporate the Keystone Cushing Pipeline before continuing through Oklahoma to a delivery point near existing terminals in Houston and Port Arthur, Texas.

In February 2012, TransCanada announced it was dividing the Keystone XL project into two parts – the Gulf Coast Project (from Cushing, Oklahoma, to the Gulf) and Keystone XL (Canada to Cushing, Oklahoma). Construction of the Gulf Coast Project began in August 2012, with an in-service date of mid-to-late 2013.

Approval from President Obama and the Department of State regarding the Presidential Permit for Keystone XL continues to be an ongoing issue.

Timeline

2008

- TransCanada proposes Keystone XL Pipeline and submits an application to the Department of State for a Presidential

Permit. The Department of State begins conducting an Environmental Impact Statement (EIS).

2009

- The Department of State conducts public meetings and collects public comments.

2010

- Canadian National Energy Board gives regulatory approval for the Pipeline and the Department of State issues its Draft Environmental Impact Statement (DEIS). The Environmental Protection Agency (EPA) determines the DEIS is inadequate and asks the Department of State to provide new analysis to address pipeline safety issues and greenhouse gas emissions. TransCanada announces it no longer seeks an exemption that would enable it to operate the pipeline at a higher pressure (a possible risk for tar sands pipelines).

2011

- January – TransCanada agrees to 57 safety measures requested by the Department of State and the Pipeline and Hazardous Materials Safety Administration relating to the construction, operation, and design of the pipeline.
- April – The Department of State releases a Supplemental EIS (SEIS) and requests public comments.
- June – The EPA issues a critical comment letter regarding the SEIS.
- August – Department of State issues the Final EIS, seeking public comments on it, and begins the National Interest Determination process (a special process for trans-boundary energy pipelines). Federal and state agencies are given until November 25 to provide input. Nebraska Governor Dave Heineman joins Nebraska's U.S. Senators in opposing the proposed route of Keystone XL over the Ogallala Aquifer and through the Nebraska Sandhills. Governor Heineman asks the Department of State to reject TransCanada's proposal.
- November – President Obama and the Department of State announce the decision for Keystone XL will not occur until 2013 (an 18-month delay), citing the need to assess alternative routes in Nebraska and environmental concerns. Nebraska enacts a law codifying a process for approving the route and directing the Nebraska Department of Environmental Quality (NDEQ) to cooperate in moving Keystone XL forward.
- December – The U.S. Congress passes legislation that contains an unrelated provision to force President Obama to make a decision on Keystone XL by February 12, 2012. President Obama signs the legislation into law.

2012

- January – President Obama denies TransCanada's application for a Presidential Permit.
- February – TransCanada announces it is dividing the Keystone XL project into two parts – the Gulf Coast Project (from Cushing, Oklahoma, to the Gulf) and Keystone XL (Canada to Oklahoma). In addition, TransCanada announces it will proceed with construction on the Gulf Coast Project, as this portion does not cross an international border, negating the need for a Presidential Permit.
- April – TransCanada submits alternative routing corridors to the NDEQ. The NDEQ begins the public comment and review process to determine an acceptable route.
- May – TransCanada submits a new Presidential Permit application to the Department of State for Keystone XL, including a new proposed route through Nebraska.
- June – Department of State issues notice of preparation on a Supplemental EIS and plans to hold a 45-day public comment period.
- August – TransCanada begins construction of the Gulf Coast Project,

with an anticipated in-service date of mid-to-late 2013.

- September – Department of State receives an environmental report from TransCanada.

2013

- January – Department of State receives notice from Governor Heineman of Nebraska that he accepts the route recommended by the NDEQ.
- March – Department of State releases documents for public review, including environmental impact statements and environmental resources information. The EPA announces the availability of the Draft version of the Supplemental EIS on its website, starting the 45-day public comment period.
- April – Department of State holds a public meeting in Grand Island, Nebraska. The comment period on Draft SEIS closes.
- May – U.S. Fish and Wildlife Service issues a biological opinion for the Keystone XL Pipeline to the Department of State, which is prepared consistent with the Endangered Species Act. The Department of State posts online the first set of approximately 100,000 comments, out of the more than 1.2 million received, on the Draft SEIS.
- September – President Obama and the Department of State continue to review the Keystone XL application for the Presidential Permit. No final date for a decision on the Presidential Permit has been released to the public.

Kansas Property Tax Exemption for Qualifying Pipelines

In May 2006, Kansas enacted the Kansas Energy Development Act (House Sub. for 303), which provided a property tax exemption for certain types of energy-related projects, including crude oil and natural gas pipelines. The exemption can be claimed for the period of construction and for 10 years after construction is completed. To qualify for the property tax exemption, a crude oil or natural gas pipeline must be located in Kansas and must meet the following criteria:

- It must be used primarily for transportation of crude oil and natural gas liquids;
- It must have a length of more than 190 miles in Kansas; and
- It must be accessible to refineries or natural gas liquid processing facilities in Kansas.

In October 2010, TransCanada filed a request with the Division of Property Valuation (Division), Kansas Department of Revenue, for a property tax exemption for Keystone Cushing, the second phase of the Keystone Pipeline System. Division officials did not recommend the approval of the tax exemption; however, the Court of Tax Appeals granted the exemption in April 2012 and subsequently denied a request by the Division to reconsider that decision. The Division filed for judicial review by the Kansas Court of Appeals, which upheld the 2012 ruling affirming a property tax exemption for TransCanada on April 20, 2013. The Division filed a petition for review in May 2013. TransCanada responded to the petition for review on June 19, 2013, which is most current action as of the date of this publication's printing.

TransCanada is paying property taxes for the portion of the first phase of the pipeline that runs through Northeast Kansas in Marshall, Brown, Nemaha, and Doniphan counties.

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I-1
Identification and Citizenship Requirements for Voter Registration and Voting

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Ethics and Elections

I-1 Identification and Citizenship Requirements for Voter Registration and Voting

For as long as voting has been a reality in the United States, the tension between voting access and security has existed. In the most recent chapter of this tension, voter identification and voter registration requirements have grown in scope in an attempt to increase voting security. This paper outlines the federal and state requirements in these two areas, as well as court decisions and relevant recent occurrences.

Part One—Voter Identification Requirements

National Voter Identification (ID) Requirements

The federal Help America Vote Act (HAVA) mandates that all states require identification from first-time voters who registered to vote by mail and did not provide identification with their mail-in voter registration. Public Law 107-252, Section 303, further specifies how a voter may meet these requirements:

(a) For those voting in person, by presenting to the appropriate official a current and valid photo ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address.

(b) For those voting by mail, by submitting with the ballot a copy of a current and valid photo ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address.

Kansas Law

Prior to the 2011 Legislative Session, Kansas law required persons voting for the first time in the county to provide ID unless they had done so when they registered. At that time, acceptable ID forms included a current, valid Kansas driver's license, nondriver's ID card, utility bill, bank statement, paycheck, government check, or other government document containing the voter's current name and address as indicated on the registration book. A voter's driver's license copy or number, nondriver's ID card copy or number, or the last four digits of the voter's Social Security number were acceptable when the voter was applying for an advance ballot to be transmitted by mail.

In 2011, the law changed significantly through the passage of HB 2067. Relatively minor amendments were made in 2012 SB 129. Effective January 1, 2012, all those voting in person are required to provide photo identification at every election (with the exception of certain voters such as active duty military personnel absent from the country on Election Day), and all voters submitting advance ballots by mail will be required to include the number on or a copy of a specified form of photo ID for every election. Free nondriver's ID cards and free Kansas birth certificates are available to anyone 17 or older for the purposes of meeting the new photo voter ID requirements. Each applicant for a free ID must sign an affidavit stating he or she plans to vote and possesses no other acceptable ID form. The individual also must provide evidence of being registered to vote. (For a detailed summary of HB 2067, see http://www.kslegresearch.org/Elections.htm.)

Other State Laws

Analysis of other states' laws is complicated both by lawsuits and, at least prior to the June 2013 U.S. Supreme Court decision *Shelby County v. Holder*, by the requirement for some states to obtain preclearance pursuant to Section 5 of the Voting Rights Act of 1965.

According to research conducted by the National Conference of State Legislatures (NCSL), a total of 34 states have passed voter ID laws. Not all 34 states' laws are in effect; some have delayed implementation dates and some are facing court challenges. Two key distinctions among the states' varying laws are described below:

- Whether the law is "strict" or not, *i.e.*, whether a voter is allowed to cast a valid ballot without first presenting ID. For example, Kansas' law is a strict one. Voters who do not show ID at the polls are given a provisional ballot.
- Whether the law requires a photo ID.

Based on these distinctions, Kansas' law would be labeled a strict law requiring photo ID. NCSL reports the following ten additional states have strict photo ID laws:

- Those currently in effect: Georgia, Indiana, and Tennessee.
- Those not currently in effect: Arkansas, Mississippi, North Carolina, Pennsylvania, Texas, Virginia, and Wisconsin.

While not affecting Kansas directly, the preclearance issue is currently important in the elections arena. As alluded to previously, "preclearance" refers to the federal law provision that prohibits any state that is a jurisdiction covered by section 5 of the Voting Rights Act of 1965 (as administered under 28 C.F.R. Part 51 App.) from implementing any change in its voting procedures without first obtaining "preclearance" from either the U.S. Attorney General or a three-judge panel of the U.S. District Court, D.C. [42 U.S.C.§ 1973c(a)]. For example, Texas' recently enacted photo ID law was denied preclearance by both the U.S. Attorney General and a federal district court. However, in *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013), the section of the Voting Rights Act of 1965 from which the current preclearance states originally were identified was ruled unconstitutional.

According to SCOTUSblog (a blogsite written by attorneys on actions of the U.S. Supreme Court) regarding the decision:

> "In an opinion by Chief Justice John Roberts that was joined by Justices Scalia, Kennedy, Thomas, and Alito, the Court did not invalidate the principle that preclearance can be required. But much more importantly, it held that Section 4 of the Voting Rights Act, which sets out the formula that is used to determine which state and local governments must comply with Section 5's preapproval requirement, is unconstitutional and can no longer be used. Thus, although Section 5 survives, it will have no actual effect unless and until Congress can enact a new statute to determine who should be covered by it. (Source: http://www.scotusblog.com/2013/06/details-on-shelby-county-v-holder-in-plain-english/)."

For a detailed analysis of other states' laws, please refer to http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx.

Part Two—Voter Registration Requirements

National Voter Registration Requirements

The U.S. Voting Rights Act of 1965 allows all U.S. citizens to vote at any election in any state (if they are otherwise qualified by law Title 42, Chapter 20, Subchapter I, Section 1971.)

The National Voter Registration Act of 1993, which expanded the locations at which a person may register to vote, requires that a voter registration application form used in conjunction with a driver's license application include a statement containing each eligibility requirement (including citizenship) for that state. (Title 42, Chapter 20, Subchapter I-H, Section 1973gg-3.)

Finally, HAVA (Public Law 107-252, Section 303) requires voter registration applicants provide one of the following when registering:

- The applicant's driver's license number, if the person possesses a current and valid driver's license.
- The last four digits of the applicant's social security number, if the person does not possess a driver's license.
- The applicant's state assigned identification number for voter registration purposes, for those applicants with neither a drivers license or a social security number.

Current Kansas Law

Prior to the 2011 Legislative Session, state law required an applicant for voter registration fill out a form specified by law and sign under penalty of perjury. Among a list of information items, the application form had to contain a box to check to indicate whether the applicant was a U.S. citizen. 2011 HB 2067 made it mandatory for an applicant to provide documentary proof of citizenship when registering to vote for the first time in Kansas. Documents acceptable for this purpose comprise a long list; among them are the following:

- Driver's license or nondriver's ID card issued by the appropriate agency in any U.S. state, if the agency indicates on the license or nondriver's ID card that the person has provided satisfactory proof of U.S. citizenship;
- Birth certificate that verifies U.S. citizenship to the satisfaction of the county election officer or Secretary of State;
- Pertinent pages of a U.S. valid or expired passport;
- Naturalization documents or the number of the naturalization certificate, with further instructions if only the number is provided; and
- Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.

For a complete list of allowable documents, see KSA 25-2309(l).

A person may request a free copy of his or her Kansas birth certificate for the purpose of registering to vote.

U.S. Supreme Court Decision and Response by the Kansas Secretary of State

On June 17, 2013, the U.S. Supreme Court held that a similar proof-of-citizenship law in Arizona "cannot stand in the face of the [National Voter Registration Act]." Options were allowed by the Court for the future, however, and the Kansas Secretary of State has pursued these options by establishing a two-tiered system of voting depending on the facts related to a prospective voter's registration. (Note: Again, the Kansas proof-of-citizenship requirement applies only in instances of voters registering to vote for the first time in Kansas.)

Following is the SCOTUSblog summary of the case in point (*Arizona v. Inter-Tribal Council of Arizona*, *Inc.*, 133 S. Ct. 2247 (2013)):

As part of an effort to increase voter registration and turnout, in 1993 Congress passed the National Voter Registration Act. The Act requires states to "accept and use" a specific federal form for voter registration; that form asks, among other things, whether the would-be voter is a citizen of the United States and over the age of eighteen. In 2004, Arizona voters approved a law that requires election officials in that state to refuse to register any would-be voter who cannot prove that he is in fact a citizen. Arizona residents, along with voting and civil rights groups, challenged the state law, arguing that it could not stand because it conflicted with, and was trumped by, the NVRA. The challengers won in the lower court, and the Supreme Court granted review last fall to consider not only whether the state law can survive, but also whether the lower court used the right test in making its decision: that court held that because the Constitution allows Congress to make or change election rules established by the states, Congress can veto any state laws relating to elections, even if it doesn't make clear that it intends to do so.

Today the Court held, in a seven-to-two decision by Justice Scalia, that Arizona's law cannot stand in the face of the NVRA. The Court first recognized that under the Elections Clause of the U.S. Constitution, Congress has the power to dictate when, where, and how elections are held, and state election laws that conflict with federal ones are therefore preempted and without effect. The Court thus held that by requiring states to "accept and use" the federal form, the NVRA effectively required the states to treat the federal form as sufficient evidence of citizenship without any additional proof, so that Arizona's proof-of-citizenship requirement was contrary to the NVRA, and therefore invalid. The Court recognized that the words "accept and use" do not necessarily carry such a broad meaning – they could mean only that the state was required to consider the federal form – but based on the context and the other provisions in the NVRA, the Court concluded that the requirement to "accept and use" the federal form has the stronger effect of requiring states to treat the federal form as sufficient. On the question of which legal test to apply, the Court made it clear that while preemption under the Supremacy Clause (which provides that federal law generally trumps contrary state law) requires Congress to clearly state its intent to preempt state requirements, preemption under the Elections Clause is more easily found because federal elections law will always displace state law.

Finally, the Court held that in the future, Arizona can ask the federal Election Assistance Commission, which creates the federal form, to include a requirement of additional proof of citizenship in the form, and to bring different legal challenges if the EAC refuses to do so.

Justice Kennedy drafted a separate opinion concurring in part and in the judgment; Justices Thomas and Alito each filed a dissenting opinion, arguing that Arizona's requirement should not have been held preempted.

(Source: http://www.scotusblog.com/2013/06/details-arizona-v-inter-tribal-council-of-arizona-inc/) (*Emphasis added*)

Since the June 2013 decision, Kansas Secretary of State Kris Kobach has begun to establish a two-tiered system of voting. The two-tiered system would allow or prohibit voting in Kansas' state and local elections, depending on which voter registration form has been completed by a prospective voter and whether the voter has supplied Kansas-required proof of citizenship when registering to vote. (According to an October 2013 article in the *New York Times*, the State of Arizona is establishing a similar two-tier system.) The tiers are as follows:

- A voter who has supplied the state-required proof of citizenship will be allowed to vote in any federal, state, or

local election in Kansas, regardless of whether the voter registered using the federal NVRA application or the state application.

- A voter who has not supplied proof of citizenship may vote *only in federal elections* if the voter has used the NVRA application to register.
- In the *Arizona v. Inter-Tribal Council* decision, Arizona was given the option of asking the federal Election Assistance Commission (EAC) to include an additional requirement related to proof of citizenship in its registration application form. Since Kansas' law is similar, it is anticipated the same would apply to Kansas. However, as of the publication of this paper it is impossible for either state to seek such addition from the EAC because of a lack of a quorum on the Commission. A review of the EAC website on November 14, 2013, confirms there are currently no members appointed to the EAC.

Source: http://www.eac.gov/about_the_eac/commissioners.aspx

In November 2013, the ACLU filed a lawsuit in Shawnee County District Court asking the court to prevent the implementation of the two-tiered system on the grounds that the system violates the *Kansas Constitution's* equal protection guarantee, violates the separation of powers set forth in the *Kansas Constitution*, and violates the Kansas Rules and Regulations Filing Act.

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J-1
Kansas Health Insurance Mandates

J-2
Payday Loan Regulation

J-3
Uninsured Motorists

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Financial Institutions and Insurance

J-1 Kansas Health Insurance Mandates

Background

Health insurance mandates in Kansas law apply to:

- Individual health insurance policies issued or renewed in Kansas.
- Group health insurance policies issued or renewed in Kansas. (The individual and group health policies are often referred to as accident and health or accident and sickness insurance policies in Kansas law.) Exceptions are noted below.
- Health Maintenance Organizations (HMOs) are included in the listing of policy issuers.

These mandates do not apply to:

- Self-insured health plans (ERISA plans*). Self-insured plans are governed by federal laws and are enforced by the U.S. Department of Labor. States cannot regulate these self-insured plans.
- Supplemental benefit policies. Examples include dental care; vision (eye exams and glasses); and hearing aids.

* ERISA = The Employee Retirement Income Security Act of 1974; states' laws that relate to employee benefits are pre-empted under this Act.

Since 1973, the Kansas Legislature has added new statutes to insurance law that mandate that certain health care providers be paid for services rendered (provider mandates) and be paid for certain prescribed types of coverage or benefit (benefit mandates).

Provider Mandates. The first mandates enacted in Kansas were on behalf of health care providers. In 1973, optometrists, dentists, chiropractors, and podiatrists sought and secured legislation directing insurers to pay for services the providers performed if those services would have been paid for by an insurance company if they had been performed by a practitioner of the healing arts (medical doctors and doctors of osteopathy). In 1974, psychologists sought and received approval of reimbursement for their services on the same basis. In that same year, the Legislature extended the scope of mandated coverages to all policies renewed or issued in Kansas by or for an individual who resides in or is employed in this state (extraterritoriality). Licensed special social workers obtained a mandate in 1982. Advanced nurse practitioners

received recognition for reimbursement for services in 1990. In a 1994 mandate, pharmacists gained inclusion in the emerging pharmacy network approach to providing pharmacy services to insured persons.

Benefit Mandates. The first benefit mandate was passed by the 1974 Legislature, through enactment of a bill to require coverage for newborn children. The newborn coverage mandate has been amended to include adopted children and immunizations, as well as a mandatory offer of coverage for the expenses of a birth mother in an adoption. The Legislature began its first review into coverage for alcoholism, drug abuse, and nervous and mental conditions in 1977. The law enacted that year required insurers to make an affirmative offer of such coverage which could be rejected only in writing. This mandate also has been broadened over time, first by becoming a mandated benefit and then as a benefit with minimum dollar amounts of coverage specified by law.

In 1988, mammograms and pap smears were mandated as cancer patients and various cancer interest groups requested mandatory coverage by health insurers. In 1998, male cancer patients and the cancer interest groups sought and received similar mandated coverage for prostate cancer screening. After a number of attempts over the course of more than a decade, supporters of coverage for diabetes were successful in securing mandatory coverage for certain equipment used in the treatment of the disease, as well as for educational costs associated with self-management training.

Table A - Kansas Provider and Benefit Mandates

Provider Mandates	Year	Benefit Mandates	Year
Optometrists	1973	Newborn and Adopted Children	1974
Dentists	1973	Alcoholism	1977
Chiropractors	1973	Drug Abuse	1977
Podiatrists	1973	Nervous and Mental Conditions	1977
Psychologists	1974	Mammograms and Pap Smears	1988
Social Workers	1982	Immunizations	1995
Advanced Registered Nurse Practitioners	1990	Maternity Stays	1996
Pharmacists	1994	Prostate Screening	1998
		Diabetes Supplies and Education	1998
		Reconstructive Breast Surgery	1999
		Dental Care in a Medical Facility	1999
		Off-Label Use of Prescription Drugs*	1999
		Osteoporosis Diagnosis, Treatment, and Management	2001
		Mental Health Parity for Certain Brain Conditions	2001

* Off-label use of prescription drugs is limited by allowing for use of a prescription drug (used in cancer treatment) that has not been approved by the federal Food and Drug Administration for that covered indication if the prescription drug is recognized for treatment of the indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

Legislative Review

Kansas law (KSA 40-2249a) requires the Legislature to review all state-mandated health insurance coverage periodically. The provider mandates have been in place, for the most part, longer than the benefit mandates and typically have not been the focus of the review. The mandate that has received a great deal of review is the alcohol, drug abuse, and mental illness mandate. A number of interim studies have been conducted on modifying the mandate, with the latest change allowing for mental health parity for certain brain diseases. The Legislature has considered a number of proposed mandates and enacted law to address some of the proposed modifications.

KSA 40-2248 requires the person or organization seeking a mandated coverage for specific health services, specific diseases, or certain providers of health care services as part of individual, group, or blanket health insurance policies, to submit to the legislative committees that would be assigned to review the proposal an impact report that assesses both the social and financial effects of the proposed mandated coverage. The law also requires the Insurance Commissioner to cooperate with, assist, and provide information to any person or organization required to submit an impact report. The social and financial impacts to be addressed in the impact report are outlined in KSA 40-2249. Social impact factors include:

- The extent to which the treatment or service is generally utilized by a significant portion of the population;
- The extent to which such insurance coverage is already generally available;
- If coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
- The level of public demand for the treatment or service;
- The level of public demand for individual or group insurance coverage of the treatment or service;
- The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts; and
- The impact of indirect costs (costs other than premiums and administrative costs) on the question of the costs and benefits of coverage.

The financial impact requirements include the extent to which the proposal would increase or decrease the cost of the treatment or service; the extent to which the proposed coverage might increase the use of the treatment or service; the extent to which the mandated treatment or service might serve as an alternative for a more expensive treatment or service; the extent to which insurance coverage of the health care service or provider can reasonably be expected to increase or decrease the insurance premium and administrative expenses of the policyholders; and the impact of proposed coverage on the total cost of health care.

State Employee Health Benefit Plan Study. KSA 40-2249a provides, in addition to the impact report requirements, that any new mandated health insurance coverage approved by the Legislature is to apply only to the state health care benefits program for a period of at least one year beginning with the first anniversary date of implementation of the mandate following its approval. On or before March 1, after the one-year period has been applied, the Health Care Commission is to report to the President of the Senate and the Speaker of the House of Representatives the impact the new mandate has had on the state health care benefits program, including data on the utilization and costs of the mandated coverage. The report also is to include a recommendation whether such mandated coverage should be continued by the Legislature to apply to the state health care benefits program or whether additional utilization and cost data are required.

Recent Review and Legislation

2009 Session

During the 2009 Session, both provider and benefits coverage requirements legislation was introduced. The legislation introduced included: certain

professionals, Behavioral Sciences Regulatory Board (BSRB) (SB 104, HB 2088); assignment of benefits (HB 2128); autism spectrum disorder (SB 12, HB 2367); dietary formulas (HB 2344); colorectal cancer screening (HB 2075/Sub. HB 2075; SB 288); mental health parity-full coverage (SB 181, HB 2231); and orally administered anti-cancer medications (SB 195). Additionally, the Kansas Insurance Department requested language to clarify the state's existing mental health parity requirements to meet compliance requirements of the federal HR 1424. The language of SB 49 was amended during the conference committee process and was incorporated in 2009 HB 2214. Among the modifications and enhancements to the existing mental health parity law, the bill designated the statutes applicable to the small group and large group plans; increased coverage for in-patient coverage of mental illness (small group) from 30 to 45 days and separately specified a limitation of not less than 30 days for in-patient treatment of alcoholism, drug abuse or substance abuse disorders; eliminated first dollar coverage requirements from the statutes now applicable to large and small groups (benefits are subject to same deductibles, copays, coinsurance, treatment limitations and out-of-pocket expenses as apply to other covered services); replaced references to "nervous or mental conditions" with the term "mental illness, alcoholism, drug abuse or substance use" (as defined in the DSM-IV, 1994); and increased the lifetime benefit for costs of out-patient treatment for mental illness, alcoholism, drug abuse and substance use disorders from $7,500 to $15,000, with no annual limit for outpatient treatment.

Legislative Review (pursuant to requirements of KSA 40-2249a). The Senate Financial Institutions and Insurance Committee and the House Insurance Committee also received briefings, during the regular session, from Committee staff on the current and recently considered health insurance mandates. Testimony also was received from interested parties.

2010 Session — An Emerging Trend: the Study Directive

The 2010 Legislature reviewed carryover mandates legislation and also introduced new measures for consideration. A modified version of 2009 SB 195 (oral anticancer medications; parity of pharmacy and medical benefits) was amended into 2010 SB 390, a bill updating requirements on insurers for genetic testing. Ultimately, the oral anticancer medication provisions were enacted in Senate Sub. for HB 2160, a bill that incorporated both oral anticancer medication provisions and an autism benefits study in the State Employee Health Plan. Those provisions, introduced in 2010 SB 554, are discussed below. The Legislature further considered the reimbursement of services provided by certain licensees of the BSRB, as proposed in 2010 HB 2546 (identical to 2009 SB 104 and HB 2088, with technical amendments to update statutory references). This legislation is discussed below under the study directives from the 2009-2010 Legislature. The Legislature again considered a bill that would have required health insurance plans to provide coverage for telemedicine, defined by the bill as using telecommunications services to link health care practitioners and patients in different locations. The bill was jointly referred to two House committees and died in Committee.

The Study Before the Law. Recently, the Legislature's review and response to health insurance mandates has included a new direction: the study before the mandate is considered and enacted by the Legislature. Procedurally (as prescribed by the 1999 statute), a mandate is to be enacted by the Legislature, applied to the State Employee Health Plan for at least one year and then a recommendation is made about continuation in the Plan or statewide (KSA 40-2249a). 2008 HB 2672 directed the KHPA to conduct a study on the impact of extending coverage for bariatric surgery in the State Employee Health Benefit Plan (corresponding mandate legislation in 2008: SB 511; HB 2864). No legislation requiring treatment for morbid obesity (bariatric surgery) was introduced during the 2009-2010 Session. 2009 Sub. for HB 2075 would have directed the KHPA to study the impact of providing coverage for colorectal cancer screening in the State Employee Health Plan, the affordability of the coverage in the small business employer group, and the state high risk pool (corresponding legislation in 2009: SB 288; introduced HB 2075). The study bill was re-referred

to House Insurance and no action was taken by the 2010 Legislature. During the 2010 Session, the House Insurance Committee again considered the reimbursement of services provided by certain BSRB licensees (SB 104; HBs 2088, 2546). The House Insurance Committee recommended a study, amended into SB 388, by the KHPA on the topic of requiring this reimbursement. The study design would have included determining the impact that coverage has had on the State Employee Health Plan, providing data on utilization of such professionals for direct reimbursement for services provided, and comparing the amount of premiums charged by insurance companies which provide reimbursement for these provider services to the amounts of premiums charged by insurers who do not provide direct reimbursement. Under the bill, the KHPA also would have been required to conduct an analysis to determine if proactive mental health treatment results in reduced expenditures for future mental and physical health care services. SB 388 died in conference committee. The study requirement also was included as a proviso to the Omnibus appropriations bill (SB 572, section 76). The provision was vetoed by the Governor; the veto was sustained.

Finally, the 2010 Legislature again considered mandating coverage for certain services associated with the treatment of Autism Spectrum Disorders (ASD). The 2010 Legislature in Senate Sub. for HB 2160 requires the Health Care Commission, which administers the State Employee Health Plan, to provide for the coverage of services for the diagnosis and treatment of ASD in any covered individual whose age is less than 19 years during the 2011 Plan Year. Services provided by the autism services provider must include applied behavioral analysis when required by a licensed physician, licensed psychologist, or licensed specialist clinical social worker. Benefits limitations are applied for two tiers of coverage: a covered person whose age is between birth and age seven, cannot exceed $36,000 per year; and a covered person whose age is at least seven and less than nineteen, cannot exceed $27,000 per year. The Health Care Commission was required to submit on or before March 1, 2012, a report to the Senate President and the Speaker. The report was to include information pertaining to the mandated ASD benefit coverage provided during the 2011 Plan Year, including information on cost impact and utilization. The Legislature was permitted to consider in the next session following the receipt of the report whether to require the coverage for autism spectrum disorder to be included in any individual or group health insurance policy, medical service plan, HMO, or other contract which provides for accident and health services and which is delivered, issued for delivery, amended, or renewed on or after July 1, 2013.

Senate Sub. for HB 2160 also required all individual or group health insurance policies or contracts (including the municipal group-funded pool and the State Employee Health Plan) that provide coverage for prescription drugs, on and after July 1, 2011, to provide coverage for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits. The Health Care Commission, pursuant to KSA 40-2249a, was required to submit a report to the Senate President and the House Speaker that indicates the impact the provisions for orally administered anticancer medications have had on the State Health Care Benefits Program, including data on the utilization and costs of such coverage. The report also was required to include a recommendation on whether such coverage should continue for the State Health Care Benefits Program or whether additional utilization and cost data is required. The report was required to be provided to the legislative representatives on or before March 1, 2011.

The 2012 Legislature considered legislation (HB 2764 and SB 226) to enact ASD coverage requirements for covered individuals under the age of 19, similar to those requirements specified in 2010 Senate Sub. for HB 2160; the proposed requirements, however, would have applied to all individual and group health insurance policies, plans, and contracts subject to state law. The 2012 bills exempted the proposed ASD coverage from the test track requirements specified in KSA 40-2249a. HB 2764, as amended by the House Committee of the Whole, also would have required coverage in the State's Medicaid Autism Waiver, Children's Health Insurance Program (CHIP), and

other Medicaid programs covering children. The bill, among other things, also would have required a study to determine the actual cost of providing coverage for the treatment and diagnosis of ASD in any individual living in Kansas who is under the age of 19. HB 2764, as amended, passed the House and was referred to a Senate Committee. Attempts to advance the bill to Senate General Orders failed and the bill died in Committee. ASD legislation has been introduced during the 2013 Session (SB 175; HB 2317; HB 2395.)

The Health Care Commission has opted to continue ASD coverage in the State Employee Health Plan, as had been required under the 2010 law for Plan Year 2011, for both Plan Year 2012 and Plan Year 2013. In June 2013, the Health Care Commission authorized a permanent ASD benefit.

Affordable Care Act Requirements — Essential Benefits

The Affordable Care Act (ACA) does not directly alter or preempt Kansas or other states' laws that require coverage of specific benefits and provider services. However, the law (Section 1302(b) of the ACA and subject to future federal regulations by the U.S. Department of Health and Human Services), directs the Secretary of HHS to determine the "essential health benefits" to be include in the "essential health benefits" package that Qualified Health Plans (QHPs) in the ACA Exchange marketplaces will be required to cover (coverage effective beginning in 2014). "Essential health benefits", as defined in Section 1302(b), include at least the following general categories:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness and chronic disease management; and
- Pediatric services, including oral and vision care.

Insurance policies are required to cover these benefits in order to be certified and offered in Exchanges; additionally, all Medicaid State plans must cover these services by 2014. Women's preventive health services were separately defined by federal regulation in August 2011 (Federal Register Vol. 76, No. 149: 46621-46626) and required that "a group health plan or health insurance issuer must cover certain items and services, without cost-sharing." Coverages included annual preventive-care medical visits and exams, contraceptives (products approved by the FDA), mammograms, and colonoscopies.

Under the ACA, QHPs are not barred from offering additional benefits. However, starting in 2014, if a state law mandates coverage not included in the final HHS "essential benefits" list of coverages, the state will pay any additional costs for those benefits for Exchange enrollees.

Benchmark. HHS issued a bulletin on December 16, 2011, to provide information about the approach the agency plans to take in its rulemaking for defining "essential benefits". The bulletin outlined a "benchmark approach" which would allow states the ability to choose from the following benchmark health plans (a benchmark plan would reflect the scope of benefits and services offered by a "typical employer plan"):

- One of the three largest small group health plans in the state by enrollment;
- One of the largest state employee health plans by enrollment;
- One of the three largest federal employee health plans by enrollment; or
- The largest HMO plan offered in the state's commercial market by enrollment.

If the State of Kansas chooses not to select a benchmark, the default option would become the small group plan with the largest enrollment in Kansas. In 2010, the Insurance Department contracted with Milliman, Inc., to analyze plans and related benefits and services available in Kansas. The Milliman Report analyzed nine plans,

and its findings were included in a September 2012 public hearing on essential benefits and selection of a benchmark for Kansas. The Insurance Commissioner submitted the following recommendations and conclusions to the Governor for consideration of a state Essential Health Benefit benchmark:

- Recommend: Selection of the largest small group plan, by enrollment; the Blue Cross Blue Shield of Kansas Comprehensive Plan.
- Recommend: Supplementing the recommended benchmark plan with the required pediatric oral and vision benefits available in the Kansas CHIP.
- Conclusion: Anticipate further guidance from HHS on the definition of "habilitative services" later in the fall of 2012. No specific recommendation was made by the Commissioner.

A benchmark preference was not provided to the HHS by September 30, 2012 deadline.

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J-1
Kansas Health Insurance Mandates

J-2
Payday Loan Regulation

J-3
Uninsured Motorists

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Financial Institutions and Insurance

J-2 Payday Loan Regulation

The Legislature first began its review of payday lenders during its 1991 Session. At that time the Consumer Credit Commissioner requested legislation while citing a concern that check cashing for a fee had become a prevalent practice in Kansas and was being conducted in a manner that would be considered a violation of the Uniform Consumer Credit Code (UCCC). The unregulated entities were advancing money and agreeing to hold a post-dated check for a specified, short period of time, and were collecting charges exceeding those allowed under the UCCC. The Commissioner indicated to the Senate Committee on Financial Institutions and Insurance that as it appeared there was a need for this type of service, there existed a need to regulate the activity in a manner that allowed the activity to take place lawfully while at the same time providing protection to consumers utilizing the check cashing service. The Kansas Attorney General had also concurred that such practice violated the UCCC and, consequently, had taken action to enforce the law against the payday lenders. The financial records of seven companies were subpoenaed and examined, and all but one of those companies closed their businesses in Kansas.

1991 SB 363 addressed the concern about excessive interest charges and fees, and the Attorney General supported its passage. In some instances, the annual percentage rate (APR) on these short-term loans ranged from 600 percent to 1600 percent. Despite these rates, neither the Commissioner nor the Attorney General's Office had received many complaints. When the companies closed, the Attorney General received a number of telephone calls from consumers asking when those companies would reopen. Although the bill was recommended favorable for passage by the Senate Committee, it was defeated on final action by a vote of 6 yeas and 32 nays. The Senate later reconsidered its action and sent the bill back to Committee for possible action at a later date.

Review of payday loan regulation continued for a second year. During the 1992 Session, the Senate Committee further considered SB 363 and the House Committee on Commercial and Financial Institutions reviewed HB 2749. The House Committee recommended its bill favorable for passage. On final action (initial vote had been 80 to 35), however, a member reported in his vote explanation that passage of such legislation would burden poor consumers as it would raise the interest rate tenfold from 36 percent to 360 percent. Fifty members changed their votes and the legislation was killed. When the Senate returned to its consideration of payday loan regulation, the Consumer

Credit Commissioner explained the House action on HB 2749 and rebutted the conclusion that the bill raised interest rates. The Senate Committee received favorable testimony from both the Attorney General's Office and the payday loan industry and voted to amend SB 363 by inserting the provisions of HB 2749. SB 363, as amended, passed the Senate 40 - 0 and was referred to the House Committee, which recommended it favorable for passage after considerable discussion. Ultimately, the bill died at the end of the Session.

In the Legislature's third year of consideration of payday loan legislation, both the House and Senate agreed on 1993 HB 2197, and the bill was signed by the Governor with an effective date of April 8, 1993. This new law, made supplemental to and a part of the UCCC, applied to short-term consumer loan transactions with a single payment repayment schedule, for which cash is advanced in an amount equal to or less than the maximum allowed to a supervised lender ($680) and subject to the following conditions:

- On any amount up to and including $50, a finance charge of $5.50 could be charged; on amounts in excess of $50 but not more than $100, the finance charge could be 10 percent of the amount plus a $5 administrative fee;
- On amounts in excess of $100 but not more than $250, the finance charge could be 7 percent of the amount with a $10 minimum plus a $5 administrative fee; and
- For amounts in excess of $250 but less than the maximum amount, the finance charge could be 6 percent of the amount with a minimum of $17.50 plus a $5 administrative fee.

The law also provided that:

- The maximum term of the loan cannot exceed 30 days.
- The contract interest rate after maturity cannot be more than 3 percent per month.
- No charge for insurance or any other charge can be made of any nature except as provided, including cashing the loan proceeds if given in a check.
- No loan made under this section may be repaid with the proceeds of another loan made by the same lender.
- If cash is advanced in exchange for a personal check and the check is returned for insufficient funds, only a return check charge provided in the UCCC is allowed.
- Certain loans made under this section may be unconscionable conduct—the Commissioner is to consider in making such a finding the ability of the borrower to repay the loan and whether the loan meets the amount and terms limitations of this section.

Kansas was one of the first states to enact legislation specific to the regulation of payday loans. The payday loan statute remained substantively unchanged for a number of years after its enactment. There have been attempts, however, to amend the law. In 1999, for example, a model act drafted by the Consumer Federation of America was introduced in Kansas as SB 272. The proponent of SB 272 explained at the time of its introduction that it was "legislation addressing the exorbitant interest rates charged by payday loan companies and how such consumer issues fall under the auspices of the UCCC." At the time of the hearing on the bill, other than the sponsor, there were no proponents present to testify on its behalf. The Acting Consumer Credit Commissioner commented to the Senate Committee on Financial Institutions and Insurance that the bill "would substantially alter the rates charged by payday loan companies." In testimony on another UCCC bill (SB 301) before the Committee, the Attorney General advised the Committee that while that "office does not take complaints on consumer credit, the Attorney General is of the opinion that the payday loan industry is not in the best interest of society as it spirals people into bankruptcy" Opponents of the bill, several operators of payday loan shops in the state, argued that reducing the allowable interest rate charge to 36 percent would have the effect of putting them out of business. Having heard the issues raised by SB 272, the Committee took no action on the measure.

SB 301, as enacted in 1999, made several significant changes in the UCCC. Among those changes was the transfer for the enforcement of the UCCC from the Consumer Credit Commissioner to a newly designated position of Deputy Commissioner for Consumer and Mortgage Lending and the elimination of interest rate caps on consumer loans. One effect of the interest rate amendment was to remove the escalator provision, which adjusted the dollar amount of consumer loans subject to the then highest allowed interest rate. Since that dollar amount also was the cap for payday loans, the bill established that amount, $860, as the new cap on payday loans.

During the 2001 Session, the Deputy Commissioner (Code Administrator) requested the passage of HB 2193, which would limit the number of loans a consumer could have from a single payday lender to two at any one time and require a "Notice to Borrower" appear on each loan agreement stating that Kansas law prohibits a lender and its related interest from having more than two loans outstanding to the same borrower at any one time. While the bill was amended by the House Committee of the Whole, those amendments were removed from the bill and the bill passed as proposed by the Deputy Commissioner.

During the 2002 Session, HB 2877 was introduced and would have reduced the allowable charges permitted on payday loans. On loan amounts up to and including $50, the charge would have been reduced from $5.50 to $4.00; on amounts in excess of $50 but not more than $100, the charge would have been reduced from 10 percent to 8 percent; on amounts in excess of $100 but not more than $250, the charge would have been reduced from 7 percent to 5 percent and the minimum allowable charge would have been reduced from $10 to $8; and on amounts of $250 but not greater than $860, the charge would have been reduced from 6 percent to 4 percent and the minimum reduced from $17.50 to $12.50. HB 2877 did not have a hearing and died in the House Committee on Financial Institutions at the end of the 2002 Session. The Chairpersons of the House Committee on Financial Institutions and the Senate Committee on Financial Institutions and Insurance requested and the Legislative Coordinating Council created an interim Special Committee on Financial Institutions and Insurance to study, among other topics:

> Regulation of "payday" loans and entities making such loans, including allowable loan rates and charges; loan terms and conditions and collection issues; and appropriate levels of regulation of lenders, including the activities of some lenders to associate with federally chartered financial institutions and then claim exemption from state regulation.

The Special Committee on Financial Institutions and Insurance did not meet during the 2002 Interim nor complete a report on its assigned subject matter.

The 2004 Legislature passed a measure, HB 2685, addressing the regulation of payday loans. The bill:

- Established a seven-day minimum term for any loan;
- Limited the number of loans to three for any borrower within a 30-day period and required lenders to keep a journal of all loan transactions which includes the name, address, and telephone number of the borrower, and the date each loan is made and the date each is due;
- Required the lender, upon receipt of a check from the borrower, to immediately stamp the check with an endorsement that states: "Negotiated as part of a loan made under KSA 16a-2-404. Holder takes subject to claims and defenses of maker. No criminal prosecution";
- Allowed a borrower, under the terms specified, to rescind the transaction without cost not later than the end of the business day following the day on which the transaction was made; and
- Outlined a list of acts or practices prohibited in connection with a payday loan.

The Senate Committee on Financial Institutions and Insurance also had reviewed a payday loan bill, SB 439, that would have created a maximum

loan amount ($500, rather than $860) and a flat fee (not more than $15 per $100 loaned). The bill received a hearing, but no action was taken on the bill and the bill died in Committee.

Finance Charge, Protections for Military Borrowers

The Office of the State Bank Commissioner's representatives brought legislation to the 2005 Legislature to enhance enforcement of both mortgage brokers under the Kansas Mortgage Business Act and supervised lenders under the Code. Senate Sub. for HB 2172 contained the provisions of another measure, Sub. for SB 223, a bill which included provisions for both mortgage brokers and supervised lenders. In addition to the additional enforcement powers and penalties created by the bill, the legislation also amended the finance charges for payday loans under the UCCC (KSA 16a-2-404). The finance charge for cash advances equal to or less than $500 is to be an amount not to exceed 15 percent of the amount of the cash advance. The bill also required publication of the notice in payday loan agreements in Spanish.

In addition, Senate Sub. for HB 2172 enacted new law concerning military borrowers, with lender provisions to:

- Not garnish any wages or salary for service in the armed forces;
- Defer all collection activity against a borrower who is deployed to combat or combat support posting for the duration of such posting;
- Not contact any person in the military chain of command of a borrower in an attempt to make collection;
- Honor all terms of the repayment agreement; and
- Not make any loan to any military borrower whenever the base commander has declared such person's place of business off limits to military personnel.

A military borrower is defined as any member of the Armed Forces of the United States, any member of the National Guard, or any member of the Armed Forces Reserve.

More recently, the Special Committee on Financial Institutions and Insurance convened during the 2005 Interim to study topics that included a broad review of the Uniform Consumer Credit Code. A proposed nondepository lending model, a closed-end installment loan (proposed in 2005 HB 2278, 2006 SB 376), was reviewed by the Committee. A hearing was held on SB 376 during the 2006 Session, but no action was taken on the bill and it died in Committee.

Legislative Proposals, 2007-2008 Biennium and 2009-2010 Biennium

The regulation of payday lending again was addressed during the most recent legislative sessions. 2007 SB 217 and HB 2244 would have added requirements to the law regulating payday lenders. Under the proposals, consumers would not be allowed to have more than two outstanding loans at any one time, and they would not be allowed more than five consecutive loans with the same lender. Under terms of both bills, a statewide database would have been developed to ensure compliance. The House Committee on Insurance and Financial Institutions held a hearing on HB 2244 and a related bill, HB 2245 (addressing vehicle title loans), during the 2007 Session; no action was taken on either bill at the time of the hearing. The 2008 Legislature introduced an additional measure to address payday lending, HB 2717, (a bill similar to HB 2244), without the database requirements. No action was taken on the payday lending legislation or the vehicle title legislation during the 2007-2008 biennium. Similar legislation was not introduced for consideration during the 2009 Session.

The 2010 Legislature introduced legislation (SB 503) that would have required a $1 surcharge to be assessed on each payday and title loan. The surcharge would have been paid by the borrower to the lender and then remitted to the Office of the State Bank Commissioner (OSBC). Upon receipt of each remittance, the moneys would then have been transferred to the Professional Development Fund (Department of Education) and expended to fund professional development programs or topics that dealt with personal financial literacy. The OSBC had indicated in the fiscal note that the bill

would generate approximately $1.2 million from the estimated 1.2 million payday and title loans that will be issued in FY 2011. The bill was referred to the Senate Financial Institutions and Insurance Committee; the bill died in Committee.

Most recently, SB 30 and HB 2036 were introduced during the 2013 Session. The bills would amend the UCCC to prevent lenders from making payday loans to a consumer that already has two outstanding loans with any lender. Restrictions would also be established on the amount of consecutive loans allowable between a particular borrower and lender. Additionally, the bill would permit the Code Administrator (OSBC) to establish an internet database; a verification fee of up to $1.00 could be charged by the OSBC/vendor to each lender that would be required to access the database prior to making a new loan. SB 30 was referred to the Senate Financial Institutions and Insurance Committee and HB 2036 was referred to the House Financial Institutions Committee.

Payday Lending Activity – Kansas

The Office of the State Bank Commissioner (the Division of Consumer and Mortgage Lending) maintains a list, available to the public, of entities that are authorized to engage in the practice of consumer lending or mortgage business entities. The list contains the license number, company name, company location, and date of next renewal. The Division also maintains a list of individuals and entities not authorized to conduct such business in Kansas. Both lists are accessible on the Office's website at: http://www.osbckansas.org/DOCML.html.

Data provided by the Code Administrator (the Deputy Commissioner, Consumer Mortgage and Lending) indicates that as of June 30, 2013, the Office has issued supervised loan licenses to 398 payday and title loan locations. Title loans are another form of consumer credit regulated under the Uniform Consumer Credit Code. The number of payday and title loan locations, the Office reported, increased from 223 to 368 between 2004 and the end of the calendar year 2005 following the statutory fee increase (Senate Sub. for HB 2172) for payday lenders. CY 2012 reports submitted by payday lenders indicate that 1,082,716 payday loans were made to Kansas consumers for a total amount of $413.9 million. (During that same time period, 28,337 title loans were made for a total amount of $21.7 million.) In 1995, 36 locations offered payday loans in Kansas.

Federal Financial Regulatory Reform, Consumer Protections and Payday Loans

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law ("Dodd-Frank Act", PL 111-203). Title X of the Dodd-Frank Act, entitled the Consumer Financial Protection Act of 2010, established a Bureau of Consumer Financial Protection within the Federal Reserve System with rulemaking, enforcement and supervisory powers over a number of financial products and services and the entities selling them (including payday and student loans). The law also transferred to the Bureau the primary rulemaking and enforcement authority over several federal consumer protection laws, including the Truth in Lending Act. The Bureau does not, however, have the authority to establish usury limits (such as a cap on interest rates) on payday loans. Among the provisions applicable to the use of payday loans (short-term loan products) is Title XII of the Dodd-Frank Act, the Improving Access to Mainstream Financial Institutions Act of 2010. Rather than specific regulations affecting payday lending, the Act provides incentives to financial institutions to offer low-cost alternatives – small-dollar loan products with lower interest rates and less predatory practices. The Act authorizes the Secretary of the Treasury to establish grants to provide these low-cost loans.

Eligible entities include:

- Any FDIC institution;
- State, local, or tribal government entities;
- Community development financial institutions (CFDI's); and
- 501(c)3 organizations. [Section 1205]

In order to receive the grant, the loan provider must offer financial literacy and education opportunities, such as relevant counseling services, educational courses, and wealth building programs, to each small-dollar loan consumer.

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Kansas Legislative Research Department

J-1
Kansas Health Insurance Mandates

J-2
Payday Loan Regulation

J-3
Uninsured Motorists

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Financial Institutions and Insurance

J-3 Uninsured Motorists

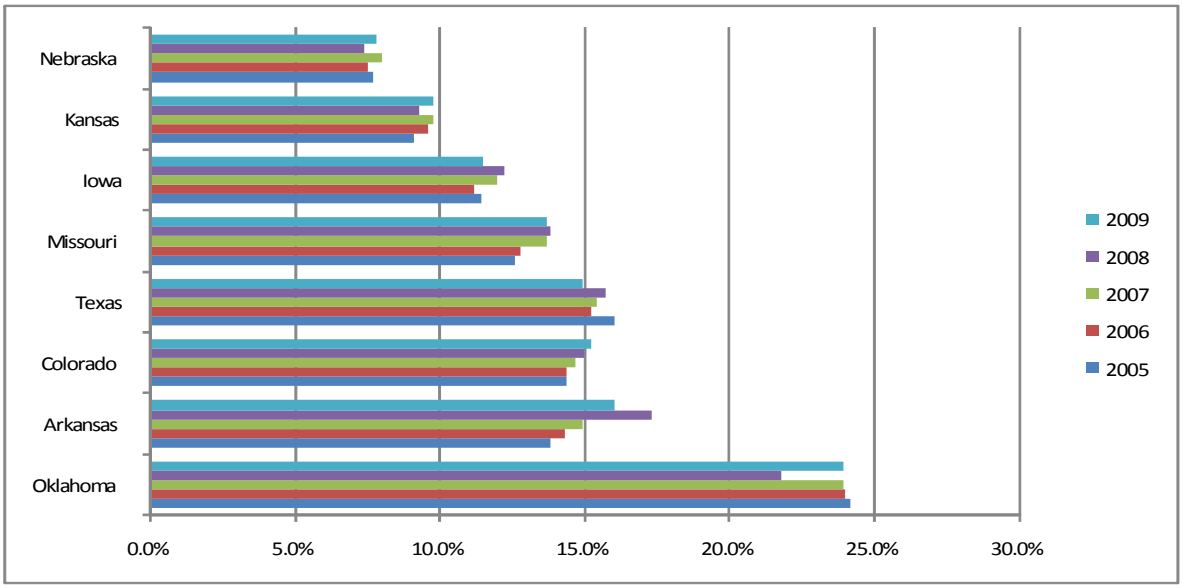
Uninsured Motorists: Basic Questions and Answers

What does "uninsured" mean when speaking of uninsured motorists? Kansas law requires that a vehicle operated on state highways be insured. Criteria differ from state to state, but in general the term "uninsured motorist" is applied to these groups:

- Motorists without insurance driving uninsured vehicles;
- Motorists with insurance driving uninsured vehicles;
- Motorists driving with insurance, but denied coverage;
- Motorists whose insurance carrier has become insolvent; and
- Unknown motorists who cause crashes, regardless of insurance (hit and run).

How many motorists are uninsured? No one knows for certain, in any state, and the answers depend on how the rate is measured. Cross-checking between records of insured vehicles and records of registered vehicles is one method, but that rate will not include vehicles that are not registered. The Insurance Research Council (IRC) periodically releases a rate that is based on uninsured motorist and bodily injury insurance claims. The graph on the next page shows trends for Kansas and nearby states; 2009 data were the most recent available when this report was written.

Rates of Uninsured Motorists, Kansas and Nearby States, 2005-2009



Sources: "Uninsured Motorists," 2008 and 2011 Editions, Insurance Research Council

The IRC states that a 1 percent change in the unemployment rate, up or down, changed the uninsured motorist rate by 0.75 percent. This could mean that Kansas' rate of uninsured motorists has declined slightly since 2009: the official unemployment rate published by the Department of Labor was 4.1 percent for 2007, 6.7 percent for 2009, and 5.9 percent for July 2013.

What does Kansas law say about motor vehicle insurance? All states require vehicles operated on public roadways to be insured, at a minimum for liability.

In Kansas a vehicle must be insured before it can be registered and the owner must "maintain financial security continuously throughout the period of registration." (KSA 2010 Supp. 40-3118)

- Proof must be provided. A driver must show proof of financial security in the event of a crash (KSA 8-1604(a)) and at any time requested by a law enforcement officer (KSA 2010 Supp. 40-3104(d)). Also, the Director of Vehicles (at the Department of Revenue) is authorized to require a vehicle owner or the owner's insurance company to provide records proving the continuous coverage. Kansas law allows coverage to be proven at registration with various types of documents and, since 2001, on-line or electronically; (For registration purposes, the Director may verify insurance coverage on-line or electronically (KSA 2012 Supp. 8-173(d)). Since 2004, the Insurance Commissioner has been authorized to require companies to provide electronic verification. Proof of insurance may be displayed on a portable electronic device. (KSA 2013 Supp. 8-173(d)).
- Punishments include fines, jail time, and suspension or revocation of a driver's license, vehicle registration, or both. In addition to fines of $300 to $1,000 for a first violation and $800 to $2,500 for a subsequent conviction within three years, a violator can be jailed for not more than six months. The Director of Vehicles may suspend a vehicle's registration and its owner's license when the Director has *prima facie* evidence that continuous financial security was not maintained. The reinstatement fee is $100 ($300 if

a subsequent violation within one year). (KSA 2013 Supp. 40-3104, 40-3118). In addition, under the terms of 2011 SB 136 (KSA 2012 Supp. 40-3130), an uninsured motorist operating a vehicle involved in a crash may not collect certain noneconomic damages ("no pay, no play").

How can a state deter motorists from driving vehicles that are not insured? Research suggests states have taken combinations of three approaches:

- Create a culture of having insurance. While not all factors that create such a culture are known, researchers say there appear to be links to consistent enforcement.
- Make insurance more affordable. Approaches include the New Jersey "Basic" policy and California's eligibility-restricted Low Cost Automobile Insurance Program.
- Punish those who have been found to have no insurance. However, researchers have not found a direct correlation between harsh statutory punishments and lower rates of uninsured motorists.

A driver's license is required to get vehicle insurance in nearly all cases. Three states (New Mexico, Utah, and Washington) had law in place before 2013 that allows certain immigrants who cannot prove lawful presence to receive state-issued driving privilege cards and, with the cards, obtain motor vehicle insurance. An additional eight states (California, Colorado, Connecticut, Illinois, Maryland, Nevada, Oregon, and Vermont) plus Puerto Rico had enacted similar provisions in 2013 as of early October. The new laws have implementation dates ranging from November 2013 to January 2015.

How can insurance coverage be verified electronically? Approaches to electronic verification use one or both of two main approaches: (1) the state creates and maintains a database; or (2) the state checks against insurance companies' data. Under either scenario, the state usually is assisted by a vendor to use the data to determine whether a vehicle is insured. The state registration database, which contains information such as the vehicle identification number (VIN) and the owner's name, is the link between the license plate number entered by a law enforcement officer, Division of Vehicles employee, or court employee and the information about the vehicle. Each approach has its advantages and disadvantages, and some states (such as Texas) have used combinations.

- If a state maintains a database (an approach in use for many years), all the data is in a single place and in a single format, and coverage will be listed regardless of whether the insured has changed companies. However, data lag behind company records, and there are no national standards. The state has responsibility for proprietary data.
- The Insurance Industry Committee on Motor Vehicle Administration (IICMVA) has established standards for on-line, real-time verification of insurance company records. Data are as current as a company's files, and the company retains its data. "Real-time" is not defined consistently, but IICMVA standards require a participating insurance company to make data available at all times, allowing down time for maintenance. MV Verisol is a leading company in on-line verification using the IICMVA model; it gave a presentation to various committees during the 2010 Legislative Session. Alabama enacted a law in 2011 to require implementation of a verification system meeting IICMVA standards beginning January 1, 2013. Idaho, Minnesota, and Mississippi enacted similar legislation in 2012. Minnesota's new system is to be fully operational by August 1, 2013; Idaho's bill becomes effective July 1, 2015. Montana expanded its IICMVA model verification from use only by troopers in 2012 to use by all law enforcement and county treasurers in 2013.

What priorities for an electronic verification system have been determined for Kansas? In its third-year report, to the 2009 Legislature, Kansas'

Electronic Motor Vehicle Financial Security Verification Task Force (whose members included legislators and representatives of property and casualty and automobile insurers, the Kansas Insurance Department, the Kansas Department of Revenue, law enforcement, and consumers) cited four goals to serve as the framework for addressing electronic real-time verification:

- Assist the Director of Motor Vehicles and county treasurers in registration of motor vehicles in compliance with motor vehicle financial security law;
- Provide law enforcement officers with roadside information during traffic stops to determine whether vehicles are in compliance with motor vehicle financial security law;
- Provide greater assurance to the motoring public that other vehicles on the road are insured as required by law; and
- Offer convenient insurance policy interface and reporting for companies required to provide insurance policy information to the state.

A representative of the Kansas Department of Insurance, also representing members from the Department of Revenue, suggested twelve requirements for the system design. Those suggestions included access to information nationwide, not just for vehicles registered in Kansas; a system that is easily, reliably and accurately accessible from a patrol car and from fixed locations; and compatibility with nearly all state and insurance company systems. The suggested requirements also included that a new system be established legislatively.

How will one know whether an action the state takes reduces the rate of uninsured vehicles? Measured rates would decrease. The rates measured could include the rate of registered vehicles for which insurance cannot be confirmed and the IRC-determined rate (based on claims). Also, violations for no insurance would decrease. The following table shows trends in violations related to no vehicle insurance from data kept by the Division of Vehicles.

Kansas Violations Related to No Vehicle Insurance, 2004-2011

Violation	2004	2005	2006	2007	2008	2009	2010	2011	2012
Conviction for No Insurance	15,974	15,908	14,247	24,189	13,530	13,093	13,569	12,185	12,650
Warning Notice - Accident, No Insurance			6,943	6,497	6,571	4,867	7,058	6,024	5,888
Suspension Notice - Accident, No Insurance	4,000	7,369	4,318	4,243	4,027	3,236	4,619	4,129	3,816
Warning Notice - Fail to File/Lapse			25,896	32,643	29,563	25,678	27,630	23,183	21,886
Suspension Notice - Fail to File/Lapse	21,733	38,888	23,543	27,362	25,420	22,032	24,502	22,624	21,273
Insurance Verification received from Courts and Law Enforcement	110,401	119,714	128,420	110,652	103,924	114,593	141,406	108,808	146,830
Evidence of Insurance Filings (SR 22 forms)	69,746	77,351	87,891	80,642	82,687	71,759	65,847	76,736	63,157
Evidence of insurance cancelled (SR 26 forms)	33,842	33,142	36,447	36,580	41,504	35,742	35,012	39,596	32,253

Source: Kansas Department of Revenue.

What bills have been introduced in Kansas since 2005 to deter motorists from driving vehicles that are not insured? As noted above, a state can create a culture of having insurance, make insurance more affordable, and punish those who have been found to have no insurance. The table below summarizes recent bills related to uninsured motorists, in those categories; the reader should be aware that these categories may overlap within individual bills.

Biennium	Bill Number	Summary	Disposition
Create a culture of having insurance			
2005-2006	SB 321	Require a real-time, online insurance verification system, to be implemented by January 1, 2008.	Died in Senate committee
2005-2006 2007-2008	SCR 1619 (2006) SCR 1603 (2007) SCR 1616 (2008)	Authorize the Electronic Motor Vehicle Financial Security Verification System Task Force.	Enacted (Published reports are available.)
2009-2010	SB 392 and HB 2474	Require the Department of Revenue, in consultation with the Insurance Commissioner, to implement an online motor vehicle financial security verification and compliance system, using a vendor.	SB died in Senate committee; HB – see House Sub. for SB 260
2009-2010	SCR 1631	Reactivate the task force studying design and implementation of an electronic motor vehicle financial security verification system.	Died in House committee
Make insurance more affordable			
No bills directly addressed affordability, but bills summarized elsewhere in this table could affect insurance affordability.			
Punishment			
2005-2006	SB 322	Increase penalties under the Kansas Automobile Injury Reparations Act (KAIRA).	Died in House committee
2005-2006	HB 2305	Limit on recovery of insurance amounts to an uninsured motorist who is injured (“no pay, no play”).	Failed on House Committee of the Whole vote
2005-2006	Sub. for HB 2690	Address resuspension and revocation of driver’s licenses.	Portions (not including the penalty provisions) were placed into Sub. for HB 2706, which was enacted
2005-2006	HB 2755	Same as HB 2305.	Died in House committee
2007-2008	SB 615	Amendments to the KAIRA to require additional steps in prosecuting an uninsured motorist (UM), authorize a court to order vehicle impoundment or immobilization for up to 30 days, limit recovery for property damage if no financial security (proof of insurance) on the vehicle.	Died in House committee
2007-2008	HB 2378	Prohibit the owner of an uninsured vehicle from recovering property damage to that vehicle in a crash with an insured vehicle.	Died in House committee
2007-2008	HB 2867	Allow a court to order vehicle impoundment or immobilization for up to 30 days.	Died in House committee
2009-2010	House Sub. for SB 260	Require the Department of Revenue, in consultation with the Insurance Commissioner, to implement a motor vehicle financial security verification and compliance system by March 1, 2011.	Died on general orders in the House
2011	SB 136	Prohibit a cause of action for non-economic loss for anyone operating an uninsured vehicle who, at the time of the accident, had not maintained personal injury protection (PIP) coverage.	Enacted (KSA 40-3130)

More detail on this topic is available in the article "Uninsured Motorists: Questions and Answers" available through the Kansas Legislative Research Department website, under "Capitol Ideas," then "Transportation." Appendix A to that article includes IRC rates of uninsured motorists for all states; Appendix B includes additional information on each of the bills summarized above.

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Kansas Legislative Research Department

K-1
Concealed Carry

K-2
Uniform State Laws—Knives, Handguns, State Pre-emption, and Unlawful Discharge

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Firearms and Weapons

K-1 Concealed Carry

Kansas legislation (known as the Personal and Family Protection Act) regarding concealed carry of handguns was revised during recent legislative sessions. The changes generally streamlined the process of applying for a license and modified the basic requirements for licensing and renewing licensure. The term "weapon" was changed to "handgun" to more accurately reflect the type of firearm covered by the legislation. Anyone licensed may carry concealed when hunting, fishing, or fur harvesting. In addition, a person with a legally acquired sound suppression device may use such device during these activities.

The 2013 Legislature enacted Senate Sub. for HB 2052 that adds new sections to the Personal and Family Protection Act, primarily authorizing concealed carry of handguns by licensees into certain public buildings enumerated in the legislation. Also passed was SB 21, which enacted firearms-related amendments.

Background

Currently, 50 states allow the concealed carry of handguns (CCH), with Illinois recently allowing CCH. States may be categorized into whether an entity is a "shall issue" or "may issue" jurisdiction. Entities that are "shall issue" will issue to private citizens a concealed weapons permit as long as they meet all legal requirements. Entities that are "may issue" have the authority to make judgments on whether or not a permit will be issued to private citizens even after they have met all other legal requirements.

There are 23 states which shall issue permits to their residents only; and there are 19 states which shall issue permits to their residents and non-residents. There are three states, and New York City, which may issue permits to residents only; and there are five states which may issues permits to residents and non-residents.

Some states have reciprocity agreements with other entities, which means those states honor the other entity's CCH. There are other situations in which one state will recognize another entity's permit, but the other entity will not reciprocate in recognition of a permit. Acceptance of another state's permit may be limited to only residents of that state, not the non-residents who hold permits. Kansas licensing of CCH is honored in 34 states, for instance, but not in 15 other states, nor in the District of Columbia or New York City.

Kansas Law

The Legislature passed the Personal and Family Protection Act in 2006, allowing licensed persons to carry concealed weapons on and after January 2, 2007. Kansas is a "shall issue" state wherein a person who meets concealed carry qualifications cannot be denied a license. In addition, Kansas is a reciprocal state where a person who has a concealed carry license or permit from another state is allowed to carry a concealed firearm in Kansas.

The 2010 Legislature modified the original 2006 authorizing statutes. House Sub. for SB 306 amended the Personal and Family Protection Act, which previously established the CCH. The amendments removed a number of provisions, modified other provisions, adjusted various fees associated with licensing, added several new provisions, and made a number of technical changes in the original law. The legislation included the following items:

- Changed the term "weapon" to "handgun" in the Act;
- Deleted a number of licensing requirements that had to be met prior to licensing in order to qualify to carry a concealed handgun after compliance with the application and training requirements;
- Maintained the requirements to be met prior to obtaining a concealed carry license that a person is at least 21 years of age, is a resident of the state and county where application for licensing is made, is not prohibited from possessing a firearm either by federal or state law;
- Added a provision that would allow a person to carry a concealed handgun while the application is pending if the individual meets certain criteria enumerated in a new provision;
- Eliminated certain requirements for license renewal;
- Modified the driver's license requirement for dependents of certain military personnel relative to the license application process;
- Reduced the current fees associated with licensing for concealed carry and also reduced fees for renewals;
- Eliminated the requirement for fingerprinting of applicants for renewal of a concealed carry license and added a requirement for a name-based national criminal records check for renewals;
- Added a provision that extends the term of a license for 90 days after a person is no longer a resident of the state;
- Modified the provisions which govern the public and private places a licensee may not carry a concealed handgun and provided new language for violations, with a first offense carrying a $50 fine, a second offense a $100 fine, and the third or subsequent offense a class B misdemeanor;
- Excluded parking lots and garages from being included in any public or private facility where a concealed handgun is prohibited;
- Revised the dimensions, locations, and other features of signs prohibiting the concealed carry of handguns, subject to rules and regulations adopted by the Attorney General;
- Amended the provisions governing the crime of carrying a concealed handgun while under the influence of alcohol or drugs;
- Deleted implied consent for testing for alcohol or drugs under most circumstances, except in cases of death or serious injury caused by the holder of a concealed carry handgun license; and
- Added an additional exception to the general criminal prohibition of firearms possession for individuals who hold a license to carry a concealed handgun.

The 2011 Legislature allowed CCH licensed persons to carry while lawfully hunting, fishing, or fur harvesting, and to use silencers on those weapons.

The 2013 Legislature amended existing law concerning firearms, criminal law, and the Personal and Family Protection Act (concealed carry of

handguns). The principal legislation was Senate Sub. for HB 2052, which:

- Prohibits the unlawful discharge of a firearm within or into the corporate limits of any city. The bill provides exemptions for when a firearm may be discharged within or into a city and also classifies the unlawful discharge of a firearm as a class B, nonperson misdemeanor;
- Modifies the Personal and Family Protection Act to allow the possession of firearms on certain governmental property, including in state and municipal buildings;
- Defines, for the purposes of the bill, the terms "adequate security measures," "municipality," "restricted access entrance," "state and municipal building," and "weapon";
- Excludes school districts from the definition of "municipality";
- Excludes the State Capitol from the definition of "state and municipal building";
- Requires adequate security measures at public entrances of state and municipal buildings in order to prohibit the carrying of any weapon into a building;
- Prevents a state agency or municipality from prohibiting a licensed employee from carrying a concealed handgun at the employee's workplace, unless the building has adequate security measures and adopted personnel policies prohibit such concealed carry by employees who are licensed;
- Provides that it will not be a violation of the provisions in the bill for a licensed person to carry a concealed handgun through a restricted access entrance into a state or municipal building with adequate security measures;
- Establishes that it is not a crime for a person to carry a concealed handgun into a public building if properly posted and allows for the denial of entry to a building or removal of such person from a building where concealed carry is prohibited;
- Provides liability protections for entities allowing concealed carry in state or municipal buildings;
- Allows corrections facilities, jail facilities, or law enforcement agencies to prohibit the carrying of handguns or firearms, concealed or unconcealed, into the secured areas of such buildings, except any other area of such building, outside a secured area and readily accessible to the public, shall be subject to provisions in the bill;
- Permits the chief judge of each judicial district to prohibit the carrying of a concealed handgun into courtrooms or ancillary courtrooms within the district provided other means of security are employed;
- Allows the governing body or chief administrative officer of any state or municipal building to exempt the building for four years, subject to developing a plan for security measures and filing notification of the exemption;
- Provides a specific four-year exemption for any state or municipal building if the governing body or chief administrative officer follows specified procedures for exempting certain entities identified in the bill: public medical care facilities, public adult care homes, community mental health centers, indigent health care clinics, and postsecondary educational institutions;
- Permits school districts, postsecondary educational institutions, public medical care facilities, public adult care homes, community mental health centers, and indigent health care clinics to allow a licensed employee to concealed carry a handgun if the employee meets the entity's general policy requirements and if the entity does not have a personnel policy prohibiting employees from concealed carry of a handgun;
- Excludes the buildings of the Kansas School for the Blind and School for the Deaf from application for a designated institutional exemption;

- Removes a specific listing of buildings in current law where concealed carrying is prohibited and inserts the new phrase "any building";
- Strikes language prohibiting the possession of a firearm on the grounds of certain government buildings, including the State Capitol, and retains existing law prohibiting "open carry" in state and municipal buildings;
- Exempts the State Capitol from provisions of the bill on and after July 1, 2014, and allows a licensee to carry a concealed handgun in the State Capitol, unless the Legislative Coordinating Council determines the Statehouse does have adequate security measures;
- Updates a statute by striking an outdated reference to the Ombudsman of Corrections, which no longer exists;
- Unless otherwise required by law, prohibits the release of records that would disclose the name, home address, zip code, e-mail address, phone number or cell number, or other contact information of any person licensed to carry concealed handguns. The provision also applies to applicants for a license;
- Deletes a reduced fee for a concealed carry license obtained by retired law enforcement officers;
- Allows corrections officers, parole officers, and corrections officers employed by the Federal Bureau of Prisons to apply professional firearms certification toward training requirements for a concealed carry license;
- Adds law enforcement officers from other states and qualified retired law enforcement officers to a list of individuals exempted from the law prohibiting the criminal carrying of a weapon;
- Allows law enforcement officers from other states and qualified retired law enforcement officers to possess handguns within buildings where concealed carry may be prohibited;
- Provides liability protections regarding concealed carry for private businesses either allowing or prohibiting concealed carry in private buildings;
- Changes all references in the bill to "premise," "premises," "facility," and "facilities" to either building or buildings; and
- Makes most provisions in the bill effective on July 1, 2013, and the provisions pertaining to the State Capitol effective on July 1, 2014 (unless the Legislative Coordinating Council determines the Statehouse does not have adequate security measures as defined in the bill).

Licensing Requirements

Anyone in Kansas desiring to obtain a concealed carry license first must qualify for licensing. The pre-qualifications include the following three requirements:

- Must be a Kansas state resident of the county where the application is made;
- Must be at least 21 years of age; and
- Must not be prohibited by either federal or state law from possessing any firearm.

A person may be disqualified from licensing if such person:

- Is deemed to pose a significantly greater threat to law enforcement or the public at large than the average citizen if presented in a voluntary report by the county sheriff or chief law enforcement officer;
- Has been convicted of any crime or has been the subject of any restraining order or any mental health finding that would disqualify the applicant; or
- Does not meet any of the pre-qualification requirements or fails to be recommended after firearms training.

Applicants for concealed carry licensing are required to complete an approved training course and to provide a certificate or affidavit of successful completion that is signed by an instructor who must be approved by the Attorney General to offer such training. The applicants must pay an initial license fee of $100 to the Attorney General, submitted

along with a formal written application, and a $32.50 fee to the county sheriff. The sheriff will take fingerprints to initiate a criminal records check as part of the application process. The Attorney General then issues a concealed carry handgun license following successful completion of the training course and the application requirements.

The 2013 Legislature also enacted SB 21, which made the following changes to firearms-related statutes and licensing for CCH:

- Clarifies that the expungement of a prior felony conviction does not relieve the individual from complying with any state or federal law relating to the use, shipment, transportation, receipt, or possession of firearms by a person previously convicted of a felony;
- Authorizes official recognition of any valid concealed carry permit from another state for individuals traveling through or visiting Kansas;
- Requires issuance of a 180-day receipt from the Attorney General for a new Kansas resident who possesses a permit from another state and who is required to obtain a Kansas license. This receipt is required to be carried along with the license from the original jurisdiction. The license from the original jurisdiction has to meet or exceed the Kansas requirements for concealed carry. Prior to the expiration of the 180-day receipt, the applicant needs to provide proof of training to the Attorney General's Office. Following a successful background check and receipt of documentation and fees, the application is approved for a Kansas concealed permit.

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Firearms and Weapons

K-2 Uniform State Laws—Knives, Handguns, State Pre-emption, and Unlawful Discharge

The 2013 Legislature passed HB 2033, which prohibits municipalities from regulating the transportation, possession, carrying, sales, transfer, purchase, gifting, licensing, registration, or use of a knife or knife-making components. In addition, the legislation:

- Prohibits a municipality from passing any ordinance, resolution, or rule that would be more restrictive regarding knife manufacturing than the manufacture of any other commercial product;
- Amends provisions related to the criminal use of weapons and criminal carrying of a weapon by removing certain types of knives, as well as by eliminating certain exceptions for carrying specific types of pocket knives and switchblade knives; and
- Excludes from the definition of "municipality" certain entities, namely, school districts, jails, and juvenile correctional facilities.

2nd Amendment Rights

The 2013 Legislature passed SB 102, which establishes the Second Amendment Protection Act in statute. The legislation has three main provisions that:

- Exclude from federal regulation any personal firearm, firearm accessory, or ammunition manufactured commercially or privately and owned in Kansas. The legislation provides that for as long as any such personal firearm, firearm accessory, or ammunition remains within the borders of Kansas, it is not subject to any federal law, regulation, or authority;
- Prevent any federal agent or contracted employee, any state employee, or any local authority from enforcing any federal regulation or law governing any personal firearm, firearm accessory, or ammunition manufactured commercially or privately and owned in Kansas, provided it remains within the borders of Kansas. In the process of a criminal prosecution, the legislation would preclude any arrest or detention prior to a trial for a violation of the Act; and
- Allow a county or district attorney or the Attorney General to seek injunctive relief in court to enjoin certain federal officials from enforcing federal law 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.

Uniform Regulation of Firearms and Concealed Carry

The 2013 Legislature amended existing law concerning firearms, concealed handguns, criminal law regarding concealed handguns, and the Personal and Family Protection Act (concealed carry of handguns). The principal legislation was Senate Sub. for HB 2052 that:

- Prohibits the unlawful discharge of a firearm within or into the corporate limits of any city. The bill provides exemptions for when a firearm may be discharged within or into a city and also classifies the unlawful discharge of a firearm as a class B, nonperson misdemeanor;
- Provides that it will not be a criminal violation for a licensed person to carry a concealed handgun through a restricted access entrance into a state or municipal building with adequate security measures;
- Establishes that it is not a crime for a person to carry a concealed handgun into a public building if properly posted and allows for the denial entry to a building or removal of such person from a building where concealed carry is prohibited; and
- Modifies the Personal and Family Protection Act to allow the possession of firearms on certain governmental property, including in most state and municipal buildings, except where prohibited in compliance with and under provisions of the new law (see article on Concealed Carry for details).

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Kansas Legislative Research Department

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Health Care Stabilization Fund and Kansas Medical Malpractice Law

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Kansas Provider Assessment

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Olmstead-Institutional and Community Placement Decisions

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Massage Therapy

L-5
Recent Changes in Kansas Health Information Technology

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Health

L-1 Health Care Stabilization Fund and Kansas Medical Malpractice Law

The 1976 Health Care Providers Insurance Availability Act (HCPIAA) created the Health Care Stabilization Fund in an effort to stabilize the availability of medical professional liability coverage for health care providers. The law mandates a basic liability requirement for certain health care providers (identified below) and establishes an availability plan in order to provide required basic professional liability insurance coverage for those providers of health care in Kansas unable to obtain such coverage from the commercial market. The Fund receives its funding from professional liability coverage surcharge payments made by health care providers.

Health Care Providers

The Health Care Stabilization Fund was created, in part, to provide excess liability coverage for the following specified Health Care Providers in KSA 2012 Supp. 40-3401(f):

- Medical Doctors and Doctors of Osteopathy who are licensed or hold temporary permits with the State Board of Healing Arts;
- Chiropractors;
- Podiatrists;
- Persons engaged in a postgraduate training program approved by the State Board of Healing Arts;
- Registered Nurse Anesthetists;
- Dentists certified by the State Board of Healing Arts;
- Medical care facilities;
- Mental health clinics and centers;
- Psychiatric hospitals (certain facilities);
- Kansas professional corporations or partnerships of defined health care providers;
- Kansas limited liability companies organized for the purpose of rendering professional services by their health care providers;
- Kansas not-for-profit corporations organized for the purpose of rendering professional services by persons who are health care providers; and a nonprofit corporation organized to administer the graduate medical education programs affiliated with the University of Kansas School of Medicine.

Health care providers whose practice includes the rendering of professional services in Kansas are subject to the basic professional liability coverage and Fund surcharge requirements. In addition, the coverage and surcharge requirements also apply to health care providers who are Kansas residents and to non-resident health care

providers whose practice includes the rendering of professional services in Kansas.

Fund coverage, through basic professional liability coverage, is available from insurers authorized to write business in Kansas or through the Health Care Provider Insurance Availability Plan. The Fund coverage limits currently include three options: $100,000/$300,000; $300,000/$900,000; and $800,000/$2,400,000. (The first dollar amount indicates the amount of loss payment available for each claim, while the second indicates the total annual amount of loss payments for all claims made during a Fund coverage year.) For Kansas health care providers, the insurer is responsible for:

- Calculation of the amount of the surcharge based on the Fund coverage limit selected by the health care provider;
- Development of the rating classification code of the provider and the number of years the provider has been in compliance with the Fund; and
- Collection of the Fund surcharge payment along with the basic professional liability coverage and remitting the surcharge to the Fund without any reductions for commissions, collections, or processing expenses.

With a primary function of excess professional liability coverage, the Fund is "triggered" when the basic professional liability insurer's projected loss exposure exceeds $200,000.

According to the Fund's staff, the Fund's legal staff monitor all claims and suits filed against Kansas health care providers, including attending claim settlement conferences where the Fund's coverage has not yet been triggered. In addition to claims protection, the law also requires all basic professional liability insurers to include prior acts coverage which eliminates the need for Kansas health care providers to purchase tail coverage when changing insurers; requires all basic professional liability insurers to provide professional liability insurance for the overall or total professional services rendered by Kansas health care providers; funds "tail" coverage for qualified inactive health care providers in Kansas; and provides special self-insurance coverage for the full-time faculty, private practice foundations and corporations, and the residents of the University of Kansas School of Medicine (KUMC) and the Wichita Center for Graduate Medical Education (WCGME). (University of Kansas School of Medicine students are covered under the Kansas Tort Claims Act—KSA 75-6102(j).)

Fund Administration

The Board of Governors, as defined in KSA 2012 Supp. 40-3403, consists of ten members appointed by the Insurance Commissioner in the manner prescribed by statute. Three members are medical doctors in Kansas nominated by the Kansas Medical Society; three members serve as representatives of Kansas hospitals, nominated by the Kansas Hospital Association; two members are doctors of osteopathic medicine, nominated by the Kansas Association of Osteopathic Medicine; one member is a chiropractor in Kansas, nominated by the Kansas Chiropractic Association; and one member is a Registered Nurse Anesthetist, nominated by the Kansas Association of Nurse Anesthetists.

Prior to 1995, the Fund was administered by the Commissioner of Insurance. Beginning in 1995, the administration of the Fund became the responsibility of the Health Care Stabilization Fund Board of Governors, and the Board was recognized as an independent state agency. The following chart illustrates the agency expenditures for administration of the Fund and total paid claims, by fiscal year.

OPERATING EXPENDITURES
Health Care Stabilization Fund
FY 2006-FY 2015

Fiscal Year	State Operations	% Change	Claims Paid	% Change	FTE
2006	$ 6,255,737	33.4 %	$ 23,245,032	(0.9) %	16.0
2007	6,389,120	2.1	25,104,792	8.0	16.0
2008	5,238,807	(18.0)	23,947,225	(4.6)	16.0
2009	5,853,999	11.7	22,467,114	(6.2)	17.0
2010	5,928,742	1.3	24,508,355	9.1	17.0
2011	6,655,856	12.3	25,236,640	3.0	17.0
2012 Actual	6,292,258	17.1	21,910,074	14.1	17.0
2013 Actual	6,250,365	(0.7)	28,405,415	29.6	18.0
2014 Approved	8,084,511	29.3	29,431,385	3.6	18.0
2015 Approved	9,065,309	12.1	34,110,975	15.9	18.0
Ten-Year Change					
Dollars/Percent	$ 3,826,502	73.0 %	$ 10,163,750	42.4 %	2.0

The Fund also receives interest on the state agency investments in addition to the surcharge paid by health care providers in Kansas. The investments for the Board of Governors are administered by the Pooled Money Investment Board (PMIB).

Budget Issue: Reimbursements from the State General Fund

2009 Session. In FY 2009 and FY 2010, transfers from the State General Fund to the Health Care Stabilization Fund for payments on behalf of the KU residents, faculty, and graduate medical education students were suspended. The moratorium on reimbursements from the State General Fund reduced the fund balance by a projected $6.0 million over the two-year period. (The FY 2010 transfer payments were suspended by the Governor's agency allotment authority in July 2009.)

KSA 40-3403(j) pertained to the reimbursement for the costs and expenses associated with the administration of a self-insurance program for the full-time faculty, private practice foundations and corporations, and the residents of the University of Kansas School of Medicine and the Wichita Center for Graduate Medical Education. (When the costs, including claims and legal expenses, exceed the amount paid by the Faculty Foundations [Private Practice Foundation Reserve Fund], the SGF, upon certification of the amount of the payments made by the HCSF, transfers the difference to the HCSF.) A 2009 Attorney General's opinion [2009-16] made, among other conclusions, the finding that, "nothing in the allotment system statute nor in the Health Care Provider Insurance Availability Act indicates that the statutory transfers of funds in KSA 40-3403 are exempt from the allotment system."

2010 Session. The Senate Financial Institutions and Insurance Committee introduced SB 414 at the request of the Kansas Medical Society as a bill to amend the Health Care Provider Insurance Availability Act and to exempt transfers from the State General Fund (SGF) to the Health Care Stabilization Fund (HCSF) as required by KSA 2009 Supp. 40-3403(j) from the allotment authority delegated by statute (KSA 75-3722) to the Secretary of Administration. The bill further amended the Act to provide that the funds required to be transferred to the Health Care Stabilization Fund for the payments specified in law (KSA 2009 Supp. 40-3403(j)) for state Fiscal Years 2010, 2011, 2012, and 2013 shall not be transferred prior to July 1, 2013. The Director of Accounts and Reports is required to maintain a record of the amounts certified by the Health Care Stabilization

Fund Board of Governors for the specified fiscal years. The bill also established a process for the repayment of the deferred State General Fund payments, as follows: beginning on July 1, 2013, and on an annual basis through July 1, 2017, 20.0 percent of the total amount of the SGF deferred transfers are to be transferred to the Health Care Stabilization Fund. No interest will be allowed to accrue on the deferred payments. SB 414 was signed into law on March 31, 2010.

Oversight

The Health Care Stabilization Fund Oversight Committee was created by the 1989 Legislature. The composition of the Committee is detailed in KSA 40-3403b. The eleven-member Committee consists of:

- Four legislators;
- Four health care providers;
- One representative of the insurance industry;
- One person from the general public with no affiliation to health care providers or with the insurance industry; and
- The chairperson of the Board of Governors of the Health Care Stabilization Fund or another Board member designated by the Board chairperson.

Current law requires the Committee to report its activities to the Legislative Coordinating Council and make recommendations to the Legislature regarding the Health Care Stabilization Fund. Committee annual reports are filed with the Legislative Research Department.

During its 2012 meeting, the Committee discussed its role in providing legislative oversight of the Fund, as outlined by statute. The Committee indicated that it continues to believe that the Oversight Committee serves a vital role as a link among the Fund Board of Governors, the providers and the Legislature, and therefore, should be continued. The Committee further stated in its annual report that it recognized the important role and function of the Fund in providing stability in the professional liability insurance marketplace. The Committee also reviewed the necessity for the need to contract for an independent actuarial review in 2013. While the Committee continued its belief that the ability to contract for an independent actuarial review is necessary for the safety and soundness of the Fund, the Committee did not find, at that time, a need for an independent review in 2013.

The Committee considered the report from the Health Care Stabilization Fund Board of Governors, its actuary, and conferees at its November 2012 meeting, and made recommendations to the Legislature on the following: the obligation to reimburse the Fund for administrative services provided to the self-insurance programs (University of Kansas Foundations and Faculty and the KUMC and WCGME residents) pursuant to the time line created by 2010 SB 414; the *Miller v. Johnson* decision, the long-term impact the Fund and its stability has had on young physicians and health care providers into the health care work force; and the continuing conversation in the wake of this decision about the cap on noneconomic damages and the role of the HCPIAA; and a stated opposition to any transfer of moneys from the Health Care Stabilization Fund to the State General Fund.

The Committee received a report from the Fund actuary (this report assists the Fund Board of Governors in its decision to set the level of surcharges for the next year). The actuary offered some general conclusions as follows: the forecasts assume an average 5.0 percent decrease in rates for FY 2013; $25.4 million in surcharge revenue in FY 2013; continued full reimbursement for KU/WCGME claims, but reimbursement from the State delayed until FY 2013; and no change in current Kansas tort law. The actuaries suggested the Board either maintain current rates or make a slight decrease (the Board opted to change FY 2013 surcharge rates at an average rate decrease of 5.0 percent). The actuary commented on the financial position of the Fund, stating that given the Fund's FY 2012 results and the recent Supreme Court decision, the firm believes the Fund is in the strongest financial position in its 36-year history.

Fund Status

The actuarial report provided to the Oversight Committee addressed the Fund's forecast position at June 30, 2012: the Fund held assets of $253.37

million and liabilities (discounted) of $189.75 million, with $63.62 million in reserve. Projections for June 2013, established using Fund data as of December 30, 2011, include $259.33 million and liabilities (discounted) of $193.05 million, with $66.28 million in reserve. *Miller v. Johnson* Decision (October 5, 2012 Ruling) – Legislative Authority to Establish a Cap on Noneconomic Damages

The Kansas Supreme Court upheld a $250,000 cap on non-economic damages in a 5-2 decision. The decision cited, among other things, four constitutional issues to be resolved in this case. The majority of the Court upheld KSA 60-19a02 as it applied to Miller (personal injury Plaintiff, medical malpractice) – the statute provides for a $250,000 cap on non-economic damages and applies to all personal injury actions, including medical malpractice claims, accruing on or after July 1, 1988. The opinion also cited the Health Care Insurance Provider Availability Act by indicating "As noted in several of our prior cases, the legislature's expressed goals for the comprehensive legislation comprising the Health Care Provider Availability Act and the noneconomic damages cap have long been accepted by this court to carry a valid public interest objective." The opinion also noted the Legislature enacted KSA 60-19a02 "in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of noneconomic damages awards and the possibility of large noneconomic damage awards."

Following is a brief summary of additional Kansas laws that address medical malpractice and the legal proceedings.

Kansas Medical Malpractice Tort Laws

Statute of Limitations	***Damage Awards' Limits***	***Pre-trial Screening, Arbitration***	***Joint and Several Liability***	***Expert Witnesses***	***Attorney Fees***	***Health Care Stabilization Fund***
KSA 60-513. Two years from act or reasonable discovery. Is permitted up to ten years after reasonable discovery.	KSA 60-19a02. $250,000 limit on noneconomic damages recoverable by each party from all Defendants. KSA 60-3702. Punitive damages limited to the lesser of Defendant's highest gross income for prior five years or $5 million. If profitability of misconduct exceeds limit, court may award 1.5 times profit instead. Judge determines punitive damages.	KSA 65-4901; 60-3502. Voluntary submission to medical screening panel upon request of party; panelists must include medical professional of same specialty as Defendant.	No separation of joint and several liability.	KSA 60-3412. Fifty percent of the expert's professional time over preceding two years must have been devoted to clinical practice in same field as Defendant.	KSA 7-121b. Attorney fees must be approved by the court.	KSA 40-3403. (discussed above).

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Health

L-2 Kansas Provider Assessments

Provider Assessment

A provider assessment is a mechanism used in maximizing the amount of federal funding for the state and collecting new state funds that may be used to draw down additional federal funds. This mechanism can result in increased Medicaid payments for the specified providers assessed for Medicaid eligible services.

In order to implement a provider assessment, the federal Center for Medicare and Medicaid Services (CMS) must first review and approve the provider assessment model designed by the state. CMS guidelines state that for a provider assessment to be approved, it must be uniformly enforced across all providers. Certain categories of providers can be excluded, but all providers of that category type then must be excluded from the assessment. In addition, CMS guidelines state that no provider within an assessed category is allowed to be excluded, even if that provider is negatively impacted. This means that all providers must be included in the provider assessment, even if some may experience a negative fiscal impact.

In FY 2012, 49 states had some form of Medicaid-related provider assessments. Currently Kansas has two implemented provider assessments: one for hospitals and one for nursing facilities. Another provider assessment is awaiting authorization by CMS for Home and Community Based Services providers for individuals with developmental disabilities. The models for provider assessments vary by state based on the population needs and structure of the provider system being assessed. For example, Connecticut assesses funds from nursing facilities based on how many Medicaid days a resident spends in a licensed nursing bed. However, in Kansas, the 2010 Legislature passed a version of a nursing facility provider assessment similar to the Iowa model that assesses funds annually based on licensed nursing facility beds.

Health Care Access Improvement Program

The Health Care Access Improvement Program (HCAIP), established by 2004 Senate Sub. for HB 2912, uses an annual assessment on inpatient services provided by hospitals and on non-Medicare premiums collected by health maintenance organizations (HMOs) to improve and expand health care in Kansas for low income persons. The assessment paid

by hospitals and HMOs is used as a state match to draw down additional federal funding. Some hospital providers that are state agencies, state educational institutions, or critical access hospitals are exempt from the provider assessment. The state mental health hospitals and developmental disability hospitals also are exempt. The hospital provider assessment amount is an annual assessment of 1.83 percent on hospital inpatient services of net inpatient operating revenue. The HMOs' assessment amount is an annual assessment of 5.9 percent of net revenue. No funds collected through HCAIP are allowed to be transferred to the State General Fund at any time.

The 2012 Legislature passed HB 2416 which changed a hospital's base fiscal year for net inpatient operating revenue used to calculate the hospital provider assessment. The bill amended the statute which addresses the annual assessment on inpatient services imposed on each hospital provider to base the assessment on an amount equal to 1.83 percent of each hospital's net inpatient operating revenue for FY 2010. If a hospital does not have a complete 12-month FY 2010, the assessment will be $200,000 until the hospital has completed it first 12-month fiscal year, at which time the assessment will be 1.83 percent of the net operating revenue of such hospital's first completed 12-month fiscal year.

The hospital portion of HCAIP stipulates that not less than 80.0 percent of the funds collected from the hospital provider assessment can be disbursed to hospital providers through a combination of Medicaid access improvement payments and increased Medicaid rates on designated diagnostic-related groupings, procedures, and codes. In FY 2012, this resulted in a net revenue of $47.6 million from all funding sources. In addition, no more than 20.0 percent of the funds collected from hospital provider assessment can be disbursed to doctors or dentists through increased Medicaid rates on designated procedures and codes. Finally, not more than 3.2 percent of the funds collected from the hospital provider assessment can be used to fund health care access improvement programs in undergraduate, graduate, or continuing medical education, including the Medical Student Loan Act.

The HMO's portion of HCAIP stipulates that no less than 53.0 percent of the funds collected from the HMO provider assessment can be disbursed to HMOs that have a contract with SRS through increased Medicaid capitation rates. In addition, no more than 30.0 percent of the funds collected from the HMO provider assessment can be disbursed to fund activities to increase access to dental care, primary care safety net clinics, increased Medicaid rates on designated procedures and codes for providers who are persons licensed to practice dentistry, and Home and Community-Based Services. Finally, not more than 17.0 percent of the funds collected from the HMO provider assessment can be disbursed to pharmacy providers through increased Medicaid rates.

Nursing Facility Provider Assessment

In 2010, Senate Sub. for Senate Sub. for Sub. for HB 2320 was enacted and established a provider assessment program for skilled nursing facilities for up to $1,950 on each licensed bed within skilled nursing care facilities, which includes nursing facilities for mental health and hospital long-term care units and excludes the Kansas Soldiers' Home and the Kansas Veterans' Home from the assessment. As of June 30, 2012, there were 307 licensed skilled nursing facilities in Kansas operating as Medicaid providers.

Skilled nursing care facility licensed beds that are excluded from qualifying to be assessed up to the full amount of $1,950 include: continuing care retirement facilities (defined as facilities which must hold a certificate of registration from the Commissioner of Insurance); small skilled nursing care facilities (defined as less than 46 licensed nursing beds); and high federal Medicaid volume skilled nursing care facilities (defined as facilities which have more than 25,000 federal Medicaid days). The amount assessed to these identified skilled nursing care facilities can not exceed one-sixth, or a maximum of $250, of the actual amount assessed for the other skilled nursing care facilities.

All funds collected through the Nursing Facility Provider Assessment are used to finance initiatives designed to maintain or increase the quantity and

quality of nursing care in licensed facilities. No funds can be transferred to the State General Fund at any time or used to replace existing funding. If any additional funds are available, they must be used for an increase of the direct health care costs center limitation up to 150.0 percent of the case mix adjusted median, and then for approved quality enhancement for skilled nursing facilities. At no point would any amount of the assessed funds be allowed to provide for bonuses or profit-sharing for any officer, employee, or parent corporation. Assessed funds may be used to pay employees who are providing direct care to a resident in a skilled nursing facility.

The provider assessment originally was to sunset after the first four years of implementation, which would be July 2014. After the first three years or July 2013, the assessment amount was to be adjusted to be no more than 60.0 percent of the assessment collected in previous years. During the first year of the Nursing Facility Provider Assessment, which started in July 2010, the assessment was used exclusively to pay for administrative expenses incurred by the Kansas Department on Aging (KDOA), increased nursing facility payments to fund covered services to Medicaid beneficiaries, restoration of the 10.0 percent provider reduction in effect for dates of service from January 1 through June 30, 2010, and restoration of funding for FY 2010 rebasing and inflation to be applied to rates in FY 2011. During the second year of the Nursing Facility Provider Assessment, the 2010 10.0 percent provider reduction no longer needed to be restored, but increased payments to nursing facilities, reimbursement of administration costs, and re-basing and inflation were applied. In FY 2012, the provider assessment resulted in $30.2 million from all funding sources for increased payments to providers.

The 2013 Legislature passed House Bill 2160 which amends the statute that created a provider assessment on licensed beds in skilled nursing care and eliminated the sunset provision in the law. The expiration of the assessment program was extended for two additional years, or until July 1, 2016. The bill also eliminated the provision directing that after the first three years the assessment amount was to be adjusted to no more than 60.0 percent of the assessment collected in previous years.

Developmental Disabilities Provider Assessment

Legislation enacted in 2011 (Senate Bill 210) created a provider assessment model for Home and Community Based Services/Developmental Disabilities (HCBS/DD) providers based assessments on the gross revenues received for providing services to individuals with developmental disabilities. Gross revenues exclude any charitable donations. The assessed funds may be used to draw down additional federal match funds that can be used for enhanced rates to providers.

Currently, HCBS/DD providers are waiting approval by CMS to participate in a provider assessment model. Should CMS authorize approval of this class of providers and then subsequently approve a Kansas waiver submission to add this provider class, then 2011 Senate Bill 210 establishes a provider assessment for developmental disabilities providers that would be implemented in the fiscal year these two authorization approvals are granted and would sunset four years after implementation. As of September 2013, the two authorization approvals have not occurred. Should this situation change, 2011 Senate Bill 210 requires the provider assessment to be implemented within 30 days of authorization approval. No funds generated by the provider assessment can be allowed to be transferred to the State General Fund at any time or be used to replace existing funding.

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Kansas Legislative Research Department

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Health Care Stabilization Fund and Kansas Medical Malpractice Law

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Recent Changes in Kansas Health Information Technology

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L-3 *Olmstead*—Institutional and Community Placement Decisions

The Supreme Court Decision

In 1999, the U.S. Supreme Court heard the case *Olmstead v. L.C., 527 U.S. 581*. This case is now used as the basis for what is required when caring for individuals with disabilities and determining whether to place them in institutional settings or community settings.

In the *Olmstead* case, two unrelated women with mental illness and developmental disabilities from the State of Georgia were in the state hospital system. One woman was deemed stable enough to move into community care in 1993. She was not transitioned into a community setting until 1996. The other woman was deemed able to be treated in the community in 1996. She was not moved into a community setting until several months into 1997. Both women argued the delay in transitioning them into the community constituted discrimination.

On June 22, 1999, the U.S. Supreme Court held in *Olmstead* that unjustified segregation of persons with disabilities is discrimination in violation of Title II of the Americans with Disabilities Act (ADA). See 42 U.S.C. §12101(a)(2) and (5). The United States Department of Justice (DOJ) summarizes the Court's decision in the case as requiring public entities to provide community-based services to persons with disabilities when these three conditions are present: such services are appropriate; the affected individual is not opposed to community-based treatment; and the community-based services can be reasonably accommodated, when considering the public entity's available resources and the needs of others receiving disability services from the public entity.

The Supreme Court, in a 6-3 decision, said "[t]he State's responsibility, once it provides community-based treatment to qualified persons with disabilities, is not boundless." The reasonable-modifications regulation allows States to resist modifications that entail a fundamenta[l] alter[ation]" of the States' services and programs by instead requiring "reasonable modifications" when necessary to avoid discrimination. The Court also stated that there is no "requirement that community-based treatment be imposed on patients who do not desire it."

However, if the patient does qualify for community-based treatment, and that individual desires to be placed in a community setting, the State would be asked to "demonstrate that it had a comprehensive, effectively

working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated."

The Role of the Department of Justice

The DOJ accepts complaints from individuals who believe that they are being discriminated against in violation of the Supreme Court's ruling in *Olmstead*. These complaints can be made directly to the DOJ by mail or e-mail to ADA.complaint@usdoj.gov.

Following investigations into the complaints, the DOJ may issue a findings letter to a State citing the ADA and *Olmstead* violations found and suggesting remedial measures. The DOJ may work with a State on a settlement agreement to remedy the violations, file a lawsuit against the State, or seek to become involved in a previously filed lawsuit against a State as an intervening party, or by filing a statement of interest or an *amicus curiae* brief.

In 2009, President Barack Obama issued a proclamation declaring it the "Year of Community Living." See http://www.whitehouse.gov/the_press_office/President-Obama-Commemorates-Anniversary-of-Olmstead-and-Announces-New-Initiatives-to-Assist-Americans-with-Disabilities/. Since that time, the DOJ has been pursuing *Olmstead* violations as a top priority.

The DOJ also has posted a technical assistance guide on its website to give some guidance to individuals in understanding their rights and to states in implementing the requirements of the *Olmstead* ruling. See http://www.ada.gov/olmstead/q&a_olmstead.htm.

Olmstead-Related Developments in Kansas

In Kansas, complaints have been filed with the U.S. Department of Health and Human Services (HHS) by individuals with disabilities. The Department of Social and Rehabilitation Services officials (currently the Department for Children and Families) met with HHS officials on February 29, 2012, to discuss the complaints regarding the state's waiting list for services for individuals with disabilities. Subsequently, as reported in a March 29, 2012, Kansas Health Institute (KHI) article entitled "Civil rights enforcers meet with governor on waiting list issue," four officials from the HHS Office for Civil Rights (OCR) privately met on that date with Governor Sam Brownback and other State officials to discuss the waiting lists for services to individuals with disabilities. The KHI article indicated the Governor had asked for the March 29 meeting to better explain the state's position and describe upcoming policy changes expected to help reduce the waiting list.

A KHI article from April 23, 2012, entitled "Justice Department takes over waiting list case," quotes Barry Grissom, U.S. Attorney for the District of Kansas, as saying: "There has been a referral made from the HHS Office of Civil Rights to the Department of Justice, and Department of Justice is now consulting with the U.S. Attorney for the District of Kansas to decide the next appropriate step toward the enforcement of *Olmstead*."

Further, a letter with an April 19, 2012, date stamp and addressed to an individual who had filed an *Olmstead* complaint with HHS, was linked to the April 23 KHI article. The letter explained that the OCR had consolidated the complaints received into a compliance review. The letter further states, in part,

> Since December 21, 2011, OCR has been involved in a series of meetings, phone calls, and exchanges of information with Kansas State officials to discuss the results of our investigation and the remedial actions that would be necessary to address these issues. This has included three meetings with State officials, including a meeting with Governor Brownback and his leadership team on March 29, 2012.
>
> After these meetings, the Office for Civil Rights has concluded that voluntary resolution of the issues

> will not be possible. Based on that determination, we have decided to refer our ADA compliance review to the Department of Justice for further investigation and proceedings. Subsequent to the referral, OCR will close our compliance review, but will provide information from our investigation to DOJ and serve as a resource as DOJ moves forward.

Subsequently, a letter was sent on April 25, 2012, by Governor Brownback to Leon Rodriguez, Director of the Office of Civil Rights, expressing regret at HHS's decision to terminate participation in assisting Kansas in finding solutions and "instead make this a matter for litigation that will be costly and will do nothing to provide more services." The Governor's letter refers to a May 2009 letter received by the State from the HHS Office for Civil Rights, notifying the state that an investigation was being opened on the Physical Disability (PD) Waiver and waiting list. The Governor's letter cites "virtually no communication" from HHS with Kansas officials during the more than two years since the May 2009 letter. The letter also refers to an April 17 letter from HHS indicating the only solution was to force the State to spend money the State does not have by adding enough waiver slots to eliminate the waiting list.

The DOJ has not issued a findings letter as of November 26, 2013. No letter from DOJ addressed to the state could be found on the DOJ website to indicate the DOJ has begun a formal investigation into this matter.

On September 11, 2013, Governor Brownback announced the release of $18.5 million in savings gained from KanCare (Kansas' Medicaid managed care program) to reduce the waiting lists for home and community-based services. According to testimony provided by Kansas Aging and Disability Services Secretary Shawn Sullivan before the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight on October 7, 2013, these funds would remove 418 individuals off the Physical Disability waiting list and 235 individuals off the Developmental Disability waiting list.

DOJ *Olmstead* actions are provided below alphabetically by state, beginning with states that were issued DOJ findings letters, followed by states for which no DOJ findings letters were issued but with DOJ involvement in litigation, and *amicus curiae* briefs filed by the United States. The information used to compile this summary of DOJ *Olmstead* actions was obtained from the U.S. Department of Justice website: www.ada.gov/olmstead.

States Issued DOJ Findings Letters

DELAWARE

DOJ FINDINGS LETTER

The DOJ filed a findings letter on November 9, 2010, citing violations, including the provision of mental health services in a manner which results in prolonged institutionalization for individuals who could be served in the community, and placement of individuals in the community at risk of unnecessary hospitalization and institutionalization.

Recommended remedial measures: The recommendations included requiring individual assessments prior to psychiatric hospital admission to ensure proper placement; revising the treatment and discharge planning process to formulate detailed transition plans; developing sufficient community support services; monitoring those in psychiatric hospitals to ensure safety; revising the discharge assessment process; developing a statewide crisis system; and instituting a risk management program and a quality management system.

OTHER ACTION BY DOJ

On July 6, 2011, the U.S. filed a complaint in U.S. District Court in *U.S. v. Delaware*, 11-CV-591 and a simultaneous settlement agreement to address concerns arising out of a DOJ investigation into whether individuals with mental illness were being served in the most integrated settings in accordance with their needs and to address concerns related to conditions of confinement at the Delaware Psychiatric Center.

Subsequently, on July 18, 2011, the Court signed the order entering the settlement agreement. Among the provisions of the agreement, the State is required to create: a community crisis system; intensive case supports; integrated supported housing in the form of vouchers or subsidies for 650 persons; supported employment for 1,100 persons; rehabilitation services for 1,100 persons; family and peer supports for 1,000 persons; a statewide quality management system; and to establish a monitor with the authority to hire staff to assist in the implementation of the agreement. The independent reviewer issued reports to the U.S. District Court in the settlement agreement between the parties on January 30, 2012, September 5, 2012, March 8, 2013, and September 24, 2013.

FLORIDA

DOJ FINDINGS LETTER

A DOJ findings letter was issued on September 5, 2012, concluding Florida's system of care had led to unnecessary institutionalization of children with disabilities, including medically complex and medically fragile children in nursing facilities and limited access to medically necessary services and supports that would allow children to transition to community-based settings.

Recommended remedial measures: The recommendations included an increase in community capacity by allotting additional waiver slots, making changes in existing policies, and increasing community services for children in or at risk of entry into nursing facilities.

OTHER ACTION BY DOJ

On July 7, 2013, the U.S. filed a lawsuit against the State of Florida in U.S. District Court, *U.S. v. State of Florida*, 0:13-cv-61576 (S.D. Fla. 2013), to correct ADA violations for the State's failure to provide services and supports to children with disabilities in the most integrated setting appropriate to their needs. The lawsuit alleges the manner in which Florida administers its service system for children with significant medical needs results in the unnecessary segregation of children with disabilities in nursing facilities when they could be served in their family homes or other community-based settings. Further, the lawsuit alleges that the State's policies and practices place other children with significant medical needs at serious risk of institutionalization in nursing facilities. [The private litigation in which the U.S. previously filed two Statements of Interest (*T.H. et al. v. Dudek et al.*) is related to this lawsuit.]

Earlier cases:

On April 10, 2013, the U.S. filed a statement of interest in *T.H. v. Dudek*, No. 12-cv-60460 (S. D. Fla. 2012) requesting the Court deny Defendants' motion to dismiss for lack of subject matter jurisdiction because of mootness, grant Plaintiff's motion for class certification, and permit the U.S. to participate in any argument the Court may hear on either motion. The U.S. previously filed a statement of interest on June, 28, 2012, in this case, opposing Florida's motion to dismiss. The Plaintiffs allege the State unnecessarily institutionalizes medically fragile Medicaid-eligible children in nursing facilities, or places them at risk by limiting access to medically necessary services in integrated settings. The complaint also alleges a violation of the Pre-Admission Screening and Resident Review (PASRR) provisions of the Nursing Home Reform Amendments to the Medicaid Act for failure to fully evaluate children prior to nursing facility admittance.

On December 20, 2012, the U. S. filed a statement of interest in *Lee v. Dudek*, 4:08-CV-26 (N.D. FL 2008) in opposition to the Defendant's motion for summary judgment. The class of Plaintiffs allege the State's refusal to provide community services to individuals unnecessarily confined to a nursing facility violated the ADA's integration mandate. The case went to trial in February 2011 after the Court denied the parties' cross motions for summary judgment on January 20, 2011. The Court's ruling is pending.

MISSISSIPPI

DOJ FINDINGS LETTER

The DOJ filed a findings letter on December 22, 2011, concluding the State failed to provide services to persons with developmental disability and mental illness in an integrated setting appropriate to their needs.

Recommended remedial measures: The recommendations directed the State to focus on community-based services; expand waiver slots; ensure intensive community services in all regions of the State; provide adequate medically necessary treatment services to children under Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) and ensure that children with disabilities are identified for special education services; and institute a quality assurance system.

OTHER ACTION BY DOJ

The State developed and submitted an *Olmstead* Plan [Mississippi Access to Care (MAC)] to the Legislature in September 2001 which included expansion of waiver slots. The *Olmstead* Plan was never implemented because it was not funded by the Legislature.

On April 8, 2011, the U.S. filed a statement of interest in *Troupe v. Barbour*, 10-CV-00153 (S.D. MS 2010) in opposition to Mississippi officials' motion to dismiss. Plaintiffs allege the State fails to provide medically necessary services to Medicaid-eligible children with significant behavioral disorders in the most integrated setting appropriate to their needs, in violation of ADA and Medicaid EPSDT provisions. The Court ruled in favor of the State in recommending dismissal of the Medicaid EPSDT claim. Plaintiffs filed an objection. Subsequently, on September 9, 2013, the U.S. filed a statement of interest in U.S. District Court to clarify the meaning of the EPSDT statute. The objection is pending before the Court.

NEW HAMPSHIRE

DOJ FINDINGS LETTER

On April 7, 2011, the DOJ filed a findings letter stating "[s]ystemic failures in the State's system place qualified individuals with disabilities at risk of unnecessary institutionalization now and going forward."

Recommended remedial measures: The DOJ recommended, in part, that the State develop and implement plan areas of need and weakness in the State's mental health system, provide a variety of supports and services, expand community placements and capacity, expand community and supported housing, create assertive community treatment (ACT) teams, and develop and implement a discharge plan.

OTHER ACTION BY DOJ

On February 2, 2012, the Plaintiff filed a complaint in *Lynn E. v. Lynch*, 1:12-CV-53-LM (D. N.H. 2012), alleging the State fails to provide mental health services in community settings to persons with a disability, forcing them to go to segregated institutions, in violation of the ADA and Section 504 of the Rehabilitation Act of 1973.

On April 4, 2012, the U. S. District Court granted the DOJ's motion to intervene in *Amanda D. v. Wood Hassan*, 1:12-CV-53-LM (D. N.H. 2012) (formerly *Lynn E. v. Lynch*). The U.S. filed a memorandum in support of Plaintiffs' motion for class certification on April 20, 2012. Subsequently, the DOJ filed a reply to the State's opposition to and in support of Plaintiffs' renewed motion for class certification on March 21, 2013.

NORTH CAROLINA

DOJ FINDINGS LETTER

The DOJ filed a findings letter on July 28, 2011, concluding the State's administration of its mental health system results in unnecessary

institutionalization of individuals with mental illness in adult care homes.

Recommended remedial measures: The recommendations included the development of enough supported housing to allow for receipt of services to those unnecessarily confined and those at risk of entry into adult care homes; realignment of state funds from institutional adult care homes to a priority on integrated community settings; scattered site supported housing with no more than ten percent of a residential setting allocated to persons with disabilities; and development and implementation of individual service plans and individual assessments to determine services needed for transition to and living in supported housing.

OTHER ACTION BY DOJ

On August 23, 2012, the U.S. filed a complaint in U.S. District Court in *U.S. v, North Carolina*, 5:12-cv-557 (E.D. N.C. 2012) and entered an eight-year settlement agreement with the State which includes, in part,: increasing access to community-based supported housing to 3,000 individuals currently residing in, or at risk of entry into, adult care homes; ensuring access to critical community-based mental health services to thousands of individuals; expanding integrated employment opportunities by providing supported employment services to 2,500 individuals with mental illness; developing a crisis service system; and appointing an independent reviewer to assist with and evaluate compliance.

Earlier case:

In 2010, *Clinton L., et al. v. Cansler, et al.*, 10-CV-00123 (M.D. NC 2010) was filed on behalf of individuals with developmental disability and mental illness challenging the State's proposed reduction in reimbursement rates for in-home services and alleging such reductions would eliminate providers that offer medically necessary services that enable individuals to live in the community and place them at risk of institutionalization. Subsequently, on February 16, 2010, the U.S. filed a statement of interest supporting Plaintiffs' motion for preliminary injunction. The Court denied the motion, but required the State to provide appropriate community-based services while the lawsuit was pending.

OREGON

DOJ FINDINGS LETTER

In June 2012, the DOJ issued a findings letter that concluded the State provides employment and vocational services to individuals with intellectual and developmental disabilities (I/DD) primarily in segregated sheltered workshops, instead of integrated community employment settings, in violation of the ADA's integration mandate.

Recommended remedial measures: The recommendations included providing enough supported employment services to allow those unnecessarily segregated in sheltered workshops to receive services in integrated settings appropriate to their needs, and implementation of a transition plan for supported employment services in more integrated settings.

OTHER ACTION BY DOJ

On April 20, 2012, the U.S. filed a statement of interest in *Lane v. Kitzhaber*, 12-CV-00138 (D. OR 2012) in opposition to the Defendant's motion to dismiss. The Plaintiffs allege the State unnecessarily segregates individuals with I/DD in sheltered workshops. The U.S. also filed a statement of interest on June 18, 2012, in support of Plaintiffs' motion for class certification to include thousands of individuals in, or referred to, sheltered workshops. The U.S. District Court certified the Plaintiff class on August 6, 2012.

Subsequently, on March 27, 2013, the U.S. filed a complaint in intervention as a Plaintiff-Intervenor against the State of Oregon, and the U.S. District Court granted the motion to intervene on May 22, 2013.

RHODE ISLAND

DOJ FINDINGS LETTER

From January 14, 2013, through March 4, 2013, the DOJ investigated Rhode Island's employment, vocational, and day services for individuals with I/DD to determine if *Olmstead* violations existed. As part of the investigative process, the DOJ participated in two meetings with the State in February and March. On March 20, 2013, the DOJ communicated its findings, to the State, and subsequently shared its findings with the City of Providence on April 9, 2013, and April 29, 2013. The DOJ met with the State and City a number of times in May 2013 to resolve these findings. The DOJ findings were sent to the State and City on June 7, 2013, memorializing its oral findings.

OTHER ACTION BY DOJ

On June 13, 2013, the U.S. filed a complaint and simultaneously entered a court-enforceable interim settlement agreement with the State of Rhode Island and the City of Providence in *U.S. v. Rhode Island and City of Providence*, 1:13-cv-00442, (D.R.I. 2013) to resolve DOJ findings as part of an ADA *Olmstead* investigation that individuals with I/DD were unnecessarily segregated in a sheltered workshop and segregated day activity service program and public school students with I/DD were at risk of placement in the same program.

The agreement provides relief for approximately 200 individuals with I/DD by providing currently segregated individuals an opportunity to receive integrated supported employment and integrated daytime services. The State will no longer provide services or funding for the sheltered workshop and segregated day program provider (Training Thru Placement—TTP), and the City will no longer provide services or funding to the Birch Vocational Program (a special education program which has run a segregated sheltered workshop inside a Providence high school serving as a pipeline to TTP). Over the next year, adults at TTP and youth transitioning from Birch will be provided with "robust and person-centered career development planning, transitional day services," supported employment placements, and integrated services. The agreement requires individuals to "receive sufficient service to support a normative 40-hour work week," with the expectation the individuals (on the average) will work in a supported environment job at competitive wages at least 20 hours per week.

VIRGINIA

DOJ FINDINGS LETTER

On February 10, 2011, the DOJ filed a findings letter concluding the State unnecessarily institutionalized more than 1,000 individuals with developmental disabilities and placed others at the risk of institutionalization (including more than 3,000 on an urgent wait list for community services).

Recommended remedial measures: The recommendations included an increase in waivers and expansion of community services to serve individuals in or at risk of entering training centers; and implementation of a clear plan to increase the pace of transitions to the community and discharge planning to begin at the time of admission.

OTHER ACTION BY DOJ

On January 26, 2012, the DOJ filed a complaint and simultaneous settlement agreement in U.S. District Court in *U.S. v. Virginia*, 3:12CV059 (E.D. VA 2012). The court-enforceable agreement is aimed at preventing unnecessary institutionalization of persons with developmental disabilities who are living in the community, including thousands on waiting lists for community-based services, and providing those currently in institutions the opportunity to receive services in the community. A group of disabled individuals, who believe the proposed consent decree would require they be moved from the training centers they consider to be their homes, was granted a motion to intervene.

On August 23, 2012, the U.S. District Court approved and made the settlement agreement, with modifications, the final order. Some provisions of the settlement include the creation of: 4,170 additional HCBS waivers by June 30, 2021,

and receipt of case management services for waiver service recipients under the agreement; a statewide crisis response system and crisis stabilization programs; an $800,000 fund for housing; and the appointment of an independent reviewer responsible for reporting to the Court on the progress of implementing the decree. The Court indicated individuals desiring continued residence in training centers could not be forced to move into community settings. On December 6, 2012 and June 6, 2013, the independent reviewer issued reports to the U.S. District Court in the settlement agreement between the parties.

States Not Issued DOJ Findings Letters

ALABAMA

ACTION BY DOJ

In 2010, *Boyd v. Mullins*, 2:10-CV-688 (M.D. AL 2010) was filed by an individual with quadriplegia living in a nursing home and wanting to receive services in a more integrated setting. The Plaintiff alleged the State administers the Medicaid program in a manner resulting in unnecessary institutionalization. On October 12, 2010, the DOJ filed a statement of interest in support of Plaintiff's motion for preliminary injunction. On November 12, 2010, the Court denied primary injunctive relief. The case is pending.

ARKANSAS

ACTION BY DOJ

On May 6, 2010, *U.S. v. Arkansas*, 10-CV-327 (E.D. AR 2010), was filed by the DOJ in U.S. District Court alleging the State's failure to provide services to individuals with developmental disabilities "in the most integrated setting appropriate to their needs" and community service options for 1,400 persons on waiting lists at risk of institutionalization. On January 24, 2011, the complaint was dismissed by the Court without prejudice due to procedural error. Dismissal of a case without prejudice allows the case to be re-filed.

Earlier Case:

The DOJ filed *U.S. v. Arkansas*, 4:09-CV-00033 (E.D. AR 2009) in U.S. District Court on January 16, 2009, alleging, among other arguments, the failure to provide facility residents with developmental disabilities with services" in the most integrated setting appropriate to their needs." On June 8, 2011, the U.S. District Court dismissed the case with prejudice (case cannot be re-filed) stating the evidence did not support such findings. The Court cited the *Olmstead* case to support the position that there is no requirement that community-based treatment be imposed on those who do not want it. The Court relied on evidence that no resident had been denied community placement when requested by the parent or guardian.

CALIFORNIA

ACTION BY DOJ

On November 18, 2011, the U.S. filed comments in support of final approval of the proposed settlement agreement in *Katie A. v. Douglas*, CV-02-05662 AMH (SHX) (C.D. CA 2011)—formerly *Katie A. v. Bonta*. The settlement agreement relates to the manner in which the State will provide intensive, community-based mental health services to Medi-Cal eligible foster children or children at risk on entering into the foster care system. The U.S. indicated the agreement, which was reached after nine years of litigation, was "fair and reasonable."

Earlier case:

On January 9, 2012, the U.S. filed a statement of interest in *Oster v. Lightbourne*, 09-CV-4468 (N.D. CA 2009)—formerly *Oster v. Wagner*. Plaintiffs challenged a 20-percent reduction in personal care in-home support services which allow elderly individuals and individuals with disabilities to avoid hospitalization and institutionalization. The U.S. District Court granted Plaintiff's motion for preliminary injunction on January 19, 2012.

Earlier case:

On July 12, 2011 and October 31, 2011, the U.S. filed statements of interest in support of Plaintiffs' claim in *Darling v. Douglas*, 09- CV-3798 (N.D. CA 2009)—formerly *Cota v. Maxwell-Jolly*. The Plaintiffs challenged the State plans to eliminate Adult Day Health Care (ADHC), which enable elderly individuals and individuals with physical and mental disabilities to receive services to live in the community. On January 10, 2012, the U.S. filed comments in support of final court approval of the parties' proposed settlement agreement. The settlement agreement would require the State to submit an application to amend the State's existing Section 1115 demonstration waiver to establish a new Medi-Cal program to provide an "out-patient facility based service program that delivers skilled nursing care, social services, therapies, personal care, family and caregiver training and support, meals, and transportation to eligible Medi-Cal beneficiaries." Subsequently, on January 21, 2012, the U.S. District Court granted final approval of the settlement agreement.

DISTRICT OF COLUMBIA

ACTION BY DOJ

On October 3, 2011, the U.S. filed a statement of interest in *Day et al. v. District of Columbia et al.*, 1:10- cv-02250-ESH (D. D.C. 2010) opposing the Defendant's motion to dismiss or for summary judgment. The Plaintiffs allege the unnecessary segregation of individuals with disabilities in nursing facilities.

On June 26, 2013, the U.S. filed a statement of interest supporting the Plaintiff's renewed motion for class certification in *Thorpe et al. v. District of Columbia*, 1:10-cv-02250-ESH (D.D.C. 2010)—formerly *Day et al. v. District of Columbia*. The Plaintiffs allege the District of Columbia unnecessarily segregates individuals with physical disabilities in nursing homes in violation of the ADA and Section 504 of the Rehabilitation Act.

GEORGIA

ACTION BY DOJ

On March 14, 2013, the U.S. filed a statement of interest in *Hunter v. Cook*, 1:08-cv-02930-TWT (N.D. Ga. 2013) in opposition to Georgia's argument that serious risk of institutionalization is not a viable claim under Title II of the ADA. The Plaintiffs allege that Georgia's administration of the Department of Community Health and the Medicaid program denies, limits and reduces nursing services such that it places Plaintiffs at risk of unnecessary confinement or out of home care in violation of the ADA.

Earlier case:

The U.S. filed a statement of interest for preliminary injunction on October 6, 2010, in *Knipp v. Perdue*, 10-CV-2850 (N.D. GA 2010). The Plaintiff alleged the State's plan to eliminate services for individuals with mental illness without offering sufficient alternative support services necessary to prevent hospitalization and institutionalization violated *Olmstead*. On October 7, 2010, the Plaintiff's motion for a preliminary injunction was granted. The case is pending.

Earlier case:

In 2010, the U.S. filed a complaint in U.S. District Court, *U.S. v. Georgia*, 10-CV-249 (N.D. GA 2010) alleging individuals with mental illness and developmental disabilities in State hospitals were unnecessarily institutionalized.

On October 19, 2010, the DOJ and the State entered into a settlement agreement. Subsequently, on October 29, 2010, the Court adopted the settlement agreement, as revised, to provide for an independent reviewer and with the Court retaining jurisdiction to enforce the revised agreement. The agreement contains provisions for individuals with developmental disabilities which include: expanding community services; ceasing all admissions to State-operated institutions; transitioning all individuals to the most integrated setting appropriate to their needs by July 1, 2015;

and creating more than 1,100 HCBS waivers. With regard to individuals with mental illness, the agreement included requiring service in the community for 9,000 individuals with serious and persistent mental illness currently being served in State Hospitals, frequently readmitted to State Hospitals, frequently seen in emergency rooms, chronically homeless, and/or being released from jails or prisons. A statewide quality management system for community services also was required.

The independent reviewer issued reports to the U.S. District Court in the settlement agreement on October 5, 2011, September 20, 2012, and September 19, 2013. On September 20, 2013, the DOJ issued a letter regarding year three settlement agreement compliance and commending the State for its improvement.

ILLINOIS

ACTION BY DOJ

On April 15, 2013, the U.S. filed a statement of interest in *ILADD v. DHS*, 13-CV-01300 (E. D. IL 2013) opposing the Plaintiffs' request for a preliminary injunction to stop the planned closure of two state-run centers for persons with developmental disabilities. The U.S. argued Title II of the ADA, regulations, and case law do not support the position that "the ADA gives persons in state-run centers a right to remain in those institutions and to stop the State's efforts to move its service system toward community based care." The U.S. maintained the *Olmstead* statement that there is no "federal requirement that community-based services be imposed upon those who do not desire them" did not create a right to institutionalization. The U.S. argued the ADA would have to unambiguously confer a right to institutionalization, which it did not do, as that would have "turn[ed] the ADA and its integration mandate on its head and impermissibly create[d] a new right under the ADA that was never intended by Congress."

Earlier Case:

On July 16, 2010, the U.S. filed a statement of interest in *Hempe v. Hamos*, 10-CV-3121 (N.D. IL 2010) in support of Plaintiffs' motion for class certification. The Plaintiffs sought the Court to permit young adults to challenge a State policy placing medically fragile individuals with disabilities at risk of institutionalization upon turning 21 years of age. On November 22, 2010, class certification was granted. The case is pending.

LOUISIANA

ACTION BY DOJ

On April 7, 2011, the U.S. filed a statement of interest supporting the Plaintiffs' allegations that the State's reduction in the maximum number of Medicaid Personal Care Services hours per week would place individuals at risk of institutionalization and urging the U.S. District Court to deny the State's motion for summary judgment. On May 16, 2011, the U.S. District Court denied the State's motion to dismiss the lawsuit.

NEW JERSEY

ACTION BY DOJ

The U.S. filed a statement of interest in *Sciarrillo v. Christie*, 2:13-cv-03478-SCR-CLW (D. NJ 2013) on September 13, 2013, stating the Plaintiffs failed to assert a claim under the ADA. The Plaintiffs oppose the State's deinstitutionalization plan for facilities for individuals with developmental disability.

NEW YORK

ACTION BY DOJ

On July 23, 2013, in *U.S. v. State of New York*, 13-cv-4165 (E.D. N.Y. 2013), the U.S., individual Plaintiffs, and the State of New York filed a settlement agreement in the U.S. District Court for the Eastern District of New York, which is subject to the court's approval. [Issues remedied by this court-enforceable agreement were litigated in

Disability Advocates, Inc. v. Paterson, which was dismissed for lack of jurisdiction.] The agreement addresses discrimination by the State in the administration of its mental health service system and ensures that individuals with mental illness who reside in 23 privately-owned, large adult homes (120 or more beds) in New York City and in which at least 25 percent or more of the resident population has a mental illness, receive services in the most integrated setting appropriate to their needs. Approximately 4,000 individuals with mental illness reside in these adult homes. Over a five-year period, the State must provide at least 2,000 community-based, scattered site apartments with rental assistance and housing-related support services and continue to create additional units to ensure availability of supported housing to all eligible adult care home residents with mental illness who desire such an opportunity; provide the community-based mental health services needed to succeed in supported housing; implement a person-centered planning process to help people transition into the community; and provide quarterly reports tracking the State's progress to the independent reviewer and the parties. An independent reviewer will monitor compliance with the agreement and report to the U.S. and private Plaintiffs.

Earlier case:

In 2009, the Plaintiff filed a complaint in *Disability Advocates, Inc. v. Paterson*, 03-CV-3209 (E.D. NY 2009). After a trial on the merits, the U.S. District Court for the Eastern District of New York ruled thousands of persons with mental illness had been segregated and were denied the opportunity to "receive services in the most integrated setting appropriate to their needs." On November 25, 2009, the DOJ, having intervened in the remedy phase of the case, filed a brief supporting the Plaintiff's proposed remedial plan.

On March 1, 2010, a remedial order was issued by the U.S. District Court, which adopted most of the Plaintiff and DOJ proposals and required the State to ensure that within four years all present and future adult care home residents with mental illness were given an opportunity for services in a community-based housing program, and only individuals eligible for community services who denied such services were placed in an adult care home. Subsequently, on April 6, 2012, the remedial order and judgment was vacated by the Second Circuit Court and the action dismissed for lack of jurisdiction.

TEXAS

ACTION BY DOJ

On December 20, 2010, the Plaintiff filed an initial complaint in *Steward v. Perry*, 5:10-CV-1025 (W.D. TX 2010) alleging the State unnecessarily segregates individuals with developmental disabilities in nursing facilities. The U.S. filed a request to intervene on June 22, 2011 and filed, as an exhibit, a proposed complaint in intervention citing individuals on waiting lists for an average of almost nine years with waiting lists, as of March 31, 2011, of over 50,000 names for about 22,800 currently filed slots.

On November 30, 2011, the U.S. filed a Supplemental statement of interest opposing the State's motion to dismiss the Plaintiffs' amended complaint. Then, on September 10, 2012, the U.S. filed a statement of interest in support of Plaintiff's amended motion for class certification for a Plaintiff class of 4,500 adults with developmental disability in or at risk of placement in nursing facilities. On September 20, 2012, the U.S. District Court granted the United States' June 2011 request to intervene.

Subsequently, on August 19, 2013, the U.S., private Plaintiffs, and the State of Texas filed an Interim settlement agreement, which is subject to the Court's approval. The settlement agreement requires the State to expand community-based services through Medicaid waivers and individual supports for at least 635 people with I/DD currently residing in nursing facilities or at risk of having to enter a nursing facility, while the parties pause ongoing litigation and negotiate a comprehensive settlement agreement on remaining issues in the case.

WASHINGTON

ACTION BY DOJ

On January 26, 2011, the U.S. filed a statement of interest in *M.R. v. Dreyfus*, 10-CV-2052 (W.D. WA 2011) in support of Plaintiff's motion for preliminary injunction. Plaintiffs allege the State's cuts to personal care services place almost 45,000 individuals with disabilities at risk of institutionalization in violation of the ADA. In February 2011, the U.S. District Court denied the Plaintiff's motion for a preliminary injunction.

On December 16, 2011, the Ninth Circuit Court of Appeals reversed the U.S. District Court's judgment and granted the Plaintiffs injunctive relief. The Court considered the DOJ's statement of interest in reversing the U.S. District Court.

Subsequently, on October 22, 2012, a DOJ letter was issued in response to the State's letter of October 8, 2012, regarding the State's March 2011 reduction in personal care services, proposed changes to the Exception to the Rule (ETR) process to ensure individuals with disabilities are not placed at a serious risk of institutionalization and other negative outcomes, and requesting clarification regarding the State's compliance with ADA obligations, as interpreted in *Olmstead*. In clarifying the State's obligation under the ADA, the DOJ noted that the U.S. has never held that states may not reduce community services to individuals with disabilities. However, if service reductions cause serious risk of institutionalization, public entities must make "reasonable modifications" when implementing reductions to avoid institutionalization. The letter notes, a "state's obligation under the ADA to make modifications that are reasonable, but do not fundamentally alter the state's programs, services or activities, enables the state to comply with the ADA while still maintaining control of the program budgets."

AMICUS CURIAE BRIEFS FILED BY DOJ

Amicus curiae ("friend of the court") briefs were filed by the Department of Justice in the following cases:

Pennsylvania

Amicus curiae briefs were filed in *Benjamin et al. v. Pennsylvania Department of Public Welfare*, 09-CV-1182 (M.D. PA) in July 2010 and again in April 2012 in support of the settlement agreement. Representatives of individuals who live in state institutions and desire to remain but are unable to express placement preferences appealed the settlement agreement. In December 2012, the Third Circuit Court ruled in favor of the representatives and reversed the U.S. District Court's order approving the settlement agreement, sending the case back to the District Court with the ruling that the representatives must be permitted to participate in the remaining stages of the lawsuit. At this time, the case is back before the U.S. District Court.

New Jersey

An *amicus* brief was filed in June 2010 in D*isability Rights New Jersey, Inc. v. Velez*, 05-CV-4723 (D. NJ 2005). In September 2010, the U.S. District Court denied both parties' motions for summary judgment and set the proceeding for trial. The case is pending.

Connecticut

An *amicus* brief was filed in *Connecticut Office of Protection and Advocacy v. State of Connecticut*, 3:06-CV-179, (D. CT 2006) in November 2009. In March 2010, the State's motion to dismiss was denied and the Court granted in part the Plaintiffs' motion for class certification. The case is pending.

(Florida 11th Circuit Court of Appeals case)

The U.S. filed an *amicus* brief in support of the Appellee in *Long v. Benson*, 08-16261 (11th Cir. 2010) in April 2009. This Appellee is a member of the class in *Lee v. Dudek* (Florida case), who successfully sought a preliminary injunction requiring the State to provide him with community-based services through the Medicaid program, instead of requiring him to stay in a nursing home.

The Court of Appeals affirmed the District Court's grant of Plaintiff's request for preliminary injunctive relief.

Virginia

In November 2009, the U.S. filed an *amicus* brief in *ARC of Virginia, Inc. v. Kaine*, 09-CV-686 (E.D. VA 2009).

North Carolina

In December 2009, the U.S. Filed an *amicus* brief in *Marlo M. v. Cansler*, 09-CV-535 (E.D. NC 2009).

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L-1
Health Care Stabilization Fund and Kansas Medical Malpractice Law

L-2
Kansas Provider Assessment

L-3
Olmstead-Institutional and Community Placement Decisions

L-4
Massage Therapy

L-5
Recent Changes in Kansas Health Information Technology

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Health

L-4 Massage Therapy

Although Kansas does not have a massage therapy licensure requirement, several recent attempts have been made to institute such a requirement. This paper summarizes Kansas law and practice, as well as laws from other states.

Kansas Law

Kansas does not have a massage therapy licensure requirement; individuals in Kansas can engage in the practice of massage therapy without fees, state standards, or state oversight. There are Kansas statutes that define what massage therapy is not. KSA 65-2872 and KSA 65-2913 expressly exclude from the practice of healing arts and from representing oneself as a physical therapist respectively, persons who massage for the purpose of relaxation, muscle conditioning or figure improvement, so long as no drugs are used and such persons do not hold themselves out to be physicians or healers.

Some local governments have zoning requirements restricting where a massage therapist can be located.

Kansas Massage Therapy Programs

There are at least nine massage therapy programs offered in Kansas at community colleges, technical schools, and private companies. The programs range in duration from 12 to 24 months. Most programs claim to prepare students to take a national massage therapy examination. There are at least five national massage therapy examinations. These examinations are listed in Table One.

Other States

Forty-eight states either require massage therapy licensure or have introduced or drafted legislation requiring licensure of massage therapists. The majority of states have a Massage Therapy Board that regulates massage therapy licenses. The biennial licensing fees range from $60 to $300. Most states require 500 to 600 hours of message therapy education, although some states require up to 1000 hours. Most states require applicants to pass a state or national examination, as well as some level of background check.

Table One compares the specific licensing requirements of HB 2187, which was introduced during the Kansas 2013 Legislative Session, to requirements in Iowa and the states geographically surrounding Kansas.

History of Bills Introduced in Kansas

Bills to enact licensure for massage therapists were introduced in 2008 (SB 572), 2012 (HB 2564), and 2013 (HB 2187). HB 2187 remained in the House Committee on Health and Human Services at the end of the 2013 Legislative Session. Table Two highlights some of the differences and similarities between the three bills.

HB 2187 would give oversight of massage therapy licensure to the Board of Nursing (Board). The Board estimated licensing of massage therapy would increase its expenditures for the first year by $217,883 and would increase fee fund revenue by $180,000, assuming 2,400 massage therapists would apply for a massage therapy license. There would be a $30,000 one-time start-up fee for the first year. The Board anticipated hiring three FTE positions to handle the increased workload.

A subcommittee of the House Committee on Health and Human Services was formed during the 2013 Legislative Session to gather additional information about massage therapy. The first meeting was on March 14, 2013, and a second meeting was held on May 9, 2013.

Proponents of the bill stated it would not over-regulate the practice of massage therapy but would protect the practitioners and the public. Proponents also stated the bill would benefit public interest by assuring clients that a licensed massage therapist had a clear scope of practice, a required education and training level, and continuing education requirements; that a means of filing a complaint or grievance was available; and that a state regulatory body was empowered to enforce sanctions against those who violated public trust. Without state licensure the only recourse for the public is filing a criminal or civil complaint.

Opponents of the bill stated massage therapy practice is operating well without government involvement. Opponents also voiced concern about the ability to comply with record-keeping standards. While massage therapy schools teach record-keeping as part of a 500-hour program there are not record-keeping classes available for practicing massage therapists not enrolled in a full training program.

The League of Kansas Municipalities (LKM) opposed the section of the bill that would preempt the municipal ordinances relating to massage therapists. The LKM suggested a dual regulation system.

Table One

Massage Therapy Laws								
State	State Licensure	Regulatory Oversight Body	License Fees (maximum allowable)	Age Requirement	Education Requirements	Other Licensing Requirements	Exam Requirements	Continuing Education
Kansas (proposed)	2013; HB 2187	State Board of Nursing	Application: $80 Temp. Permit: $25 Renewal: $75 Late Renewal: $75 Reinstatement: $80	18 years of age	High school diploma/equivalent; 500 in-classroom hours	No disqualifying conduct (as defined by the Board); criminal background check (optional)	Nationally recognized competency exam in massage	12 hours biennially
Colorado	yes	Regulatory Board	Application & Initial Licenses: $80 Renewal: $59 Fingerprint Check: $39.50		500 hours	Background check	NCBTMB; or MBLEx	N/A
Missouri	yes	Missouri State Board of Therapeutic Massage	Student License: $25 Provisional: $50 Permanent License: $125 Renewal: $100	18 years of age	500 hours	Good moral character	*NCETMB; *NCCAOM; *MBLEx; or *AMMANCE	12 hours biennially
Nebraska	yes	Nebraska Massage Therapy Board	License: $110 Temp. License: $25 Renewal: $110	19 years of age	1,000 hours	Good character	NCBMTB; or MBLEx	24 hours biennially
Oklahoma	no							
Iowa	yes	Iowa Board of Massage Therapy Examiners	Application: $120 Biennial Renewal: $60		600 hours		NCETMB; or MBLEx	24 hours biennially
NCBMTB: National Certification Examination for Therapeutic Massage & Bodywork MBLEx: Federation of State Massage Therapy Boards NCCAOM: National Certification Commission for Acupuncture and Oriental Medicine NCETMB: National Certification Board for Therapeutic Massage & Bodywork AMMANCE: American Manual Medicine Association National Certification Exam								

Table Two

Comparison of Massage Therapy Licensure Bills 2001-2013			
Provisions	2013 HB 2187	2012 HB 2564	2008 SB 572
Named Act	Massage Therapist Licensure Act	Same as 2013 bill	Massage Therapy Practice Act
Regulatory Oversight Body	State Board of Nursing	State Board of Healing Arts	Board of Massage Therapy established by the Act
Included in Practice of Massage Therapy	Care and services in a system of therapeutic, structured touch, palpitation or movement of soft tissue to enhance or restore general health and well-being. The system includes, but is not limited to: effleurage (stroking or gliding); petrissage (kneading); tapotement or percussion; friction, vibration, compression; passive and active stretching within the normal anatomical range of movement; hydromassage; thermal massage; or application of these techniques with or without the aid of lubricants, salt or herbal preparations, water, heat, or a massage device mimicking or enhancing actions by human hands.	Does not refer to services by a "licensed" massage therapist, but other provisions are identical to the 2013 bill.	Does not refer to services by a "licensed" massage therapist, but other provisions are identical to 2013 bill.
Applicant Requirements for Licensure	The applicant may be licensed if they have a high school diploma or equivalent, 18 years of age or older, no other disqualifying conduct as defined by the Board, completion of 500 hours of instruction, and has passed a nationally recognized competency examination approved by the Board.	Instead of having no other disqualifying conduct as defined by Board, the applicant "is of good moral character as defined by the Board according to this Act."	Same as 2013 except proof of U.S. citizen or permanent resident and good moral character were required. Two options available to license individuals who do not meet the standard requirements.
Detailed License Standards for Practice of Massage Therapy	Not in statute	Not in statute	Detailed licensed standards for practice set out in statute.
Temporary Permits	May be issued for not more than 120 days for a graduate of a massage therapy school in a foreign country (requires licensure verification and approval of educational credentials).	Not in statute	Not in statute
Identification as Licensed Massage Therapist	Use of "LMT" in identifying self to patient or public; use of words including "massage therapist," "massagist," "massotherapist," "myotherapist," "body therapist," "massage technician," "massage practitioner," " masseur," " masseuse," or any derivation of these terms.	Same as 2013 bill	Includes terms identifying individual as a massage therapist similar to 2013 bill.

Table Two, cotinued

Comparison of Massage Therapy Licensure Bills 2001-2013			
Provisions	2013 HB 2187	2012 HB 2564	2008 SB 572
Named Act	Massage Therapist Licensure Act	Same as 2013 bill	Massage Therapy Practice Act
Advisory Committee or Advisory Council	Advisory Committee established by the Board	Massage Therapy Advisory Council	None. Instead, the bill outlines the creation of the Board of Massage Therapy.
License Expiration	Expires every two years on the date established by Board rules and regulations. Renewal application and prescribed biennial renewal fee required.	Expires on the date of expiration established by rules and regulations of the Board unless the license is renewed in the manner prescribed by the Board.	Expires annually unless renewed.
Continuing Education Requirement on License Renewal	No more than 12 hours of continuing education required biennially for license renewal.	No more than six hours of continuing education annually.	Continuing education requirements not to exceed 16 hours per biennium.
Fingerprinting - State and National Criminal History Record Check	The Board may require fingerprinting of an initial applicant for licensure for identification and to determine whether applicant has criminal record in state or other jurisdictions, and may use such information to determine character and fitness for practice in state.	Not in statute	New applicant for license agrees to provide the Board with any and all information needed to perform a criminal background check and expressly consents and authorizes the Board or its representative to perform such a check.
Disciplinary Action	The Board may deny, suspend, revoke, or limit a license or the licensee may be publicly or privately censured if guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Civil fines also may be assessed for unprofessional conduct in an amount not to exceed: $1,000 for first violation, $2,000 for second violation, and $3,000 for third and each subsequent violation.	Differences: Also mentions the Board may refuse to renew; if applicant is found guilty of a felony, mentions acts for which convicted must be found by the Board to have a direct bearing on whether the individual should be entrusted to serve the public in the capacity of a naturopathic doctor. Civil fines may be assessed for unprofessional conduct in an amount not to exceed $5,000 for first violation, $10,000 for second violation, and $15,000 for third and each subsequent violation.	The Board may examine and determine the qualifications and fitness of applicants to practice massage therapy. The Board may issue, renew, refuse to renew, deny, suspend, or revoke licenses to practice massage therapy or otherwise discipline massage therapists. The Board may assess civil penalties. Fines for practice without a license: not more than $1,000 for each offense; conviction of second or subsequent offense would include a fine of not more than $1,000 for each offense, imprisonment for not more than 12 months, or both. The Board also may impose fines of not more than $1,000 for each offense for a detailed list of 13 additional offenses, including unprofessional conduct. The factors the Board is to consider before imposing civil penalties also are provided in the bill.
Restriction on Local Units of Government	On and after July 1, 2015, local units of government cannot establish or maintain professional licensing requirements for massage therapists licensed under the Act. Local zoning requirements are not affected by the Act.	Same as 2013 bill, except a one year delay in application of restriction and 2013 bill applies a one to two year delay depending on the date of bill passage and publication in statute book.	Local jurisdictions may adopt or enforce any local ordinance that is not in conflict with provisions of the Act.

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Health

L-5 Recent Changes in Kansas Health Information Technology

This article provides background information on the development of health information technology in Kansas and changes made during the 2013 Legislative Session to the Kansas Health Information Technology and Exchange Act, which was renamed the Kansas Health Information Technology Act.

Background

Beginning in 2005, the State facilitated meetings with Kansas stakeholders to discuss and develop the statewide infrastructure to support an intra-state and inter-state Health Information Exchange (HIE). HIE is intended to provide the ability to exchange health information electronically as a means of improving health care quality and safety.

A funding opportunity under the American Recovery and Reinvestment Act in August 2009 through the Office of the National Coordinator (ONC) to provide state grants promoted health information technology, and the State applied for the funding. The funding was to assist in the creation and implementation of governance, policy, and technical infrastructure to enable standards-based HIE and a high-performance health care system. The Kansas Department of Health and Environment (KDHE) formed the Kansas e-Health Advisory Council (eHAC) to provide stakeholder input to assist KDHE in the preparation of the state's application for the State HIE Grant. In October 2009, KDHE submitted the application requesting $9,010,066 to develop the state's HIE. After completion of the grant application, KDHE asked e-HAC to continue providing assistance. Kansas received a Notice of Grant Award for the full amount of the request in February 2010.

The receipt of grant funding required Kansas to name the entities in the State responsible for grant compliance and for the development of an HIE. KDHE and e-HAC worked together to create the documents to form a public-private partnership, the Kansas Health Information Exchange, Inc. (KHIE), in response to Governor's Executive Order 10-6 issued in June 2010. As recommended by the Secretary of Health and Environment (Secretary) and e-HAC, KDHE became the state agency responsible for the planning and implementation of health information technology. KHIE became the state-designated entity to ensure collaborative statewide HIE development in Kansas. KHIE came into existence as a 17 member Board of Directors in November 2010.

KHIE had two major areas of focus: solidifying its corporate structure (including hiring staff) and developing policies addressing all aspects of HIE in Kansas. The efforts of KHIE resulted in the creation of the Kansas Health Information Technology Exchange Act (KHITE), which passed as part of 2011 HB 2182 (a bill containing multiple health related matters). KHITE was designed to provide consistency between state health information security and privacy and the federal Health Information Portability and Accountability Act (HIPAA). KHIE also designed and implemented a process for approving Health Information Organizations (HIOs) in Kansas, which ensured alignment with State policies and goals. Two HIOs have been licensed to operate and provided service in Kansas: the Kansas Health Information Network (KHIN) and the Lewis and Clark Information Exchange (LACIE). These vendors of HIE services in Kansas are to provide statewide service and direct services to medical providers who are not ready to move to full electronic health records or to automated HIE. Further, KHIE developed an education plan to inform patients and medical providers of the value of HIE.

In the process of policy development for Kansas, KHIE determined it would not provide public statewide technology services directly to health care providers in the state, and instead allowed the continued development of privately managed Regional Health Information Organizations to provide direct service to health care providers. KHIE decided that a majority of the technologies necessary to share data across networks would be provided through memorandums of understanding between approved HIOs as a condition of certification as KHIE Board-approved HIOs.

Reorganization of Health Information Technology

A recommendation for reorganization to transition responsibilities from KHIE to KDHE occurred after discussions regarding KHIE's business model, the cost of continuing the KHIE Board and its staff beyond the life of the ONC grant, and the purpose of the Board after the decision not to provide core technologies to facilitate data transmissions. The goal was to achieve better service coordination with additional state resources and with a reduction in operating costs, which could impact or deter provider participation.

The recommended transition in responsibility from KHIE to KDHE and other amendments to KHITE were contained in 2013 SB 210. Testimony in favor of the bill provided by the Deputy Secretary of Health and Environment at the hearing before the Senate Committee on Public Health and Welfare indicated a drastic change in scope from the initial state plan that informed the development of the original KHIE. Originally, KDHE was to be funded through the collection of fees associated with providing HIOs services to medical providers in Kansas. Without the fees, KHIE needed to identify how to fund an annual budget of $400,000 to $500,000. According to the representative, the KHIE Board determined KDHE would be the preferred and appropriate entity to administer the regulatory functions previously assigned to the Board, in light of the evolution of KHIE's responsibilities and the capabilities of KDHE.

Among those speaking in opposition to 2013 SB 210 at the Senate Committee hearing was a representative of the Kansas Association for Justice, who indicated the Association generally was neutral to components of the bill, but opposed language prohibiting disclosure of protected health information by approved HIOs. The representative stated such language in the bill would be detrimental to the expeditious and fair resolution to all parties of a legal claim, whether needed by an injured person to prove their case or by someone defending themselves in litigation. The representative further indicated the effect of the prohibited disclosure language in the bill would be to deny patients access to their health information and would violate HIPAA.

During Conference Committee, 2013 SB 210, as amended by the Senate Committee, was placed in 2013 Sub. for HB 2183, along with other health related bills. In Conference Committee, KHITE was further amended to identify the appointing entity for certain members of the Advisory Council on Health Information Technology (Council).

Sub. for HB 2183 replaced, KHITE with the Kansas Health Information Technology Act (Act). The

oversight and authorization to establish standards for the operation of statewide and regional HIOs was transferred from KHIE to KDHE. A new Council was created with the responsibility for providing advice to the Secretary. References in KHITE to "health information exchange" generally were replaced with "the sharing of information electronically."

Purpose of the Act

The stated purpose of the Act is "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 the sharing of health information electronically." (The U.S. Department of Health and Human Services issued the Privacy Rule to implement national standards for the protection of health information pursuant to HIPAA.)

Definition Changes

The terms "approved health information organization," "covered entity," "health care provider," "health information organization," and "participation agreement" were revised. Additionally, the term "health information technology" was amended to specify that the term includes an electronic health record, a personal health record, the sharing of health information electronically, electronic order entry, and electronic decision support.

The following terms were deleted from the Act: "corporation" (this term referred to KHIE), "designated record set," "DPOA-HC," "electronic protected health information," "health care clearinghouse," "health plan," "hybrid entity," "interoperability," "public health authority," and "standard authorization form."

Definitions for "authorization" and "department" (referencing KDHE) were added to the Act. "Authorization" was defined as 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 CFR § 160.508.

Oversight and Standards

Under the Act, as amended, KDHE assumes the duties to establish and revise the standards for the approval and operation of the statewide and regional HIOs operating in Kansas, duties which originally were the responsibility of KHIE. KDHE is required to ensure that approved HIOs operate within the state in a manner consistent with the protection of the security and privacy of health information of the citizens of Kansas.

State General Fund expenditures for administration, operation, or oversight of the HIOs are prohibited, with one exception: the Secretary may make operational expenditures to adopt and administer the rules and regulations necessary to implement the Act.

The standards established in the Act include the following: adherence to nationally recognized standards for interoperability (the capacity of two or more information systems to share information or data in an accurate, effective, secure, and consistent manner); adoption and adherence to rules promulgated by KDHE regarding access to and use and disclosure of protected health information maintained by or on an approved HIO; and development of procedures for entering into and enforcing the terms of participation agreements with covered entities that satisfy the requirements established by KDHE pursuant to participation agreement provisions of the Act.

Health Information Organizations

Under the Act, KDHE is directed to establish requirements to be used by approved HIOs in participation agreements with covered entities. Requirements KDHE must provide include specifications of:

- Procedures by which an individual's protected health information will be disclosed by covered entities, collected by approved HIOs, and shared with other participating covered entities and with the KDHE, as required by law for public health purposes;
- Procedures by which an individual may elect to restrict the disclosure of protected health information by approved HIOs to covered entities; and
- Purposes for and procedures by which a covered entity can access an individual's protected health information from the approved HIO, including access to restricted information needed to properly treat the individual in an emergency situation.

Procedural requirements for the written notice provided by covered entities to individuals and their personal representatives also are addressed in the Act.

Protected health information in the possession of an approved HIO is not subject to discovery, subpoena, or other means of legal compulsion for the release of such information to any person or entity. In addition, an approved HIO cannot be compelled by a request for production, subpoena, court order, or otherwise, to disclose an individual's protected health information.

Advisory Council on Health Information Technology

The Act also provides for an Advisory Council on Health Information Technology (Council) within the Division of Health in KDHE. The Council is to serve in an advisory role to the Secretary and to provide input on the continued development of policy and direction related to HIE in Kansas. Appointments to the Council are made through the Secretary.

The Council consists of 23 voting members who, with the exception of the Governor and Secretary or their designees, serve staggered terms from the commencement of the Council. Term lengths vary from one to four years and are determined by lot. Members of the Council are:

- Secretary of Health and Environment, or designee;
- Governor, or designee;
- Four legislators selected by the Chairpersons and ranking minority members of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare;
- Members appointed by the Secretary, as follows:
  - Two consumer representatives;
  - One employer representative;
  - One payer representative;
- Members appointed by the Secretary from a list of three names submitted by the entity noted in parentheses:
  - One local health department representative (Kansas Association of Local Health Departments);
  - Three hospital representatives, one of which must be involved in the administration of a critical access hospital (three names submitted for each position by the Kansas Hospital Association);
  - Three members, at least two of which must be practicing physicians and one of the physicians must be a primary care specialist (three names submitted for each position by the Kansas Medical Society);
  - Two pharmacist representatives, at least one of which must be a practicing pharmacist (Kansas Pharmacists Association); and
- One member representing each of the following entities and appointed by the Secretary from a list of three names provided by each entity:
  - University of Kansas Center for Health Information;
  - Kansas Foundation for Medical Care;
  - Kansas Optometric Association; and
  - Association of Community Mental Health Centers of Kansas.

Following a member's initial term of service on the Council, he or she may be reappointed and, if appointed, serves a four year term. The Act

provides for the filling of vacancies and removal of Council members, requires meetings of the Council at least four times per year and at such times as deemed appropriate by the Council or called by the Secretary, and provides for compensation and expenses as provided in existing law. Members attending Council meetings or subcommittee meetings authorized by the Council are to be paid mileage and applicable expenses consistent with policies established by the Council from time-to-time.

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M-1
Supreme Court Ruling's Impact on Affordable Care Act—Medicaid Expansion

M-2
Health Insurance Marketplaces/ Market Reforms/ Implementation

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Health Reform

M-1 Supreme Court Ruling's Impact on Affordable Care Act—Medicaid Expansion

The Patient Protection and Affordable Care Act and the Health Care Education Act, jointly referred to as the Affordable Care Act (ACA), passed in March 2010, included a section that addressed the expansion of the Medicaid program.

Eligibility Requirements

To participate in Medicaid, states were required by federal law to cover the following groups: pregnant women and children under the age of six with family incomes below 133 percent of the federal poverty level (FPL), children ages six through 18 with family incomes at or below 100 percent of FPL, parents and caretaker relatives who met certain financial eligibility guidelines, and elderly and disabled individuals who qualified for Supplemental Security Income benefits as a result of low income and resources.

The Medicaid expansion for adults, scheduled to commence on January 1, 2014, in conjunction with the health insurance exchange, was structured to extend Medicaid coverage to a newly eligible group consisting of nearly all non-disabled adults under the age of 65 whose household income fell at or below 133 percent of the FPL with a variance of plus or minus 5 percent. Under the 2013 Federal Poverty Level, a family of four making $31,322 and an individual making $15,282 would be at 133 percent of FPL. A family of four making $32,499 and an individual making $15,856 would be at 138 percent of FPL.

Federal Government Funding

Under the ACA provisions, states were required to participate in the Medicaid expansion for the newly eligible group or risk losing all Medicaid funding. Instead of providing federal matching funds to the states to provide Medicaid covered services to the new group under the existing federal share structure, known as the medical assistance percentage (FMAP), the federal government would cover 100 percent of the states' costs for the newly expanded group from 2014 through 2016 and gradually reduce the federal share to 90 percent in 2020 and after.

The provisions of the federal Medicaid Act that grant authority to the Secretary of the Department of Health and Human Services (HHS) to withhold all or part of a state's federal matching funds for non-compliance

with federal requirements were unchanged by the ACA.

Court Challenge to Medicaid Expansion

Twenty-six states, several individuals, and the National Federation of Independent Business (NFIB) brought suit in Federal District Court challenging the Medicaid expansion and the constitutionality of the individual mandate. The case is known as Florida v. HHS. At least 25 other cases were filed in federal district courts, but only in the Florida case did the petitioners assert that the ACA's Medicaid expansion was "unconstitutionally coercive." Both the Florida Federal District Court and the 11th Circuit Court of Appeals upheld the Medicaid expansion provision. The 11th Circuit's decision stated states have a choice to participate in the Medicaid program, and the Medicaid expansion was within Congress' spending clause power to impose conditions on its grants to states. The case reached the U.S. Supreme Court, which heard oral arguments in the case on March 26, 27, and 28, 2012. The Supreme Court's decision in the case is cited as *National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al.*, 132 S. Ct. 2566 (2012).

Arguments Before Supreme Court

Among the four issues addressed by the Supreme Court was whether Congress unconstitutionally coerced the states into expanding the Medicaid program by threatening to withhold the states' federal funding.

The state petitioners argued Medicaid expansion was coercive because the states felt the need to participate in the program due to the importance of Medicaid funding and would then be required to comply with the new expansion requirements. The states asserted Congress may not coerce the states to adopt policies through the Spending Clause of the Constitution when Congress does not have power to force the states to do so directly. The state petitioners argued that limits should be placed and enforced on Congress' spending power to protect state sovereignty and restore the balance of power between Congress and the states. The states stressed the Medicaid expansion was unprecedented because Congress had never mandated what they believed was an across-the-board Medicaid financial eligibility floor.

In the Supreme Court case, the federal government argued Congress has the authority to place conditions on the receipt of federal funds by the power granted under the Spending Clause of the Constitution. Further, the federal government argued the Supreme Court has recognized Congress' power to attach conditions on the receipt of federal funds disbursed under its spending power. The federal government also argued the federal Medicaid statute has contained mandatory coverage requirements for participating states and Congress previously has required states to cover new categories of individuals.

State Options for Medicaid Ruling Summary

The U.S. Supreme Court upheld nearly all of the ACA, affirming the law's mandate that most everyone carry insurance, but striking down a provision that would have allowed the federal government to withhold all Medicaid funds to any state that did not comply with the new Medicaid eligibility requirements.

Section 1396c of the Medicaid Act provided that if a State's Medicaid plan does not comply with the Act's requirements, the Secretary of Health and Human Services may declare that "further payments will not be made to the State." 42 U. S. C. §1396c. A State that opts out of the Affordable Care Act's expansion in health care coverage stood to lose all of its Medicaid funding. Section 1396c gave the Secretary of Health and Human Services the authority to withhold all "further [Medicaid] payments... to the State" if it is determined that the State is out of compliance with any Medicaid requirement, including those contained in the expansion. 42 U. S. C. §1396c.

A majority of the justices voted that the government could not compel states to expand Medicaid by threatening to withhold federal money to existing Medicaid programs. "When, for example, such

conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes." 132 S. Ct. at 2604.

"[T]he Secretary cannot apply §1396c to withdraw existing Medicaid funds for failure to comply with the requirements set out in the expansion." 132 S. Ct. at 2607.

The expansion is valid, however, if the penalty is limited to the loss of new funds. The ACA's provision withholding all Medicaid funding from any state that did not agree was unconstitutionally coercive on the states. "The threatened loss of over 10 percent of a State's overall budget, in contrast, is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion." 132 S. Ct. at 2605.

Congress had not revised an existing program but essentially created a whole new one, and therefore was not entitled to withhold longstanding funding for states that would not go along with the changes. "[T]he manner in which the expansion is structured indicates that while Congress may have styled the expansion a mere alteration of existing Medicaid, it recognized it was enlisting the States in a new health care program." 132 S. Ct. at 2606.

The Court ruling limited the Medicaid expansion provisions, but did not invalidate them. The Medicaid expansion is now optional for states, and states will no longer be required to implement those provisions. "Nothing in our opinion precludes Congress from offering funds under the Affordable Care Act to expand the availability of health care, and requiring that States accepting such funds comply with the conditions on their use. What Congress is not free to do is to penalize States that choose not to participate in that new program by taking away their existing Medicaid funding." 132 S. Ct. at 2607.

The Court upheld the ACA's major expansion of the joint federal-state Medicaid health insurance program but limited the possible penalty for states that opt to forgo expansion provisions outlined in the law. "The Court today limits the financial pressure the Secretary may apply to induce States to accept the terms of the Medicaid expansion. As a practical matter, that means States may now choose to reject the expansion; that is the whole point." 132 S. Ct. at 2608.

According to Kaiser Health News, the Court's ruling on Medicaid funding took away one of the federal government's primary inducements to get states to participate in its expanded health coverage for low-income people. The ACA would have allowed the government to withhold all Medicaid money to states that did not expand Medicaid coverage to those who earned up to 133 percent of FPL, which is about $31,000 for a family of four under the 2013 FPL. "The Court today limits the financial pressure the Secretary may apply to induce States to accept the terms of the Medicaid expansion." 132 S. Ct. at 2608.

State Decisions

The Supreme Court's health reform ruling ended months of speculation and uncertainty, but it also raised key questions for Kansas policymakers. Among the most pressing is the question of Medicaid expansion. If policymakers choose not to comply with the eligibility changes called for in the law, an estimated 130,000 low-income adult Kansans may remain uninsured. States will now have to make a series of political, fiscal, and policy decisions moving forward to determine if this Medicaid expansion makes sense for their state. Currently in Kansas, adults who are not elderly or disabled and who are not caretakers are not eligible for Medicaid at any income level. Adults who are caretakers with incomes up to roughly 27 percent of FPL—around $6,000 per year—are eligible for Medicaid.

The ACA originally required states to expand eligibility for their Medicaid programs to all non-elderly individuals with incomes up to 133 percent of FPL— about $31,000 for a family of four. The Court's decision prohibiting the federal government from withholding Medicaid funding from states that do not comply with the Medicaid expansion requirement has the effect of making the expansion optional. Of the approximately 356,000 uninsured Kansans, 151,000 could qualify for the expanded Medicaid program if implemented by the State. Of

those, an estimated 130,000 are low-income adult Kansans who today do not qualify for Medicaid and who would be made eligible by the expansion.

The HHS has yet to promulgate guidance on the Medicaid expansion provision issue of how "current funding" is defined, another key consideration for the State.

The issues of what constitutes expansion and whether partial expansion is allowed have been addressed. In a letter to Governors dated December 10, 2012, HHS Secretary Kathleen Sebelius clarified states will not receive 100 percent federal funding for partial Medicaid expansion. Secretary Sebelius' December 10, 2012, posting on the HealthCare.gov blog addresses whether receipt of 100 percent of federal matching funds is available to states choosing to expand to less than 133 percent of FPL. She clarified the law does not create an option for enhanced match for a partial or phased-in Medicaid expansion to 133 percent of poverty. Secretary Sebelius noted HHS would consider broad-based state innovation waivers at the regular matching rate now and in 2017 when the 100 percent federal funding for the expansion group is slightly reduced.

There are many questions to contemplate as Kansas weighs the decision of whether to expand the Medicaid program:

- Should the State not opt to expand Medicaid, how many of the 130,000 Medicaid expansion population would be subject to the individual mandate?

A person is exempt from the individual mandate if he or she cannot find coverage for less than eight percent of his or her annual income; for a family of four earning $31,000 (133 percent of FPL), that is approximately $2,400 yearly or $200 per month. Theoretically, many in this population would be unable to find "affordable" coverage and would be exempt from the mandate.

- How will Disproportionate Share Hospital payment reductions apply?

The ACA begins lowering what are known as "Disproportionate Share Hospital" or "DSH" payments in 2014. These are payments made to hospitals to help offset the costs of providing care to uninsured and low-income patients. The payments are being reduced under the theory that, as more people get insurance through the ACA, DSH payments will become less necessary. The reductions are set to be calculated based on the states' rate of uninsured, but it is not clear how calculations will be made in states that do not expand the Medicaid program.

HHS' Center for Medicare and Medicaid Services (CMS) issued the final rule on DSH reduction on September 18, 2013. The ACA requires the use of a DSH Health Reform Methodology (DHRM) to determine the percentage reduction in each annual state DSH allotment in order to meet the required aggregate annual reduction in federal DSH funding. The statute requires annual aggregate reductions in federal DSH funding from FY 2014 through FY 2020. The aggregate annual reduction amounts are as follows: $500 million for FY 2014; $600 million for FY 2015; $600 million for FY 2016; $1.8 billion for FY 2017; $5 billion for FY 2018; $5.6 billion for FY 2019; and $4 billion for FY 2020.

CMS expects states that do not expand will have relatively higher rates of uninsured, and more uncompensated care than states expanding Medicaid. According to CMS, because states expanding Medicaid would likely have reductions in the rates of uninsurance, the reduction in DSH funding may be greater for those states than for states that do not expand. CMS anticipates hospitals in states that do not expand that serve Medicaid patients may experience a deeper reduction in DSH payments than they would if all states were to expand Medicaid, but those effects would not be experienced until after FY 2014 and FY 2015 based on current data reporting timelines.

As such, the DHRM proposed only for the first two years of DSH funding reductions (2014 and 2015) does not include a method to account for differential coverage expansions in Medicaid. Given the reduction on funding for Medicaid DSH in the ACA, in future rulemaking CMS intends to account for the different circumstances among states in the formula for DSH allotment reductions for FY 2016 and later, when the relevant data would be available.

CMS notes, though the rule would reduce state DSH allotments, management of the reduced allotments largely remains with the states. Given that states would retain the same flexibility to design DSH payment methodologies under the state plan and individual hospital DSH payment limits would not be reduced, CMS noted it could not predict if or how states would exercise their flexibility in setting DSH payments given their reduced allotments and the effect that would have on providers.

- Can the State High Risk Pool accommodate more persons when the Federal High Risk Pool ends in Calendar Year 2014?

In Kansas, the Federal High Risk Pool has around 470 enrollees (as of June 30, 2013, as reported by CMS), but the State High Risk Pool has 1,305 (as of October 28, 2013, as reported by the Kansas Insurance Department). Both of these high-risk pools will terminate member coverage effective December 31, 2013, when standard health coverage is available to all individuals under the ACA, regardless of health status. Open enrollment for health insurance policies available on the Health Insurance Marketplace began October 1, 2013. Individuals may go to the Marketplace and select a new plan without having to report a pre-existing condition, with coverage beginning as early as January 1, 2014.

- What federal funding would be provided to states for Medicaid expansions?

If Kansas chose to expand the Medicaid program, the federal government would cover the cost of the newly eligible enrollees for the first three years. Over time, the federal government's share would drop to 90 percent.

Year	Federal Share	State Share
2014	100%	0
2015	100%	0
2016	100%	0
2017	97%	3%
2018	95%	5%
2019	93%	7%
2020 and Beyond	90%	10%

Other States Plans

Early Adopters of Expansion

Some states have already planned for and implemented the Medicaid expansion.

States Getting an Early Start on the Medicaid Expansion, April 2010-May 2012

	Coverage Authority	Effective Date	Income Limit	Enrollment
CA	**Waiver**	**Nov 1, 2010**	**200% FPL**	**251,308**
CT	**ACA Option**	**April 1, 2010**	**56% FPL**	**74,752**
CO	**Waiver**	**April 1, 2012**	**10% FPL**	**10,000**
DC	**ACA Option** **Waiver**	**July 1, 2010** **Dec 1, 2010**	**133% FPL** **200% FPL**	**40,776** **3,411**
MN	**ACA Option** **Waiver**	**March 1, 2010** **August 1, 2011**	**75% FPL** **250% FPL**	**80,200** **41,811**
MO	**Waiver**	**July 1, 2012**	**133% FPL**	**N/A**
NJ	**Waiver**	**April 14, 2011**	**23% FPL**	**53,490**
WA	**Waiver**	**Jan 3, 2011**	**133% FPL**	**50,920**

Kaiser Family Foundation

Kansas Action on Expansion

Kansas has not opted to expand Medicaid to date. Section 203 of 2013 SB 171 [the approved budget bill that made supplemental appropriations for FY 2013 (and FY 2014 for selected fee-funded agencies) and appropriations, including capital improvements for FY 2014 and FY 2015] addressed the issue of Medicaid eligibility expansion. Section 203 expressly prohibited the use of moneys appropriated from the State General Fund or from any special revenue fund or funds for FY 2013, 2014, and 2015, to expand eligibility for receipt of benefits under Medicaid, as provided for in the ACA, unless the Legislature expressly consented to the expansion of Medicaid services.

In addition, several concurrent resolutions and one bill were proposed during the 2013 Legislative Session addressing Medicaid expansion, either directly or indirectly, as outlined below. However, no final action was taken on any of these measures.

House Concurrent Resolution No. 5013 was proposed stating the will of the Kansas Legislature is that the State not expand Medicaid above its current eligibility levels. The resolution was heard before the House Committee on Appropriations, at which time testimony was presented both supporting and opposing the resolution, as well as testimony indicating the State should wait to see what flexibility the federal government might allow to make Medicaid expansion a Kansas-based program. The Committee recommended the resolution be adopted, but no further action was taken prior to the end of the session.

Also proposed during the 2013 Legislative Session were Senate Concurrent Resolutions (SCR) 1612 and 1613. SCR 1612 proposed Article 15 of the *Kansas Constitution* be amended to expressly reserve to the State and its citizens all powers not delegated to the United States by the *U. S. Constitution* or prohibited to the states by the *U.S. Constitution*. Health care was listed as included in these reserved powers. SCR 1613 made an application to the U.S. Congress to call a Constitutional Convention to consider an amendment to the *U.S. Constitution* with respect to states' rights. The proposed amendment stated the State and its citizens have the sole and exclusive authority to regulate directly, and to regulate indirectly through taxes, several subjects including health care and all forms of insurance. Both resolutions were referred to the Senate Committee on Federal and State Affairs, but no hearing was held on either.

Further, HB 2032 was proposed to expand Medicaid eligibility to 133 percent of FPL effective January 1, 2014, for adults under the age of 65 who are not pregnant. However, no bill hearing occurred.

Other State Actions on Expansion

States have flexibility to start or stop the expansion, but the federal match rates paid are tied by law to specific calendar years. As outlined in the ACA, for the first three years of the expansion, the federal government will pay for 100 percent of the costs of covering the newly eligible Medicaid population. However, that federal contribution declines to 90 percent by the year 2020, with the state picking up the remaining 10 percent.

According to CMS, as of October 24, 2013, 25 states and the District of Columbia have decided to move forward with Medicaid expansion, while 25 states are not expanding as of that date. Arkansas, Iowa, and Pennsylvania are exploring expansion alternatives.

Arkansas has submitted a Medicaid expansion Section 1115 demonstration waiver application (Arkansas Health Care Independence Demonstration) to CMS, which has received conceptual approval. As part of the final approval process, CMS accepted public comments on the proposal until September 7, 2013. The statewide demonstration would operate during calendar years 2014, 2015, and 2016. Under the proposed demonstration waiver, Arkansas would use premium assistance funds to purchase coverage within qualified health plans in its state and federal partnership exchange that are available in the individual market for certain individuals eligible for Medicaid coverage. These individuals would be either childless adults ages 19 to 65 with incomes at or below 138 percent of FPL or parents between the ages of 19 and 65 with incomes between 17 and 138 percent of FPL. Arkansas estimates approximately 225,000 individuals would be eligible for the demonstration.

Iowa also has submitted a Medicaid expansion Section 1115 demonstration waiver application, which like Arkansas would use Medicaid funds as premium assistance to purchase coverage for some newly-eligible Medicaid beneficiaries in Marketplace (or Exchange) Qualified Health Plans. Like Arkansas, Iowa proposed to make premium assistance enrollment mandatory for affected beneficiaries and would exempt beneficiaries who are medically frail. However, Iowa proposes waiving wrap-around benefit requirements. The Iowa plan would limit coverage to newly-eligible Medicaid beneficiaries between 101 percent and 138 percent of FPL and would require enrollees to pay a premium of $20 per month, which may be waived if certain conditions are met. Additional details of the Iowa and Arkansas demonstration waiver application are available in a comparison prepared by the Kaiser Family Foundation entitled *Medicaid Expansion Through Premium Assistance: Arkansas and Iowa Section 1115 Demonstration Waiver Applications Compared* (September 18, 2013).

On September 16, 2013, Pennsylvania's Governor proposed an insurance expansion, Healthy Pennsylvania. *The Daily Pennsylvanian* reported on October 8, 2013, that a policy report had been issued. Healthy Pennsylvania would serve 520,000 currently uninsured individuals. The proposal would rely on a health insurance exchange that would allow private insurance companies to compete for enrollees, whose premiums would be subsidized by the federal government. However, unlike Medicaid, the proposal would require enrollees to pay up to $25 per month in insurance premiums and create additional work requirements not present in Medicaid coverage. The work conditions include requiring able-bodied Medicaid beneficiaries to prove they are searching for employment, a requirement not allowed under federal law.

State Budget Concerns with Expansion

Matt Salo, Executive Director of the National Association of Medicaid Directors has said while politics is a factor, states have legitimate budget concerns when weighing Medicaid expansion. Many state officials already are struggling to pay for the entitlement program, which typically is the largest or second largest state expense. A state's future share may sound small, but it represents billions in new spending that could require cutbacks of other more popular programs, such as education or transportation, or require raising taxes.

The Congressional Budget Office projected states would pay approximately $73 billion, or 7 percent of the cost of the Medicaid expansion between 2014 and 2022, while the federal government pays $931 billion, or 93 percent.

Concerns over start-up costs, the likelihood that millions of unenrolled persons currently eligible for Medicaid will enroll as a result of publicity about the expansion, and the potential that a deficit-focused Congress will scale back the federal share are causing states to evaluate whether they should opt for the expansion.

The woodwork effect—the possibility those currently Medicaid eligible individuals will enroll due to publicity about expansion—is of particular concern because states only will receive the traditional federal funding match, averaging 57 percent, for those individuals.

The Kansas Department of Health and Environment contracted with Aon Hewitt to perform an independent analysis on the potential enrollment and costs of the ACA implementation to the State's Medicaid and Children's Health Insurance Program. The analysis, published on February 13, 2013, indicates the ACA (without Medicaid expansion) would cost the state an increase of $513.5 million from the State General Fund for calendar years 2014 through 2023. The ACA with Medicaid expansion over the same time period would cost the state an estimated increase of $1.1 billion from the State General Fund. The estimated cost increases for the State General Fund are lower in the early years of expansion due to the 100 percent federal share paid.

On April 5, 2013, Governor Brownback said he continues "active conversations with people" about the potential benefits and risks of expanding the State's Medicaid program. He stated "[e]xpansion would have to be addressed by the Legislature.

They would have to budget it." He indicated concerns that the federal government eventually could shift much of the program's costs onto states. The Governor has indicated he is aware of the federal government's pledge to fully cover each state's expansion cost for the first three years and to limit states' responsibility to no more than ten percent thereafter, but that could change if federal funds were not available. Governor Brownback has not indicated whether he would decide on Medicaid expansion in 2013. (KHI News Service, April 5, 2013)

Health Care Provider Support for Expansion

Health care providers who treat low-income patients strongly support the expansion of coverage.

Richard J. Umbdenstock, President of the American Hospital Association (AHA), has said that hospitals around the country would lobby for the Medicaid expansion. "If states do not avail themselves of this opportunity," he said, "the federal money will go to other states, and hospitals will be left with large numbers of the uninsured." (*New York Times*, July 2012) After the Obama Administration's announcement in July 2013 of a one-year delay on the ACA requirement that medium and large employers provide insurance coverage for their workers or face fines, Mr. Umbdenstock issued a statement on behalf of the AHA on July 3, 2013, in which he noted the AHA is "concerned that the delay further erodes the coverage that was envisioned as part of the ACA. This delay comes at a time when there is significant uncertainty regarding Medicaid expansion. We will continue to work with Congress and the administration on the implementation of the law to make sure that the coverage needs for the uninsured are met."

Nancy M. Schlichting, Chief Executive of the Henry Ford Health System in Detroit, said she "absolutely will lobby" for the expansion of Medicaid. (*New York Times*, July 2012) She stated the expansion will provide "needed revenue for our health system and needed coverage for the people we serve." (*Detroit Free Press*, September 2, 2013)

A new report produced by researchers at Regional Economic Models, Inc., and George Washington University released by the Kansas Hospital Association (KHA) in February 2013, *Economic and Employment Effects of Expanding KanCare in Kansas*, estimates the federal funding associated with KanCare expansion will help create approximately 3,400 new jobs in 2014 and 4,000 new jobs by 2020. According to the KHA, the new report shows that expansion could help grow the Kansas economy and "documents the importance of Kansas carefully considering all aspects of expansion and making a decision that is best for Kansas." The report indicates expanding KanCare could actually result in a net cost savings for the state of $82 million from 2014-2020. Tom Bell, President and Chief Executive Officer of the KHA, stated "[a] decision to forego Medicaid expansion is more than just a decision to refuse the federal funding associated with Medicaid expansion. In fact, it amounts to additional real cuts to hospitals that are currently serving as the primary safety net for many uninsured individuals, and it comes at a time when the uncompensated care burden on the hospitals continues to grow at an alarming rate." (KHA Media release, February 18, 2013)

State Flexibility in Medicaid Expansion Participation

CMS has indicated there is much to consider in deciding whether to expand Medicaid, and there is no deadline by which states must make that determination. CMS stated states are expected and encouraged to look at their choices and options. CMS also stressed Medicaid expansion by states to include low income adults is voluntary. CMS indicated this means a state can decide when to expand, if to expand, and whether to terminate the expansion. Since Medicaid expansion is voluntary, if a state adopts the expansion and determines at a later time, for whatever reason, it does not want to maintain the expansion, the state also can decide to discontinue the expansion. CMS noted that all other aspects of the Medicaid expansion program remain intact, including the favorable federal match rate available, and states need to think through the costs and benefits of expansion before making a decision.

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M-1
Supreme Court Ruling's Impact on Affordable Care Act—Medicaid Expansion

M-2
Health Insurance Marketplaces/ Market Reforms/ Implementation

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Health Reform

M-2 Health Insurance Marketplaces/Market Reforms/ Implementation

This article outlines the insurance marketplace reforms included in the Affordable Care Act, related changes in Kansas law, and the interaction of the market and Exchange and available options following the June 2012 U.S. Supreme Court decision and the remaining implementation time line, as established by the Act.

Market Reforms – September 23, 2010, Policy Requirements

Under the Affordable Care Act (ACA), a number of significant market reforms became effective for most group and individual health insurance policies with plan years beginning on or after September 23, 2010. Under the ACA, most health benefit plans in Kansas were affected by these provisions, including self-funded Employment Retirement Income Security Act (ERISA) plans excluded from state regulation. The following provisions, with notation of relevant action by the Kansas Legislature, are the health insurance market reforms for plan years beginning on or after September 23, 2010[1]:

- **No annual or lifetime limits.** Health plans are not permitted to impose lifetime dollar limits on key benefits. Annual dollar limits on insurance coverage also are restricted and are not allowed to be less than $750,000 unless the health plan receives a waiver.
- **Prohibition on rescissions.** Rescissions of health insurance coverage are prohibited, except in instances of fraud or intentional misrepresentation.
- **Coverage of preventive health services.** Qualified health plans (QHPs) are required to provide, at a minimum, coverage without cost-sharing for: preventive services rated A or B by the U.S. Preventive Services Task Force; recommended immunizations; preventive care for infants, children, and adolescents; and additional preventive care and screenings for women.
- **Extension of adult dependent coverage.** Health plans that offer dependent coverage must provide coverage for adult children up to the age of 26 for all individual and group policies.

1 Some of the provisions will not apply to health plans that were in existence prior to March 23, 2010, and have complied with the requirements necessary to maintain a "grandfathered" status.

- **Prohibition of preexisting condition exclusion, children under age 19.** Health plans may not deny coverage or apply pre-existing condition exclusions to coverage for children under age 19. Under the law, a high-risk pool separate from the state pool already in place was created to cover certain individuals with pre-existing medical conditions – this pre-existing conditions pool remains effective until January 1, 2014.
    - The Kansas Legislature enacted legislation (2011 HB 2075) that amended law governing the existing State High Risk Pool law to accept children under the age of 19, if no coverage is available under an individual health insurance policy in the area in which the child lives. The law also increased the statutory lifetime limit from $2.0 million to $3.0 million. The 2013 Legislature increased this limit to $4.0 million (2013 HB 2107.)
- **Appeals process.** The ACA requires a group health and health insurers in the group or individual markets to implement an effective appeals process for coverage determination and claims. This process must, at minimum, include: having an internal claims appeals process; providing notice to plan enrollees of available internal and external appeals processes and the availability of any applicable assistance; and allowing an enrollee to review his or her files, present evidence and testimony, and to receive continued coverage pending the outcome of the appeal.
    - The Kansas Legislature enacted updates to four provisions in the external review statutes (2011 HB 2075) to comply with the Uniform Health Carrier External Review Model Act (new rules adopted on July 23, 2010). The Legislature previously has enacted provisions granting insureds certain appeal rights for adverse health care decisions made through a utilization review process (internal review rights, 2006 H. Sub. for SB 522).
- **Prohibition on discrimination based on salary.** Group health plans (other than those self-insured plans) may not establish rules relating to the health insurance eligibility of any full-time employee that are based on the total hourly or annual salary of the employee. The eligibility rules cannot discriminate in favor of higher wage employees.
- **Other patient protections.** Health plans in the group market or insurers in the individual market may not require referrals for in-network pediatrician and ob-gyn care. Additionally, if the plan or health insurance issuer covers services in a hospital ER, the plan or issuer is required to cover those services without the need for prior authorization. If the ER services are provided out-of-network, the cost-sharing requirement will be the same as the in-network requirement.

Among other insurance reforms instituted in 2010, the law required health plans to report their proportional spending of premium dollars spent on clinical services, quality, and other costs and, subsequently, provide rebates to consumers for the amount of the premium expended that is less than 85 percent for plans in the large group market and 80 percent for plans in the individual and small group markets (aka Medical Loss Ratio [MLR]).

January 1, 2014, ACA Insurance Marketplace Provisions in the ACA

In addition to market reforms that became effective in late 2010, the ACA provides a number of marketplace reforms that become effective on January 1, 2014, including:

- **Elimination of pre-existing condition exclusions**—individuals and families purchasing insurance in the individual market will be guaranteed coverage for pre-existing conditions.
- **Guaranteed issue and renewability of coverage**—guaranteed issue and renewability will be required.

- **Rating factors limited to age (3:1 band), tobacco use, geography, and family size**—rating variation only will be allowed based on age [limited to 3:1 ratio], premium rating area, family composition, and tobacco use [limited to 1.5:1 ratio] in the individual and small group market and the Exchanges.
- **Limits on out-of-pocket costs in qualified health plans**—deductibles for plans in the small group market are limited to $2,000 for individuals and $4,000 for families unless contributions are offered that offset deductible amounts above these limits. Out-of-pocket limits also would be reduced for persons with incomes up to 400 percent of the federal poverty level (FPL) (three tiers).
- **Mandatory coverage of "essential health benefits"**—the ACA creates an essential health benefits package requirement—which provides for a comprehensive set of services, covers at least 60 percent of the actuarial value of the covered benefits [the "bronze" level of coverage], limits the annual cost-sharing to the current law Health Savings Accounts (HSAs) limits [$5,950/individual and $11,900/family in 2010], and is not more extensive than the typical employer plan.
- **Uniform explanation of benefits and standardized definitions**—requires qualified health plans to meet new operating standards and reporting requirements.

Additional options for coverage. States would be allowed to create a Basic Health Plan for uninsured individuals with incomes between 133-200 percent of FPL who would otherwise be eligible to receive premium subsidies in the Exchange. States also would be permitted the option of merging the individual and small group markets.

January 1, 2014, also represents the first day of operation (open enrollment commenced in October 2013) of a health insurance exchange in the states. The ACA allows states an option to create state-based American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges, administered by either a governmental agency or non-profit organization, through which individuals and small businesses (up to 100 employees) may purchase health insurance coverage. This article does not address the individual mandate or phase-in tax penalty for those without qualifying health insurance coverage. The remaining section addresses the options available for states, following the recent decision, NFIB v. Secretary Sebelius, Department of Health and Human Services.

Exchange Options—State Discussion and Decision

Following the June 2012 U.S. Supreme Court decision, discussions began anew about the Exchange options available to the State of Kansas.

With the operational requirement of January 1, 2014, it was unlikely a state-based Exchange could be implemented in Kansas. The decision to opt-in for a state-based exchange would have to be submitted and certified by the U.S. Department of Health and Human Services (HHS) for approval or conditional approval by January 1, 2013 [for the 2014 coverage year]. The Kansas Legislature convened its 2013 Session on January 14, 2013. The legislation addressing the operational issues associated with the Marketplace, including its governance, was introduced during the session.

Review of State Options

The 2011 Interim Special Committee on Financial Institutions and Insurance received a briefing on Exchange options available to the states; options, in lieu of the establishment of a state-based Exchange, include: a State-Federal Partnership Exchange and a Federally-Facilitated Exchange.

In September 2011, HHS outlined the structure for a **Federally-Facilitated Exchange (FFE) and State-Federal Partnership Exchange** options. Five "core" functions of an exchange were identified:

- Consumer Assistance

  - Activities include consumer education and outreach; development and management of the Navigator program; call center operations; and website management.
  - If a state opts to maintain its consumer assistance function, the state would provide in-person assistance, Navigator management, and outreach and education.
- Plan Management
  - Decision-making includes those decisions relating to the operation of the Exchange (active purchaser or an open marketplace) and the rules and requirements for insurers participating on the Exchange and plans offered.
  - Plan management functions include plan selection; collection and analysis of plan rate and benefit package information; ongoing issuer account management; and plan monitoring, oversight, data collection, and quality analysis.
- Eligibility. The process of determining which individuals will be eligible for Children's Health Insurance Program (CHIP) and Medicaid programs and those persons eligible for tax credits and subsidies applicable to the purchase of private health insurance coverage.
- Enrollment. This process includes the enrollment of individuals in public programs or private plans based on the person's eligibility and the on-going involvement with private health plans (enrollments and payment of premium subsidies).
- Financial Management. Responsibilities include premium processing, the development and management of the funding mechanism for the operation of the Exchange, and the risk adjustment and reinsurance programs that will be required to ensure the operation of the health insurance marketplace (the market will include new, previously uninsured, enrollees).

State-Federal Partnership Options. Partnerships are Exchanges where both the federal HHS and the state operate functions of the insurance exchange. States entering into a Partnership would be required to agree, under the terms of their grants, to ensure the state's insurance department, Medicaid and CHIP cooperation to coordinate business processes, systems, data and information, and enforcement. As part of this agreement, a state could choose to operate plan management functions [see above Core Functions] and some or all consumer services, using available Exchange grant funding to establish functionality. Including these options in the agreement could allow for an easier transition to a future state-based Exchange.

The three options for operating an Exchange available to the states under the Partnership are:

- Option 1: Plan management functions;
- Option 2: Selected consumer assistance functions; and
- Option 3: Both selected consumer assistance and plan management functions.

All other core functions would be performed by the HHS under these options.

FFE Option. As State officials did not certify a Partnership [declaration letter] by November 16, 2012, for a state-based exchange[2] an FFE is being implemented in Kansas. The operation of an FFE in Kansas means:

2 On November 9, HHS Secretary Sebelius extended the deadline for submission of the Exchange Blueprint from the original date of November 16, 2012 to December 14, 2012. HHS is required to approve or conditionally approve a State-based Exchange for 2014 according to the statutory deadline of January 1, 2013. On November 8, 2012, Governor Brownback notified the Insurance Commissioner he would not support the state-federal partnership Exchange application. [Media Release, 11/08/2012]

- The FFE will perform the core functions comparable to State-based Exchanges, including consultation with stakeholders.
- The FFE will make decisions where Exchanges have flexibility, including network adequacy and marketing.
- The FFE will work with local stakeholders through the Navigator program and other outreach to educate consumers and small businesses about available options in 2014.
- HHS is permitted to charge issuers (of health plans and policies) user fees to run the FFE.
- FFEs will determine eligibility for QHPs, tax credits, cost sharing reductions, and Medicaid and state CHIP eligibility based on modified adjusted gross income (MAGI). The FFE will provide eligibility information to the applicable State agency to enroll these individuals in coverage.

The FFE will have standardized rules, and input from the states will be part of this process to implement Exchanges. Further, HHS will administer these functions in a manner consistent with the Exchange final rule, which established minimum Federal standards for major Exchange business areas "while leaving much flexibility and discretion to Exchanges to design processes and procedures that reflect local market dynamics." [General Guidance on Federally-facilitated Exchanges, Center for Consumer Information and Insurance Oversight (CCIIO), CMS, May 16, 2012]

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N-1
Immigration Issues

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Immigration

N-1 Immigration Issues

This briefing paper discusses the 2010 Arizona immigration law, the related judicial proceedings, and the decision handed down by the United States Supreme Court in 2012. The article also discusses the E-Verify system, the current Kansas in-state tuition law, and the changes proposed to the in-state tuition law in 2013. For information on Voter ID laws see the Ethics and Elections section of this publication. For information on the use of driver's licenses and other identification documents see the Transportation and Motor Vehicles section of this publication.

2010 Arizona Immigration Law

Background

The Arizona immigration law (the Arizona law), Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070) was signed by Arizona Governor Jan Brewer on April 23, 2010, and was scheduled to go into effect on July 29, 2010. Legal challenges against the law were filed, arguing the law was unconstitutional and non-compliant with civil rights law. The U.S. Department of Justice asked the courts for an injunction against enforcement of the law. A federal judge issued a preliminary injunction that blocked the law's most controversial provisions.

Major Provisions of the Arizona Law

SB 1070:

- Requires reasonable attempts to determine the immigration status of persons lawfully stopped, detained, or arrested where there is reasonable suspicion regarding the immigration status of the person, except if such a determination would hinder or obstruct an investigation;
- Stipulates that if a person is arrested, that person's immigration status must be determined and verified with the federal government before the person is released;
- Imposes criminal sanctions on aliens not carrying the documents required to prove their identity as a lawfully present citizen;
- Presumes lawful presence if a person presents a valid Arizona driver's license or state-issued ID, a tribal enrollment card or ID, or any other valid ID issued by the federal government or

state or local governments after requiring proof of lawful presence;
- Makes the hiring of an illegal alien and the hiring of day laborers off the street a crime;
- Imposes criminal penalties for unlawfully present aliens who knowingly apply for, solicit, or perform work as an employee or independent contractor; and
- Makes it illegal to transport or conceal, harbor, or shield an unlawfully present alien or to encourage an alien to immigrate to Arizona, if the alien is known to be illegal.

According to the Arizona law, race, color, and national origin may not be considered when enforcing any provision of the law, except as permitted under the state and federal constitutions. The Arizona law also prohibits state, county, or local officials from limiting or restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law. It allows any legal Arizona resident to sue any state agency that does not comply with the law. Penalties are assessed for each violation of the law.

2010 Arizona HB 2162

Critics of SB 1070 stated that it encourages racial profiling. To address these concerns, the law subsequently was modified by 2010 HB 2162. That legislation states that race, color, or national origin may not be used as "reasonable suspicion" to determine whether an alien was illegal. HB 2162 also requires a violation of law to occur before a law enforcement officer could request documents to ascertain alien status.

2012 United States Supreme Court Decision

On June 25, 2012, the Supreme Court handed down its ruling in the case of *Arizona v. United States*. At issue was whether federal law preempted certain provisions of Arizona's immigration law (SB 1070), passed into law in 2010.

Provisions Invalidated by the Court

The Supreme Court struck down provisions related to:

- The new crime of "willful failure to complete or carry an alien registration document";
- New criminal penalties for unauthorized aliens who "knowingly apply for work, solicit work in a public place, or perform work as an employee or independent contractor"; and
- Allowing state officers to execute warrantless arrests on persons whom the officer has probable cause to believe are removable from the United States.

The Court held that these provisions were preempted by federal law, either because federal law already provided comprehensive regulation in that area or because the newly enacted state laws created an unlawful obstacle to the regulatory scheme chosen by Congress to achieve the goals and objectives of existing federal law.

Provisions Upheld by the Court

The Court upheld a provision of the state law requiring state officers to make a "reasonable attempt to determine the immigration status" of anyone the officers stop, detain, or arrest based on a legitimate basis when "reasonable suspicion exists that the person is an alien and is unlawfully present in the United States."

The Court concluded that, since the law had not yet been implemented due to litigation and resulting injunctions, there was uncertainty about what the new law meant and how it would be enforced. The Court also held that there was a way to read the Arizona law so that it complied with existing federal law. However, without guidance from the state courts regarding how the Arizona law would be interpreted and enforced, the Court felt it was "inappropriate to assume the provision conflict[ed] with federal law." The Court's opinion did not preclude other challenges to this provision of the law after it went into effect.

2013 9th Circuit Court of Appeals Decision

In October of 2013, the 9th Circuit Court of Appeals ruled on another portion of the Arizona immigration law not yet considered by the Supreme Court. The 9th Circuit Court upheld the decision of a lower federal court, blocking enforcement of a provision of the law that makes transporting or harboring persons illegally residing in the county a crime. The provision had been in effect until it was blocked by the lower court in September of 2012. The 9th Circuit Court of Appeals found the provision to be vague and preempted by federal law.

E-Verify

E-Verify is an electronic federal program which employers may use to verify the employment eligibility of their workers. The program was authorized by the Illegal Immigration Reform and Responsibility Act of 1996. Employers submit information taken from a new employee's Form I-9 (Employment Eligibility Verification Form) through E-Verify to the Social Security Administration and U.S. Citizenship and Immigration Services to determine whether the employee is authorized to work in the United States.

Support for E-Verify

The federal argument in favor of the E-Verify system is that employers have safe harbor protection in the event of discovery of unauthorized workers and can avoid penalties; employers can use the system free of charge; the system reduces unauthorized employment and minimizes verification-related discrimination; and it is a quick and easy system to use while maintaining employee privacy. Employers using E-Verify have a better chance of attracting and retaining talented foreign nationals through the H-1B lottery system.

Criticism of E-Verify

Critics of the E-Verify system contend that if the information is not contained in E-Verify for a legal immigrant or U.S. citizen, then the employer would be prevented from hiring such individual, and E-Verify can generate "false positives" (incorrectly shows a mismatch).

Kansas Law

Kansas employers currently are not mandated to participate in E-Verify. Legislation was considered in the 2008 Session of the Kansas Legislature for such a mandate, but that legislation did not pass.

In-State Tuition For Aliens Not Lawfully Present

Current Kansas In-State Tuition Law

In 2004, the Kansas Legislature passed HB 2145 (KSA 76-731a), which defines the criteria for in-state tuition to illegal immigrants. The law states an individual is entitled to in-state tuition if the person "has attended an accredited Kansas high school for three years or more, has either graduated from an accredited Kansas high school or earned a general education development certificate issued in Kansas, regardless of whether the person is or is not a citizen of the United States," and "in the case of a person without lawful immigration status, has filed with the post secondary educational institution an affidavit stating that the person or the person's parents have filed an application to legalize such person's immigration status, or such person will file such application as soon as the person is eligible to do so or, in the case of a person with legal, nonpermanent immigration status, has filed with the postsecondary educational institution an affidavit stating that such person has filed an application to begin the process for citizenship of the United States, or will file such application as soon as the person is eligible to do so."

2013 Proposed Kansas In-State Tuition Legislation

The 2013 Legislature introduced HB 2192. The bill would exclude aliens not lawfully present from the definition of domiciliary resident for purposes of instate tuition and specifically stated that such persons would not be entitled to in state tuition rates at any state educational institution. The bill received a hearing in the House Federal and State Affairs Committee, but did not advance any further. The bill will carry over to the 2014 Session.

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O-1
Tort Claims Act

O-2
Death Penalty in Kansas

O-3
Kansas Administrative Procedure Act

O-4
Sex Offenders and Sexually Violent Predators

O-5
Human Trafficking

O-6
Judicial Selection

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Judiciary

O-1 Tort Claims Act

Background

The enactment of the Kansas Tort Claims Act (KTCA) in 1979 ended more than a decade of sparring between the judicial and legislative branches of state government over the issue of governmental immunity. The Kansas Supreme Court rendered five decisions between 1969 and 1979 on the issue of governmental immunity, four of which abrogated governmental immunity, either partially or completely. Several of these court opinions were countered or negated by legislative action reestablishing governmental immunity either for the state or for municipalities.

One legal commentator noted after the passage of the KTCA in 1979 that the Act was "so sweeping" that old rules of immunity and liability did not apply.

Scope of Liability

The KTCA incorporates an "open-ended" approach, where liability is the rule and immunity is the exception. KSA 75-6103(a) provides "subject to the limitations of the act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable . . . ."

It is clear the law covers acts of negligence. Plaintiffs also have asserted a variety of other tort actions under this law including, among others: defamation, invasion of privacy, abuse of process, malicious prosecution, trespass, and nuisance.

Cap on Damages—$500,000

The KTCA contains a $500,000 cap on damage awards for any number of claims arising out of a single occurrence or accident (KSA 75-6105(a)). When the amount awarded or settled on involves multiple claimants and exceeds the statutory cap, then any party may apply to the district court for apportionment in proportion to the ratio of the award or settlement to the aggregate awards and settlements. See KSA 75-6105(b). The $500,000 cap is waived where the governmental entity has

purchased insurance or has entered into a pooling arrangement which provides coverage exceeding this $500,000 liability limit. See KSA 75-6111.

What Governmental Entities Are Covered?

The Act lists those government entities it covers, including:

- The State (KSA 75-6102(c)):
  - The State of Kansas;
  - Any department or branch of state government; or
  - Any agency, authority, institution, or other instrumentality thereof.
- Municipalities (KSA 75-6102(c)):
  - Counties;
  - Townships;
  - Cities;
  - School districts;
  - Other political or taxing subdivisions of the state; or
  - Any agency, authority, institution, or other instrumentality thereof.

What Employees Are Covered?

The Act defines "employee" to include the following:

- Any officer, employee, servant, or member of a board, commission, committee, division, department, branch, or council of a governmental entity, including the following:
  - Elected or appointed officials;
  - Persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation (the Kansas Supreme Court has held the members of a local Jaycees, Inc. organization administering a city softball league were considered city employees); and
  - Charitable health care providers, as defined in KSA 75-6102(e).
- Any steward or racing judge appointed pursuant to KSA 74-8818, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor.
- Employees of the U.S. Marshals Service engaged in the transportation of inmates on behalf of the Secretary of Corrections.
- Employees of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the Secretary of Corrections and who are engaged in providing such service (so long as the employees do not otherwise have coverage for such acts and omissions).
- Employees or volunteers of a nonprofit program, other than a municipality, who have contracted with the Commissioner of Juvenile Justice or another nonprofit program that has contracted with the Commissioner of Juvenile Justice to provide a juvenile justice program for juvenile offenders in a judicial district (so long as the employees or volunteers do not otherwise have coverage for such acts and omissions).
- An employee of an indigent health care clinic, as defined in KSA 75-6102(g).
- Former employees for acts and omissions within the scope of employment during their former employment with the governmental entity.
- Any member of a regional medical emergency response team, created under the provisions of KSA 48-928 in connection with authorized training or upon activation for an emergency response.

- Medical students enrolled at the University of Kansas Medical Center who are in clinical training, on or after July 1, 2008, at the University of Kansas Medical Center or at another health care institution.

Note: Independent contractors, except as noted above, are excluded from the definition of employee.

Key Immunity Provisions

Presently, there are 24 different exceptions to liability that are listed in the basic immunity section of the KTCA (KSA 75-6104) compared to 15 exceptions in the original Act. The immunity provisions apply equally to a governmental entity or to an employee acting within the scope of employment. There are, however, four key exceptions to liability, i.e., legislative function, judicial function, enforcement of the law, and discretionary function. See KSA 75-6104(a)-(c) and (e). These exceptions are the most important, and arguably are broad enough to encompass most of the other, more specific exemptions. They codify the traditional notion that it cannot be a tort for government to govern. The additional exemptions, arguably, are codified primarily to give the courts direction in applying the four general exceptions, as the Act does not contain definitions of several key terms, *e.g.*, "discretion," in these basic exceptions.

Key Immunity Provisions

- Legislative Functions (KSA 75-6104(a)). The exemption covers "legislative functions, including, but not limited to, the adoption or failure to adopt any statute, regulation, ordinance or resolution." You cannot sue a city for failure to enact a noise ordinance or, on the other hand, sue the city for adopting a ban on smoking in public places.

- Judicial Functions (KSA 75-6104(b)). The second exception provides immunity for government entities and employees exercising judicial functions. You cannot sue a judge for wrongly deciding your civil lawsuit.

- Enforcement of a Law (KSA 75-6104(c)). This exception immunizes actions that involve the "enforcement of or failure to enforce a law, whether valid or invalid, including, but not limited to, any statute, rule and regulation, ordinance, or resolution." You cannot sue a county for failing to enforce its speed limits on county roads.

- Discretionary Functions (KSA 75-6104(e)). This exception covers "any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee whether or not the discretion is abused and regardless of the level of discretion involved."

The discretionary exception from liability is the single most encompassing immunity provision of the KTCA. It provides the broadest scope of immunity of any of the 25 exceptions. Further, many of the other KTCA exceptions contain a discretionary ingredient. A classic example of discretionary function exception is illustrated by the case of *Robertson v. City of Topeka*, 231 Kan. 358, 644 P.2d 458 (1982), which found the actions of police officers who removed a homeowner from his own property but allowed another intoxicated individual to remain on the premises, who then burned the house, fell within the discretionary function exception. The court said that absent guidelines, which would be virtually impossible to formulate in anticipation of every situation an officer might encounter, police officers should be vested with the necessary discretionary authority to act without the threat of potentially large tort judgments against their employers.

Notice of Claims Against Municipalities—Not the State

KSA 12-105b(d) requires that a notice of claim be filed with the clerk or governing body prior to the filing of a claim against a municipality defined basically as any unit of local government. The notice of claim law does not apply to the state and its agencies.

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Judiciary

O-2 Death Penalty in Kansas

Background

On June 29, 1972, the U.S. Supreme Court, in *Furman v. Georgia*, 408 U.S. 238 (1972), held the imposition and execution of the death penalty, or capital punishment, in the cases before the court constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. Justice Potter Stewart remarked that the death penalty was "cruel and unusual in the same way that being struck by lightning is cruel and unusual." That case nullified all capital sentences imposed without statutory guidelines.

In the following four years, states enacted new death penalty laws aimed at overcoming the court's *de facto* moratorium on the death penalty. Several statutes mandated bifurcated trials, with separate guilt and sentencing phases, and imposed standards to guide the discretion of juries and judges in imposing capital sentences. In *Gregg v. Georgia*, 428 U.S. 153 (1976), the Court upheld the capital sentencing schemes of Georgia, Florida, and Texas. The Court found that these states' capital sentencing schemes provided objective criteria to direct and limit the sentencing authority's discretion, provided mandatory appellate review of all death sentences, and allowed the judge or jury to take into account the character and record of an individual defendant.

The death penalty was reenacted in Kansas, effective on July 1,1994. Then-Governor Joan Finney allowed the bill to become law without her signature.

The Kansas Supreme Court, in *State v. Marsh*, 278 Kan. 520, 534–535, 102 P. 3d 445, 458 (2004), held that the Kansas death penalty statute was facially unconstitutional. The court concluded that the statute's weighing equation violated the Eighth and Fourteenth Amendments of the *U.S. Constitution* because, "[i]n the event of equipoise, i.e., the jury's determination that the balance of any aggravating circumstances and any mitigating circumstances weighed equal, the death penalty would be required." Id., at 534, 102 P. 3d, at 457. The U.S. Supreme Court reversed the Kansas Supreme Court's judgment and held the Kansas capital sentencing statute is constitutional. In June 2006, the Court found that the Kansas death penalty statute satisfies the constitutional mandates of *Furman* and its progeny because it "rationally narrows the class of death-eligible defendants and permits a jury to consider any mitigating evidence relevant to its sentencing determination. It does

not interfere, in a constitutionally significant way, with a jury's ability to give independent weight to evidence offered in mitigation."

Kansas Capital Murder Crime

In Kansas, the capital murder crimes for which the death penalty can be invoked include the following:

- Intentional and premeditated killing of any person in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with the intent to hold the person for ransom;

- Intentional and premeditated killing of any person under a contract or agreement to kill that person or being a party to the contract killing;

- Intentional and premeditated killing of any person by an inmate or prisoner confined to 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;

- Intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, the crime of rape, criminal sodomy, or aggravated criminal sodomy, or any attempt thereof;

- Intentional and premeditated killing of a law enforcement officer;

- 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

- Intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with the intent that the child commit or submit to a sex offense.

According to Kansas law, upon conviction of a defendant of capital murder, there will be a separate proceeding to determine whether the defendant shall be sentenced to death. This proceeding will be conducted before the trial jury as soon as practicable. If the jury finds, beyond a reasonable doubt, that one or more aggravating circumstances exist and that such aggravating circumstances are not outweighed by any mitigating circumstances which are found to exist, then by unanimous vote, the defendant will be sentenced to death. The Kansas Supreme Court will automatically review the conviction and sentence of a defendant sentenced to death.

If mitigating circumstances outweigh the aggravating circumstances, a defendant convicted of capital murder will not be given a death sentence but will be sentenced to life without the possibility of parole. A defendant sentenced to life without the possibility of parole is not eligible for parole, probation, assignment to a community correctional services program, conditional release, post-release supervision, or suspension, modification, or reduction of sentence.

Costs

Generally, costs for death penalty cases tend to be higher at the trial and appeal stages. In fact, cases in which the death penalty was sought and imposed could cost about 70 percent more than cases in which the death penalty was not sought. It should be noted that none of the death penalty cases have completed the legal process, except for the two cases that were pled to life sentences before retrial. Therefore, the total cost of a death penalty case remains uncertain.

Costs By Case Type

	Death Sentence (7 cases)	Death Penalty Sought-Sentenced to Prison (7 cases)	Death Penalty Not Sought (8 cases)
Total Cost for Group	$10.6 million	$6.3 million	$6.3 million
Most Expensive Case	$2.4 million	$1.1 million	$1.0 million
Least Expensive Case	$1.1 million	$0.7 million	$0.6 million
Median Cost for a Case	$1.2 million	$0.9 million	$0.7 million

Source: 2003 Performance Audit Report for Death Penalty Cases: A K-Goal Audit of the Department of Corrections

The Kansas Board of Indigents' Defense Services established a Kansas Death Penalty Defense unit, with four public defenders who specialize in capital punishment issues. The approved budget for the Capital Defense Unit in FY 2014 will be $1.15 million. Actual expenditures for the unit in FY 2013 were $1.22 million.

Death Penalty and Intellectual Disability

At the national level, the U.S. Supreme Court in *Atkins v. Virginia*, 536 U.S. 304 (2002), stated that capital punishment of those with "mental retardation" is cruel and unusual punishment under the Eighth Amendment of the *U.S. Constitution*. Various states subsequently attempted to draft legislation that would comply with the Atkins decision. In the Atkins decision, there is no definition of "mentally retarded", but the Court referred to a national consensus regarding mental retardation.

[Note: In 2012, the Legislature passed Sub. for SB 397, which replaced statutory references to "mental retardation" and similar terms with "intellectual disability," and directed state agencies to update their terminology accordingly. Thus, the concept of "mental retardation" as addressed by the U.S. Supreme Court in Atkins will be discussed here as "intellectual disability."]

Currently, Kansas law defines "intellectual disability" in the death penalty context to mean a person having significantly subaverage general intellectual functioning to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law. See KSA 21-6622(h).

Under Kansas law, counsel for a defendant convicted of capital murder, or the warden or sheriff having custody of the defendant, may request the court to determine if the defendant has an intellectual disability. The court shall then conduct proceedings to determine if the defendant has an intellectual disability. If the court determines the defendant has an intellectual disability, no sentence of death, life without the possibility of parole, or mandatory term of imprisonment shall be imposed. See KSA 21-6622.

Death Penalty and Minors

In *Roper v. Simmons*, 543 U.S. 551 (2005), the U.S. Supreme Court invalidated the death penalty for all juvenile offenders. The majority opinion pointed to teenagers' lack of maturity and responsibility, greater vulnerability to negative influences, and incomplete character development, concluding that juvenile offenders assume diminished culpability for their crimes.

A provision in current Kansas law declares that if a defendant in a capital murder case was less than 18 years of age at the time of the commission of the crime, the court shall sentence the defendant as otherwise provided by law, and no sentence of death shall be imposed. As a result of KSA 21-6618, cited here, the death penalty or capital punishment cannot be imposed on a minor in Kansas.

Method of Carrying Out Death Penalty

The method of carrying out a sentence of death in Kansas will be by intravenous injection of a substance or substances in sufficient quantity to cause death in a swift and humane manner pursuant to KSA 22-4001. No death penalty sentence has been carried out in Kansas since it was reenacted in 1994.

Inmates in Kansas Under Sentence of Death

Defendant's Name	Race	Birth	Date Capital Penalty Imposed	County	Case Status
James Craig Kahler	White	Jan. 15, 1963	Oct. 11, 2011	Osage	Appeal Pending
Justin Eugene Thurber	White	Mar. 14, 1983	Mar. 20, 2009	Cowley	Appeal Pending
Scott Dever Cheever	White	Aug. 19, 1981	Jan. 23, 2008	Greenwood	See below
Sidney John Gleason	Black	Apr. 22, 1979	Aug. 28, 2006	Barton	Appeal Pending
Douglas Stephen Belt	White	Nov. 19, 1961	Nov. 17, 2004	Sedgwick	Appeal Pending
John Edward Robinson, Sr.	White	Dec. 27, 1943	Jan. 21, 2003	Johnson	Appeal Pending
Jonathan Daniel Carr	Black	Mar. 30, 1980	Nov. 15, 2002	Sedgwick	Appeal Pending
Reginald Dexter Carr, Jr.	Black	Nov. 14, 1977	Nov. 15, 2002	Sedgwick	Appeal Pending
Gary Wayne Kleypas	White	Oct. 8, 1955	Mar. 11, 1998	Crawford	Appeal Pending

On November 17, 2004, the death sentence of Stanley Elms of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to the Hard 40 term, which is life in prison with no possibility of parole for 40 years.

On April 3, 2009, the death sentence of Michael Marsh of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to two life sentences, with parole eligibility after 55 years, but with 85 months to serve for additional convictions if paroled.

On March 24, 2010, the death sentence of Gavin Scott of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to two life sentences.

In 2010, a Shawnee County district judge granted Phillip D. Cheatham, Jr., who was under sentence of death, a new sentencing hearing. In January 2013, before this hearing was held, the Kansas Supreme Court found Cheatham's trial counsel was ineffective, reversed Cheatham's convictions, and remanded the case for a new trial.

In August 2012, the Kansas Supreme Court reversed the capital murder convictions of Scott Dever Cheever and ordered the case remanded for a new trial. Cheever was under sentence of death for the convictions. The State appealed the case to the United States Supreme Court, which issued an opinion December 11, 2013, vacating the judgment of the Kansas Supreme Court and remanding the case for further consideration by Kansas courts of possible error under the Fifth Amendment or Kansas evidentiary rules. As of December 2013, Cheever was being held in special management at Lansing Correctional Facility.

As of December 2013, nine inmates under a death penalty sentence are being held in administrative segregation because Kansas does not technically

have a death row. Inmates under sentence of death (other than Cheever) are held in administrative segregation at the El Dorado Correctional Facility (EDCF).

State-to-State Comparison

Kansas is one of 32 states that has a death penalty. The two following tables show the states with a death penalty and the 18 states without such penalty.

Jurisdictions with the Death Penalty				
Alabama	Georgia	Missouri	Oklahoma	Utah
Arizona	Idaho	Montana	Oregon	Virginia
Arkansas	Indiana	Nebraska	Pennsylvania	Washington
California	Kansas*	Nevada	South Carolina	Wyoming
Colorado	Kentucky	New Hampshire*	South Dakota	Plus U.S. Government
Delaware	Louisiana	North Carolina	Tennessee	U.S. Military*
Florida	Mississippi	Ohio	Texas	
*Indicates jurisdiction with no executions since 1976.				

Jurisdictions without the Death Penalty (year abolished in parentheses)		
Alaska (1957)	Massachusetts (1984)	North Dakota (1973)
Connecticut* (2012)	Michigan (1846)	Rhode Island (1984)
Hawaii (1948)	Minnesota (1911)	Vermont (1964)
Illinois (2011)	New Jersey (2007)	West Virginia (1965)
Iowa (1965)	New Mexico**(2009)	Wisconsin (1853)
Maine (1887)	New York (2007)	District of Columbia (1981)
Maryland (2013)***		
*In April 2012, Connecticut voted to abolish the death penalty. The repeal was not retroactive, which left 11 people on the state's death row.		
**In March 2009, New Mexico repealed the death penalty. The repeal was not retroactive, which left two people on the state's death row.		
***In May 2013, Maryland abolished the death penalty. The repeal was not retroactive, which left five people on the state's death row.		
(Source: Death Penalty Information Center)		

Recent Developments

In March 2009, the Senate Judiciary Committee held a hearing on SB 208 to repeal the death penalty in Kansas. The bill was amended and passed out of the Committee. The Senate Committee of the Whole re-referred the bill to the Senate Judiciary Committee for study by the Judicial Council during the Interim. The Judicial Council formed the Death Penalty Advisory Committee to study SB 208 and concluded the bill presented a number of technical problems which could not be resolved by amending the bill. Instead, the Committee drafted a new bill which was introduced in the 2010 Legislative Session as SB 375. SB 375 was passed, as amended, out of the Senate Committee on Judiciary. However, the bill was killed on final action in the Senate Committee of the Whole.

Bills that would abolish the death penalty were introduced in both chambers in 2011. See 2011 HB 2323; 2011 SB 239. No action was taken on either bill. The 2012 House Committee on Corrections and Juvenile Justice held an "informational" hearing on the death penalty.

In 2013, bills abolishing the death penalty were again introduced in both chambers. See 2013 HB 2397; 2013 SB 126. No action was taken on either bill during the 2013 Session.

The 2013 Legislature passed Senate Sub. for HB 2043, which allows the Attorney General to file notice of intent to seek the death penalty in those cases where the county or district attorney or a court determines a conflict exists.

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Judiciary

O-3 Kansas Administrative Procedure Act

Administrative law addresses with actions that arise out of state agencies and for the purpose of hearings by state agencies. Generally, agencies are charged with executing action to further legislative policies and purposes. These powers typically are delegated by statute. Administrative procedure guiding agencies generally is simpler and less formal than judicial procedure. One of the purposes of administrative remedies is to allow individuals to resolve their disputes in a less cumbersome and less expensive way than by a trial in court. In addition, administrative actions are adjudicatory in nature. An adjudicatory hearing is a proceeding before an administrative agency in which the rights and duties of the person involved are determined after notice and opportunity to be heard.

A Revised Model State Administrative Procedure Act was drafted in Kansas in 1961 and revised in 1981. According to the 1981 revision, the Model Act applied to all agencies not expressly exempted and further, it warned that it only created procedural rights and imposed procedural duties. A procedural act does not create substantive legal rights. Such substantive legal rights can exist only by statute, by the agency's rules and regulations, or by some constitutional command.

The Kansas Administrative Procedure Act (KAPA), KSA 77-501, *et seq*., was enacted in 1984 and became effective July 1, 1985. Under KAPA, the object is to conduct a fair and impartial hearing for people who contest state agency actions that have impacted their legal rights. The Kansas Judicial Review Act (KJRA), KSA 77-601, *et seq.*, was enacted as a companion piece of legislation. The Kansas Judicial Council was actively involved with the enactment of KAPA and recommended that KAPA apply to all state agencies. The Council also recommended that KJRA be enacted as the appeal act for all agency actions. These Acts, however, were enacted in a more restrictive fashion.

Consistency of agency action has been cited as a major purpose of an administrative procedure act. Along the same lines of reasoning, fairness often is mentioned as a major purpose of KAPA as the same rules apply to all parties, who are to be given full opportunity to proceed under the Act. Further, it is purported to exclude most agency bias when independent hearing examiners are used.

In 1997, the Office of Administrative Hearings (OAH) within the Department of Administration was established for the purpose of conducting administrative hearings for the Department of Social and Rehabilitation Services (now Department for Children and Families.)

During the 1997 Interim, the Special Committee on Judiciary, after a study of the centralized office concept, recommended that the administrative hearing officers of all state agencies covered by KAPA be transferred to OAH.

The Legislative Division of Post Audit conducted an audit (March 2001) titled "Centralized Administrative Hearings: Reviewing the Advantages and Disadvantages." According to the audit, proponents of centralized administrative hearings indicated that such a measure would promote both fairness and the perception of fairness by eliminating the conflict of interest that exists when a hearing officer works for the agency that is party to the proceeding. Efficiency of operation and economic feasibility also were cited as reasons for the centralized hearing mechanism. Opposition to the measure was noted by the concern that hearing officers will become generalists without adequate technical expertise in particular subject matter areas.

As a result of the Post Audit, the OAH took action that included:

- Handling cases on a timely basis;
- Establishing an equitable system of billing;
- Reporting estimated income from all sources in the OAH budget; and
- Ensuring that participants involved in the hearing process are aware of OAH's independence from the Department of Social and Rehabilitation Services.

In 2004, SB 141 was enacted, extending the responsibility for conducting administrative hearings for nearly all state agencies to the OAH over a five-year phase-in schedule beginning July 1, 2005, and concluding July 1, 2009. Since July 1, 2009, the OAH has existed as a free-standing agency, separate from the Department of Administration.

In 2007, SB 351 was enacted, requiring all agencies, boards, and commissions to utilize the OAH for hearings held in accordance with the KAPA on and after July 1, 2009.

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Judiciary

O-4 Sex Offenders and Sexually Violent Predators

Sex Offender Registration

In recent years, the Kansas Legislature has made significant amendments to the Kansas Offender Registration Act (the Act), KSA 22-4901 to 4911 and 22-4913, to comply with the federal Adam Walsh Sex Offender Registration and Notification Act (SORNA). The purpose of the federal law is to protect the public, in particular children, from violent sex offenders by using a more comprehensive, nationalized system for registration of sex offenders. It calls for state conformity to various aspects of sex offender registration, including the information that must be collected, duration of registration requirement for classifications of offenders, verification of registry information, access to and sharing of information, and penalties for failure to register as required. Failure of a jurisdiction to comply would result in a 10 percent reduction in Byrne law enforcement assistance grants. Sixteen states, Kansas included, substantially have implemented SORNA. The other states are Alabama, Delaware, Florida, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, and Wyoming.

The Act outlines registration requirements for "offenders," which is defined to include sex offenders, violent offenders, and drug offenders, in addition to persons required to register in other states or by a Kansas court for a crime that is not otherwise an offense requiring registration. The definitions of sex offenders, violent offenders, and drug offenders are based on the commission and conviction of designated crimes. KSA 22-4902. A first conviction of failure to comply with the provisions of the Act is a severity level 6, person felony; a second conviction is a level 5, person felony; and a third or subsequent conviction is a level 3, person felony. Additionally, failure to comply with the Act for more than 180 consecutive days is considered an aggravated violation, a level 3, person felony. KSA 22-4903.

Several entities collaborate to enforce the provisions of the Act. KSA 22-4904 lists the duties of each in its own subsection as follows:

(a) Courts (at the time of conviction or adjudication);
(b) Staff of a correctional facility;
(c) Staff of a treatment facility;
(d) Registering law enforcement agencies;
(e) Kansas Bureau of Investigation (KBI);
(f) Attorney General;

(g) Kansas Department of Education;
(h) Secretary of Health and Environment; and
(i)The clerk of any court of record.

Registration Requirements

KSA 22-4905 describes registration requirements. An offender must register in person with the registering law enforcement agency within three business days of coming into any county or location of jurisdiction in which the offender resides or intends to reside; maintains employment or intends to maintain employment; or attends school or intends to attend school. Exceptions exist for anyone physically unable to register in person, at the discretion of the registering law enforcement agency. Additionally, sex offenders must report in person four times a year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment, or is attending school. Violent offenders and drug offenders, at the discretion of the registering law enforcement agency, are required to report in person three times each year and by certified letter one time each year. If incapacitated, the registering law enforcement agency may allow violent offenders and drug offenders to report by certified letter four times a year. An offender must register during the month of the offender's birth, and every third, sixth, and ninth month occurring before and after the offender's birthday. With some exceptions, the offender must pay a $20 fee each time.

2013 SB 20 amended this section to provide that registration is complete even when the offender does not remit the registration fee, and failure to remit full payment within 15 days of registration is a class A misdemeanor, or, if within 15 days of the most recent registration two or more full payments have not been remitted, a severity level 9, person felony.

Offenders also must register in person within three business days of commencement, change, or termination of residence, employment status, school attendance, or other information required on the registration form, with the registering law enforcement agency where last registered and provide written notice to the KBI. Similarly, an offender must register within three business days of any name change. Finally, the offender must submit to the taking of an updated photograph when registering or to document any changes in identifying characteristics; renew any driver's license or identification card annually; surrender any drivers' licenses or identification cards from other jurisdictions when Kansas is the offender's primary residence (an exception exists for active duty members of the military and their immediate family); and read and sign registration forms indicating whether these requirements have been explained.

Special conditions exist for registration in certain circumstances. If in the custody of a correctional facility, the bill requires offenders to register with that facility within three business days of arrival, but does not require them to update their registration until discharged, paroled, furloughed, or released on work or school release from a correctional facility. If receiving inpatient treatment at any treatment facility, the offender must inform the registering law enforcement agency of the offender's presence at the facility and the expected duration of the treatment. If an offender is transient, the bill requires the offender to report in person to the registering law enforcement agency of the county or location of jurisdiction within three business days of arrival, and every 30 days thereafter, or more often at the discretion of the registering law enforcement agency. If traveling outside the U.S., the offender must report in person to the registering law enforcement agency and the KBI 21 days prior to travel and provide an itinerary including destination, means of transport, and duration of travel. In an emergency, an offender must report within three business days of making arrangements for travel outside of the U.S.

Duration of Registration

Pursuant to the Act, offenders are required to register for 15 or 25 years, or for life, depending on the offense. Those crimes requiring registration for 15 years are: capital murder; murder in the first degree; murder in the second degree; voluntary manslaughter; involuntary manslaughter; criminal restraint, when the victim is less than 18; a sexually motivated crime; a person felony where a deadly

weapon was used; sexual battery; manufacture or attempted manufacture of a controlled substance; possession of certain drug precursors; when one of the parties is less than 18, adultery, patronizing a prostitute, or lewd and lascivious behavior;attempt, conspiracy, or criminal solicitation of any of these crimes; and convictions of any person required by court order to register for an offense not otherwise required by the Act.

Those crimes requiring registration for 25 years are: criminal sodomy, when one of the parties is less than 18; indecent solicitation of a child; electronic solicitation; aggravated incest; indecent liberties with a child; unlawful sexual relations; sexual exploitation of a child; aggravated sexual battery; promoting prostitution; or any attempt, conspiracy, or criminal solicitation of any of these crimes.

Those crimes requiring registration for life are: second or subsequent convictions of an offense requiring registration; rape; aggravated indecent solicitation of a child; aggravated indecent liberties with a child; criminal sodomy; aggravated criminal sodomy; aggravated human trafficking; sexual exploitation of a child; promoting prostitution; kidnapping; aggravated kidnapping; or any attempt, conspiracy, or criminal solicitation of any of these crimes. Additionally, any person declared a sexually violent predator is required to register for life. Offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is a severity level 1 non-drug felony or an offgrid felony, also must register for life.

For offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is not a severity level 1 non-drug felony or an off-grid felony, a court may:

- Require registration until the offender reaches 18, five years after adjudication or, if confined, five years after release from confinement, whichever occurs later;
- Not require registration if it finds on the record substantial and compelling reasons; or
- Require registration, but with the information not open to the public or posted on the internet (the offender would be required to provide a copy of such an order to the registering law enforcement agency at the time of registration, which in turn, would forward the order to the KBI).

An offender required to register pursuant to the Act cannot expunge any conviction or part of the offender's criminal record while the offender is required to register.

Public Access to Offender Registration Information and the Kansas Bureau of Investigation Registered Offender Website

KSA 22-4909 provides that information provided by offenders pursuant to the Act is open to inspection by the public and can be accessed at a registering law enforcement agency, as well as KBI headquarters. Additionally, the KBI maintains a website with this information (http://www.kansas.gov/kbi/ro.shtml), as do some registering law enforcement agencies. One of the provisions of this statute, added by 2012 HB 2568, prohibits disclosure of the address of any place where the offender is an employee or any other information about where the offender works on a website sponsored or created by a registering law enforcement agency or the KBI. While that information is not available online, however, it remains publicly available and may be obtained by contacting the appropriate registering law enforcement agency or by signing up for community notification through the KBI website.

Additionally, when a court orders expungement of a conviction or adjudication that requires registration, the offender must continue registering, although the registration is not open to inspection by the public or posted on the internet. If the offender has an additional conviction or adjudication that requires registration that is not expunged, registration for that conviction or adjudication remains open to the public and may be posted on the internet, unless the registration is ordered restricted.

Development of Sex Offender Policy

Consistent with Kansas' early compliance with SORNA, the Kansas Legislature has been at the forefront of state and federal efforts to deal with the problem of sex offenders and sex predators. In addition to the SORNA amendments, since 1993 the Kansas Legislature has passed the Kansas Offender Registration Act (the Act); passed the Civil Commitment of Sexually Violent Predators Act; reinstated the death penalty for various acts of intentional and premeditated murder following the rape or sodomy of the victim or following the kidnapping of the victim; made life without parole the sentence for those persons convicted of a capital murder crime who are not given the sentence of death; nearly quadrupled the length of time more serious offenders, including sex offenders, serve in prison; lengthened the statute of limitations for sex crimes; and required DNA testing.

2006 SB 506 authorized the creation of the Sex Offender Policy Board (SOPB) under the auspices of the Kansas Criminal Justice Coordinating Council (KCJCC). The bill established the SOPB to consult with and advise the KCJCC on issues and policies relating to the treatment, sentencing, rehabilitation, reintegration, and supervision of sex offenders and to report its findings to the KCJCC, Governor, Attorney General, Chief Justice of the Supreme Court, the Chief Clerk of the House of Representatives, and the Secretary of the Senate. The SOPB's first report examined four topics: utilization of electronic monitoring, public notification pertaining to sex offenders, management of juvenile sex offenders, and restrictions on the residence of released sex offenders. The second report addressed the topics of treatment and supervision standards for sexual offenders, suitability of lifetime release supervision, and safety education and prevention strategies for the public.

Sex Offender Residency Restrictions

2006 SB 506 also prohibited cities and counties from adopting or enforcing any ordinance, resolution, or regulation establishing residential restrictions for offenders required to register under the Act. This provision was scheduled to expire on June 30, 2008. During the 2006 Interim, the Special Committee on Judiciary was charged by the Legislative Coordinating Council with studying actions by other states and local jurisdictions regarding residency and proximity restrictions for sex offenders to discover any serious unintended consequences of such restriction, and identify actions Kansas might take that actually achieve the intended outcome of increasing public safety. The Committee held a joint hearing with the SOPB to take testimony from experts in the field. The Committee recommended the Legislature wait to receive the report from the SOPB on the topic before any legislative action was taken.

On January 8, 2007, the Kansas SOPB issued a Report on its findings regarding sex offender residency restrictions, with the following conclusions:

- Although residency restrictions appear to have strong public support, the Board found no evidence to support their efficacy. It is imperative that policy makers enact laws that actually will make the public safe and not laws giving the public a false sense of security.
- It is recommended the Legislature make permanent the moratorium on residency restrictions. However, the moratorium should not be intended to interfere with a locality's ability to regulate through zoning the location of congregate dwellings for offenders such as group homes.
- Residency restrictions should be determined based on individually identified risk factors.
- The most effective alternative for protecting children is a comprehensive education program. It is recommended that the necessary resources be provided to an agency determined appropriate by the Legislature to educate Kansas parents, children, and communities regarding effective ways to prevent and respond to sexual abuse. Such an education program should include all victims and potential victims of child sexual abuse.

- In order for an effective model policy to be developed, the issue of sex offender residency restrictions should be referred to the Council of State Governments, the National Governor's Association, and similar organizations to prevent states and localities from shifting the population and potential problems of managing sex offenders back and forth among states.

During the 2008 Legislative Session, SB 536 was enacted to:

- Eliminate the sunset provision on the prohibition on cities and counties from adopting or enforcing any ordinance, resolution or regulation establishing residential restrictions for offenders;
- Add a provision to exempt any city or county residential licensing or zoning program for correctional placement residences that regulates housing for such offenders from the prohibition from adopting or enforcing offender residency restrictions;
- Add a provision which defines "correctional placement residence" to mean a facility that provides residential services for offenders who reside or have been placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse; and
- Clarify that a correctional placement residence does not include a single or multifamily dwelling or commercial residential building that provides residence to persons other than those placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse.

During the 2010 Interim, the Joint Committee on Corrections and Juvenile Justice Oversight studied the issue of residency restrictions and concluded that sex offender residency restrictions have no demonstrated efficacy as a means of protecting public safety.

Commitment of Sexually Violent Predators in Kansas

In Kansas, a sexually violent predator is a person who has been convicted of or charged with a "sexually violent offense" and who suffers from a mental abnormality or personality disorder, which makes the person likely to engage in repeat acts of sexual violence. Sexually violent predators are distinct from other sex offenders due to a higher risk to re-offend if their mental abnormality or personality disorder is left untreated. Those crimes considered "sexually violent offenses" are: rape, KSA 21-5503; indecent liberties with a child and aggravated indecent liberties, KSA 21-5506; criminal sodomy and aggravated criminal sodomy, KSA 21-5504; indecent solicitation of a child and aggravated indecent solicitation, KSA 21-5508; sexual exploitation of a child, KSA 21-5510; aggravated sexual battery, KSA 21-5505; and aggravated incest, KSA 21-5604. "Mental abnormality" is defined as a congenital or acquired condition affecting the emotional or volitional capacity, which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others. "Likely to engage in repeat acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

Pursuant to KSA 59-29a01 *et seq.*, originally enacted in 1994, a sexually violent predator can be involuntarily committed to the Sexual Predator Treatment Program at Larned State Hospital. Civil commitment is different from a criminal conviction. Instead of having a definitive time frame, civil commitment continues until the offender's mental abnormality or personality disorder has changed to the extent that he or she is safe to be released. Commitment can be accomplished only following a civil trial in which the court or a jury finds that a person is a sexually violent predator. A sexually violent predator would be required to complete the seven phases of the treatment program, which include five inpatient phases at Larned State Hospital and two outpatient phases at Osawatomie State Hospital. There is no time limit for completion of each phase. The offender

must meet the predetermined requirements of the phase to progress.

Upon release from the secure facility, a person would then go to a transitional release or conditional release facility. These facilities cannot be located within 2,000 feet of a licensed child care facility, an established place of worship, any residence in which a child under 18 years of age resides, or a school or facility used for extracurricular activities of pupils enrolled in Kindergarten through grade 12. KSA 59-29a11(b). Additionally, no more than eight sexually violent predators may be placed in any one county on transitional release or conditional release.

The Secretary of the Department for Children and Families is required to issue an annual report to the Governor and Legislature detailing activities regarding transitional and conditional release of sexually violent predators. Such details include their number and location, the number of those who have been returned to treatment at Larned State Hospital and the reasons for the return; and any plans for the development of additional transitional or conditional release facilities.

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Judiciary

O-5 Human Trafficking

In 1865, the United States officially adopted the Thirteenth Amendment to the *U.S. Constitution*, which outlawed slavery and involuntary servitude except as a punishment for crime. However, slavery and involuntary servitude exist in the U.S. and in Kansas today, in the form of human trafficking.

Human trafficking is a growing problem in the country, and similarly in Kansas. Human trafficking victimizes U.S. citizens – including many children. It also victimizes immigrants. Although the exact number of persons trafficked is not readily available, estimates of the number of victims are high. According to one source:

- With 100,000 children estimated to be in the sex trade in the U.S. each year, it is clear that the total number of human trafficking victims in the U.S. reaches into the hundreds of thousands when estimates of both adults and minors and sex trafficking and labor trafficking are aggregated. (Source: http://www.polarisproject.org/human-trafficking/overview/)

Background

Definition

The definition of "human trafficking" illustrates that a label can be misleading. Although the word "trafficking" generally implies movement, human trafficking does not always involve moving the victim. Instead, human trafficking focuses on obtaining or holding another person in compelled service. According to the U.S. Department of State *2012 Trafficking in Persons Report* (hereinafter referred to as the *2012 Report*):

> People may be considered trafficking victims regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the traffickers' goal of exploiting and enslaving their victims and the myriad coercive and deceptive practices they use to do so.

In a presentation to the 2011 Joint Committee on Home and Community Based Oversight (HCBS Committee), a representative of the Kansas Attorney General identified the following key elements of human trafficking:

- The Act (What is done) – Recruitment, transportation, transfer, harboring, or receipt of persons.
- The Means (How it is done) – Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person who is in control of the victim.
- The Purpose (Why it is done) – For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices, and the removal of organs.

Kansas Law Definitions. KSA 21-5426, subsection (a), defines the crime of human trafficking as follows:

Human trafficking is:

- The intentional recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor;
- Intentionally benefitting financially or by receiving anything of value from participation in a venture that the person has reason to know has engaged in acts set forth in subsection (a)(1);
- Knowingly coercing employment by obtaining or maintaining labor or services that are performed or provided by another person through any of the following:
  - Causing or threatening to cause physical injury to any person;
  - Physically restraining or threatening to physically restrain another person;
  - Abusing or threatening to abuse the law or legal process;
  - Threatening to withhold food, lodging or clothing; or
  - Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or
- Knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person.

Subsection (b) of the same statute defines "aggravated human trafficking" as human trafficking:

- Involving the commission or attempted commission of kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5408, and amendments thereto;
- Committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or
- Resulting in a death; or
- Recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

Scope

According to the *2012 Report* (Page 359), "The U.S. is a source, transit, and destination for men, women, and children – both U.S. citizens and foreign nationals – subjected to forced labor, debt bondage, involuntary servitude, and sex trafficking. The *2011 Trafficking in Persons Report (2011 Report)* breaks down the types of trafficking as follows:

- **Forced Labor** – A number of forms of forced labor exist in the U.S., including domestic labor and work in the agricultural, manufacturing, janitorial, construction, health and elder care, hospitality, and hotel industries, in addition to strip clubs. (Page 372)

- **Debt Bondage** – Although illegal in the U.S., debt bondage reportedly exists here nonetheless. (Pages 7 and 372)
- **Sex Trafficking** – An adult can be coerced, forced, or deceived into prostitution, or forced to remain in prostitution. According to the *2011 Report*, the crime of sex trafficking also can occur within debt bondage, "... as women and girls are forced to continue in prostitution through the use of unlawful 'debt' purportedly incurred through their transportation, recruitment, or even … 'sale' – which exploiters insist they must pay off before they can be free." (Pages 7 and 372)
- **Child Sex Trafficking** – The *2011 Report* (Page 372) states: U.S. citizen victims, both adults and children, are predominantly found in sex trafficking; U.S. citizen child victims are often runaways, troubled, and homeless youth."

Extent of the Problem in Kansas

As mentioned, the problem has been documented to exist within and adjacent to Kansas. During her 2011 HCBS Committee presentation, the Kansas Attorney General representative provided the following testimony:

> Human trafficking is occurring in Kansas at a rate in which the state is currently unprepared to address. Both Wichita and Kansas City have been recognized as major originating cities for human trafficking. Officers located in the Wichita-Sedgwick County Exploited and Missing Child Unit report that sex traffickers often pick up runaways within 48 hours of their being on the streets and transport them to either Dallas or Chicago within 72 hours.
>
> In addition to the sex trade, the vast rural areas in Western Kansas are conducive to human trafficking for forced labor on farms and in food processing plants. While originally noticed in Wichita and Kansas City, human trafficking reports from victim service agencies indicate it is also occurring in many mid-level communities across the state. From July 1 through December 31, 2010, victim service agencies in El Dorado, Garden City, Newton, and Manhattan were faced with providing services to human trafficking victims in their communities, in addition to service agencies in Wichita and Kansas City.

Federal Law

The first comprehensive federal law addressing human trafficking was enacted in 2000. Co-sponsored by then-U.S. Senator Sam Brownback, the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386; also referred to as the Trafficking Victims Protection Act of 2000, or TVPA 2000), the TVPA used a "three-pronged approach" to combat the problem: "... **prevention** through public awareness programs overseas and a State Department-led monitoring and sanctions program; **protection** through a new T-Visa and services for foreign national victims; and **prosecution** through new federal crimes." Among other provisions, the Act made human trafficking a federal crime with severe penalties, created a number of related new crimes, and mandated that restitution be paid to victims. (Source: "Polaris Project – Trafficking Victims' Protection Act [TVPA] – Fact Sheet," Copyright Polaris Project, 2008)

The Act has been reauthorized three times since its establishment, in 2003, 2005, and 2008. Over the course of these reauthorization acts (referred to as the Trafficking Victims Protection Reauthorization Act, or TVPRA, of each of the three years) approximately one-half billion federal dollars have been authorized to fight human trafficking. In addition, a number of changes including the following were made to the Act (Source: Polaris Project Fact Sheet):

- A federal civil cause of action was created for trafficking victims to sue their traffickers.
- New programs were authorized to serve U.S. citizen or legal permanent resident victims of domestic human trafficking, including a pilot program for sheltering minors.
- Grant programs were authorized to assist state and local law enforcement efforts in combating human trafficking.
- Federal criminal jurisdiction was expanded to trafficking offenses committed by U.S. government personnel and contractors while abroad.
- An integrated database was required to be created by the Human Smuggling and Trafficking Center to collect human trafficking data from all federal agencies.
- A new program was authorized for providing services to U.S. citizen survivors of human trafficking.
- Criminal liability was expanded to include financially benefiting from human trafficking crimes; obstruction and conspiracy were added as well.
- The crime of sex trafficking was modified to remove the knowledge-of-age requirement in certain instances involving minors; in addition, the standard of proof was lowered to "reckless disregard" of the use of force, fraud, or coercion to cause a person to engage in commercial sex.
- The Department of Justice was mandated to create a new model state law to further a comprehensive approach in investigating and prosecuting human trafficking, including provisions criminalizing sex trafficking without proof of force, fraud, or coercion whether or not the victim is a minor.
- Human trafficking crimes were placed in the most serious crime category under the two principle state reporting mechanisms (Uniform Crime Reports [UCR] and National Incident-Based Reporting System [NIBRS]).
- States were required to report prostitution and vice crimes separately to the FBI for annual crime statistics under the categories of (a) those directing, managing, or profiting from commercial sex act; (b) those unlawfully purchasing commercial sex acts; and (c) those unlawfully providing commercial sex acts.

Kansas Law

The Kansas law establishing the crimes of human trafficking and aggravated human trafficking was passed in 2005 and has been revised since, most recently with technical changes in 2012 HB 2318.

The 2013 Legislature passed Senate Sub. for HB 2034, which was a comprehensive effort to strengthen other sections of Kansas law related to human trafficking and sexual exploitation. The bill was presented by the Office of the Attorney General and was the product of the Attorney General's work with a coalition of state agencies, law enforcement, prosecutors, victim services providers, advocates, non-government organizations, and others to respond to the ongoing issue of human trafficking.

The bill authorized the Attorney General to coordinate training regarding human trafficking for law enforcement agencies throughout the state and designates the Attorney General's Human Trafficking Advisory Board as the official human trafficking advisory board of Kansas. It also established the Human Trafficking Victim Assistance Fund, which will be funded by the collection of fines established by the bill to be imposed for trafficking-related offenses. These funds will be used to pay for the training described above and for care, treatment, and other services for victims of human trafficking and commercial sexual exploitation of a child.

The crime of "commercial sexual exploitation of a child" was created by the bill. This crime involves giving, receiving, or offering anything of value to induce a person younger than 18 years of age to engage in sexual intercourse or related acts with the intent to arouse or gratify the sexual desires of the offender or another. The crime also prohibits the ownership, management, or use of any property for such purposes, or providing transportation for such purposes. The crime is a severity level 5, person felony for a first offense, and a severity

level 2, person felony for a subsequent offense. It also will give rise to civil forfeiture.

The bill changed the terminology or titles of several trafficking-related crimes. For example, "prostitution" became "selling sexual relations" and "promoting prostitution" became "promoting the sale of sexual relations."

The bill created an affirmative defense to the crime of "selling sexual relations" where the defendant committed the crime because the defendant was subjected to human trafficking, aggravated human trafficking, or commercial exploitation of a child. Expungement is allowed where persons convicted of this crime (or a juvenile adjudication of the equivalent) can show they were acting under coercion.

The bill required notices offering help to victims of human trafficking be posted on the official websites of the Attorney General, Department for Children and Families (DCF), and the Department of Labor. The Secretary of Labor is required to consult with the Attorney General to create an education plan to raise awareness among Kansas employers about human trafficking.

The severity levels of the crimes of promoting the sale of sexual relations and buying sexual relations were increased, and new fines were imposed to fund the Human Trafficking Victim Assistance Fund.

The bill also amended the Revised Code for the Care of Children to implement a requirement that the Secretary of DCF conduct a research-based assessment of any child taken into custody who has been subjected to trafficking-related crimes or who has committed an act which, if committed by an adult, would constitute the crime of selling sexual relations. A law enforcement officer is permitted to take a child into custody if the officer reasonably believes the child is a victim of a trafficking-related offense. The officer must place the child in protective custody and contact DCF so that an assessment may be made.

The bill defines and lists the requirements for a "staff secure facility," which will provide case management, life skills training, health care, mental health counseling, substance abuse screening and treatment, and other appropriate services to children placed there. Service providers in the facility will be trained to counsel and assist victims of human trafficking and sexual exploitation. The bill provides mechanisms by which a court may order a child to be placed in a staff secure facility or DCF may decide to place a child in such a facility.

The Kansas Attorney General's Office, the Kansas Secretary of State's Office, and DCF provide assistance in combating human trafficking. The Attorney General established the Human Trafficking Advisory Board (HTAB) in 2010, and 2013 Senate Sub. for HB 2034 designated this Board as the official human trafficking board of Kansas. The HTAB comprises a team of experts from a wide range of backgrounds, including law enforcement, prosecutors, court personnel, victim advocates, academia, health care, immigration services, and other areas of expertise. See http://ag.ks.gov/public-safety/human-trafficking. The Secretary of State's Office offers an address confidentiality program, entitled "Safe at Home," for victims of certain crimes including human trafficking. See http://www.kssos.org/safeathome/. DCF administers a program that provides cash assistance to, among others, "Adult victims of severe forms of trafficking who have been certified by the U.S. Department of Health and Human Services." The DCF program also serves children subjected to trafficking, but they do not have to be certified. See the DCF policy statement at http://content.dcf.ks.gov/ees/keesm/robo10-12/KEESM_05_01_09.htm#keesm2410.htm.

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Judiciary

O-6 Judicial Selection

Current Method for Filling Vacancies

Article 3, Section 5 of the *Kansas Constitution* governs selection of Kansas Supreme Court justices. Since its amendment in 1958, Section 5 has specified any vacancy on the Court shall be filled through the Governor's appointment of one of three candidates nominated by the Supreme Court Nominating Commission (the Commission). The nonpartisan Commission has nine members: a chairman who is an attorney chosen by the members of the Kansas bar; one attorney member from each congressional district chosen by members of the Kansas bar that reside in such district; and one non-attorney member from each congressional district appointed by the Governor.

The process for filling vacancies on the Kansas Court of Appeals is governed by statute and was amended by passage of 2013 HB 2019 to allow the Governor, with the consent of the Senate, to appoint a qualified person to fill a vacancy. Under this new procedure, the Governor must make an appointment within 60 days of receiving notice of the vacancy from the Clerk of the Supreme Court. Otherwise, the Chief Justice of the Supreme Court, with the consent of the Senate, will appoint a qualified person for the position. The Senate is required to vote to consent to the appointment within 60 days of being received or, if the Senate is not in session and will not be in session within the 60-day time limit, within 20 days of the next session. If the Senate fails to vote within the time limit, its consent will be deemed given. If the appointee does not receive a majority vote in the Senate, the Governor will appoint another qualified person within 60 days, and the same consent procedure will be followed.

Once appointed, Supreme Court justices and Court of Appeals judges are subject to retention elections following their first full year in office and at the end of each term. Supreme Court justices serve six-year terms and Court of Appeals judges serve four-year terms.

Recent Legislative Efforts

As the Kansas Court of Appeals is governed by statute, amending the method for filling vacancies on that court requires only a statutory amendment. The method for filling vacancies on the Kansas Supreme Court is governed by the *Kansas Constitution*, however, requiring a constitutional amendment to modify that process. Article 14, Section

1 of the *Kansas Constitution* allows amendments to be made through approval by popular vote of a legislative proposal. Specifically, it provides that a concurrent resolution originating in either house of the Legislature that is approved by two-thirds of all members will be considered by Kansas voters at the next election. If a majority of those voting on any such amendment approve the amendment, it becomes a part of the *Kansas Constitution*.

During the 2013 Legislative Session, the Kansas Legislature considered numerous bills and concurrent resolutions related to judicial selection. One of these concurrent resolutions, HCR 5002, which was approved by the House Judiciary Committee, would submit a constitutional amendment to the qualified electors of the State to modify the method of selection for justices of the Kansas Supreme Court and add the law governing the Court of Appeals to the *Kansas Constitution*. Specifically, the amendment would eliminate the Supreme Court Nominating Commission and allow the Governor to appoint qualified persons to the Supreme Court and Court of Appeals using the procedure adopted for the Court of Appeals in 2013 HB 2019. While the method of appointment would be modified, both Supreme Court justices and Court of Appeals judges would continue to be subject to retention elections. If approved by two-thirds of the members of the House and Senate, the amendment would be submitted to the electors in November 2014.

Appointment and Confirmation Subsequent to Passage of 2013 HB 2019

In addition to modifying the method for filling vacancies on the Kansas Court of Appeals, 2013 HB 2019 also removed a provision making the 14th Court of Appeals position subject to appropriations. This created a vacancy on the court, allowing Governor Sam Brownback to appoint Caleb Stegall on August 20, 2013. During the 2013 Special Session, which was called to amend the state's Hard 50 sentence in response to a U.S. Supreme Court decision, *Alleyne v. U.S.*, 133 S.Ct. 2151 (June 17, 2013), the Senate confirmed Mr. Stegall in a unanimous vote.

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P-1
Kansas Open Meetings Act

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Kansas Open Meetings Act

P-1 Kansas Open Meetings Act

Purpose

The Kansas Open Meetings Act (KOMA), KSA 75-4317 *et seq.*, is one of two main laws that guarantee the business of government is conducted in the "sunshine." The second "sunshine" act is the Kansas Open Records Act (KORA), which is discussed in a separate briefing paper.

The open meetings law recognizes "that a representative government is dependent upon an informed electorate" and declares that the policy of the State of Kansas is one where "meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public" (KSA 75-4317).

The Kansas Supreme Court has recognized that the law is to be "interpreted liberally and exceptions narrowly construed" to carry out the purpose of the law. See *Memorial Hospital Association v. Knutson*, 239 Kan. 663, 669 (1986).

State and Local Public Bodies Covered by KOMA

The Kansas Open Meetings Act applies to the following:

- State agencies;
- Political and taxing subdivisions of the state;
- Legislative bodies of the state or its subdivisions;
- Administrative bodies of the state or its subdivisions;
- Boards, commissions, authorities, councils, committees, and subcommittees of the state or its subdivisions, or of legislative or administrative bodies thereof; and
- Other subordinate groups of any of the above entities which receive or expend and are supported in whole or in part by public funds (KSA 75-4318).

State Bodies Covered by KOMA

- The State Legislature, its Committees, and Subcommittees unless rules provide otherwise
- State Administrative Bodies, Boards, and Commissions
- State Board of Regents
- State Board of Education
- Kansas Turnpike Authority
- Other State Bodies

Local Governments Covered by KOMA

- Cities
- Drainage Districts
- Counties
- Conservation Districts
- School Districts
- Irrigation Districts
- Townships
- Groundwater Management Districts
- Water Districts
- Watershed Districts
- Fire Districts
- Municipal Energy Agencies
- Sewer Districts
- Other Special District Governments

One of the most difficult problems of interpretation of the open meetings law is to determine which subordinate groups of public entities are covered and which are excluded.

Representative Subordinate Groups

Covered	Not Covered
Nonprofit Mental Health Services Providers	Nonprofit entity operating county hospital
Area Agencies on Aging	Kansas Venture Capital, Inc.
Economic Opportunity Foundation	Prairie Village Economic Development Commission
Three Rivers, Inc.	Hesston Area Service Center

Public Bodies Excluded From KOMA

Certain state and local bodies or entities are excluded from the requirements of the open meetings law, including the following:

- The Judicial Branch; and
- State or local bodies when exercising quasi-judicial powers (examples include teacher due process hearings, civil service board hearings for a specific employee, or zoning amendment hearings for a specific property).

Meetings: What Are They?

The KOMA covers meetings that are defined in KSA 75-4317a as a gathering or assembly with the following characteristics:

- The gathering or assembly may be in person, or it may occur through the use of a telephone or any other medium for "interactive" communication. (See also "Serial Meetings," below.)
- The meeting involves a majority of the membership of an agency or body. (Prior to a change in 2009, a meeting was defined as involving the majority of a quorum of a body.)
- The meeting is for the purpose of discussing the business or affairs of the body.

A Kansas appellate court has held that informal discussions before, after, or during recesses of a public meeting are subject to the requirements of the open meetings law. See *Coggins v. Public Employee Relations Board*, 2 K.A.2d 416 (1987). Calling a gathering a work session does not exempt the event from the law if the three requirements of a meeting are met. The Attorney General has said that serial communications among a majority of a quorum of a public body, if the purpose is to discuss a common topic of business or affairs of that body by the members, constitutes a meeting. (Note: The opinions were issued prior to the change in requirements from "majority of a quorum" to "majority.") Such a meeting may occur through calling trees, e-mail or through the use of an agent (staff member) of the body. See Atty. Gen. Op. 98-26 and 98-49. The use of instant messaging also would qualify as a meeting.

Serial Meetings. In 2009, the law was changed to address the topic of what some have called "serial meetings," or communications held in a series when, taken together, they involve a majority of members. Pursuant to this change, KSA 75-

4318(f) now deems interactive communications in a series to be open if the following apply:

- The communications collectively involve a majority of the membership of the body or agency;
- The communications share a common topic of discussion concerning the business or affairs of the body or agency; and
- The communications are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency.

Is Binding Action the Trigger? In regard to discussing "the business or affairs of the body," binding action or voting is not necessary. It is the discussion itself which triggers the requirements of the open meetings law (KSA 75-4317a).

What About Social Gatherings? Social gatherings are not subject to KOMA as long as there is no discussion of the business of the public body.

Notice of Meetings, Agendas, Minutes, Conduct of Meeting, and Cameras

Notice Required Only When Requested. Contrary to popular belief, the KOMA does not require notice of meetings to be published in a newspaper or otherwise widely distributed. According to KSA 75-4318(b), notice must be given to any person or organization requesting it. Notice requests may expire at the end of a fiscal year, but the public body has a duty to notify the person of the pending expiration before terminating notice. The presiding officer has the duty to provide notice, but that duty may be delegated. No time limit is imposed for receipt of notice prior to the meeting.

Notice may be given in writing or orally, but it must be made individually to the person requesting it. Posting or publication in a newspaper is insufficient. A single notice can suffice for regularly scheduled meetings. There also is a duty to notify of any special meetings. No fee for notice may be charged.

Petitions for notice may be submitted by groups of people, but notice need be provided only to one person on the list, that person being designated as required by law. All members of an employee organization or trade association are deemed to have received a notice if one is furnished to the executive officer of the organization.

Agenda Not Required. KSA 75-4318(d) states: "Prior to any meeting …, any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting the agenda." In *Stevens v. City of Hutchinson*, 11 K.A. 2D 290 (1986), the court concluded that while the law does not require an agenda be created, if a body chooses to create an agenda, the agenda should include topics planned for discussion.

Minimal Requirements for Minutes. The only KOMA requirement regarding minutes exists in regard to closed or executive sessions. KSA 75-4319(a) requires that any motion to recess for a closed or executive meeting be recorded in the meeting minutes. (See "Executive Sessions: Procedure and Subjects Allowed" for additional information on executive sessions.)

Conduct of Meetings. Any person may attend open meetings, but the law does not require that the public be allowed to speak or have an item placed on the agenda. The KOMA does not dictate the location of a meeting, the size of the room used (or even that a room must be used), or other accommodation-type considerations. The court has determined the key to determining whether a meeting is "open" is whether it is accessible to the public. See *Stevens v. City of Hutchinson*, 11 K.A. 2D 292 (1986).

KSA 75-4318(a) prohibits the use of secret ballots for any binding action. The public must be able to ascertain how each member voted.

Use of Cameras. Subject to reasonable rules, cameras and recording devices must be allowed at open meetings, (KSA 75-4318(e)).

Executive Sessions: Procedure and Subjects Allowed

Requirements and restrictions on closed or executive sessions are contained in KSA 75-4319. Executive sessions are permitted only for the purposes specified. First, however, the public body must convene an open meeting and then recess into an executive session. Binding action may not be taken in executive session. Reaching a consensus in executive session is not in itself a violation of the KOMA. *O'Hair v. USD No. 300*, 15 Kan. App. 2D 52 (1991). A "consensus," however, may constitute binding action and violate the law if a body fails to follow up with a formal open vote on a decision which would normally require a vote. The law does not require an executive session; the decision to hold an executive session is discretionary.

Only the members of a public body have the right to attend an executive session. Mere observers may not attend. Inclusion of general observers means the meeting should be open to all members of the public persons who aid the body in its discussions may be admitted discretionarily.

Procedures for going into executive session include the following:

- Formal motion, seconded, and carried;
- Motion must contain a statement providing:
  - Justification for closure;
  - Subject(s) to be discussed; and
  - Time and place open meeting will resume.
- Executive session motions must be recorded in minutes. The law does not require other information to be recorded. Other minutes for open or executive sessions are discretionary, unless some other law requires them.

Enforcement of the KOMA

KSA 75-4320 and 75-4320a set forth the enforcement actions and possible consequences for violation of the KOMA. According to KSA 75-4320, any member of a body or agency that

Subject Matter Justifying Executive Session

Pursuant to KSA 75-4319(b), only a limited number of subjects may be discussed in executive session. Some of these are listed below.

- Personnel matters of nonelected personnel. The purpose of this exception is to protect the privacy interests of individuals. Discussions of consolidation of departments or overall salary structure are not proper topics for executive session. This personnel exemption applies only to employees of the public agency. The personnel exemption does not apply to appointments to boards or committees, nor does it apply to independent contractors.
- Consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship. All elements of privilege must be present:
  - The body's attorney must be present;
  - The communication must be privileged; and
  - No other third parties may be present.
- Employer-employee negotiations to discuss conduct or status of negotiations, with or without the authorized representative who actually is doing the bargaining.
- Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships.
- Matters affecting an individual student, patient, or resident of a public institution.
- Preliminary discussions relating to acquisition (not sale) of real property.
- Security of a public body or agency, public building or facility, or the information system of a public body or agency, if open discussion would jeopardize security.

is subject to the KOMA is liable for a civil, not criminal, penalty of up to $500 for each violation, if the individual "knowingly" violated the Act. There is no requirement that specific intent to violate the law be proved; "knowing" violation occurs when there is purposeful commission of the prohibited acts. The civil action must be brought by the Attorney General or county or district attorney. In addition, binding action taken at a meeting that was conducted while "not in substantial compliance" with the KOMA will be voidable in any action brought by the Attorney General or county or district attorney within 21 days of the meeting. The court has jurisdiction to issue injunctions or writs of mandamus to enforce the Act.

KSA 75-4320a authorizes any person, not only the Attorney General or county or district attorney, to seek an action for an injunction, mandamus, or declaratory judgment in the district court of any county in which a meeting is held allegedly in violation of the KOMA. Once the action is filed, the burden of proof is on the public body or agency to sustain its action. A plaintiff may receive court costs if a violation is established. If the defendant agency or body prevails in such an action and the court finds that the action was frivolous, the court may award court costs to the defendant.

Violation of the open meetings law can be grounds for ouster from office pursuant to KSA 60-1205. This is a separate action which must be filed by the Attorney General or the county or district attorney. Alleged violation of the law also can be grounds for recall of public officials.

On or before January 15, 2006, and each year thereafter, the county or district attorney of each county is required to report all complaints of both KOMA and KORA and the disposition of each complaint. The Attorney General is required to publish a yearly abstract of this information listing by name the public agencies which are the subject of the complaints.

Comparison with Other States' Laws

Recently, concern has arisen over several aspects of Kansas' open meetings law, and how they compare with those of other states. Among the concerns expressed were:

- What actually constitutes a meeting? For example, are social gatherings considered meetings? If so, in what instances? How many members must be present in order for a gathering to constitute a meeting?
- What kind of notice has to be given? Does this apply to all meetings or just specific types?

The following information was derived either from a 2002 states survey by the National Conference of State Legislatures (NCSL) or from direct research of a limited number of states' statutes. States included in the statute comparison were Alabama, Alaska, Arizona, Arkansas, Colorado, Idaho, Illinois, Indiana, Iowa, Mississippi, Missouri, Nebraska Oklahoma, and Texas.

Inclusion of Legislatures in Open Meetings Laws—In the limited comparison of other states' statutes, the first item noted was that several states' legislative bodies are exempt from their open meetings laws. Of those compared, the states of Alaska, Arkansas, and Oklahoma exempted their legislatures, either specifically or by omission, from the open meetings laws. The statutes of one other state, Nebraska, were ambiguous as to whether its legislature is included. Indiana's Legislature was deemed not subject in *State ex rel. Masariu v. Marion Superior Court*, in which the court held that any judicial involvement in legislative open meetings and records matters constituted a violation of the separation of powers clause of the Indiana Constitution. By comparison, KOMA specifically includes the Legislature (KSA 75-4318).

What Constitutes a Meeting—Based on the limited comparison of other states' statutes, most states that included their legislatures defined a meeting as the gathering of a majority of the body's members. Only one of the states examined, Illinois, defined it as a "majority of a quorum." As mentioned previously, Kansas changed its law in 2009 from a majority of a quorum to a majority of the body's members.

The meeting definitions among the states examined varied as to whether social gatherings were specifically addressed. When specifically addressed, the mention was in the format of what a meeting does not include. Alabama's law states that a meeting does not include occasions when a quorum attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers so long as the governing body does not deliberate specific matters expected to come before the governing body at a later date. Similarly, Missouri's law excludes an informal gathering of members of a body for ministerial or social purposes when there is no intent to avoid the purposes of the open meetings law.

Notice Details—In its 2002 report, NCSL indicated: "Most legislatures post meeting notices in the capitol or legislative building. Due to increased computer use, legislative assemblies now commonly enter notices into their computer systems and post meeting listings on their Internet or Intranet sites. Only 13 chambers reported that they advertise committee meetings in newspapers, and six use radio or television announcements...."

The NCSL survey also indicated "[t]he items to be discussed usually must be included in the meeting notice as well.... [H]owever, committees often have the ability to take up issues not listed."

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Q-1
Kansas Open Records Act

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Kansas Open Records Act

Q-1 Kansas Open Records Act

Purpose

The Kansas Open Records Act (KORA) - KSA 45-215 *et seq.* - is one of two main laws that guarantee the business of government be conducted in the "sunshine." The other "sunshine" law is the Kansas Open Meetings Act, which is the subject of a separate briefing paper.

The open records law declares that it is the public policy of Kansas that "public records shall be open for inspection by any person unless otherwise provided" (KSA 45-216). The burden of proving an exemption from disclosure is on the agency not disclosing the information (*SRS v. Public Employee Relations Board*, 249 Kan. 163 (1991)).

Who Is Covered by the Act?

Coverage under KORA is keyed to the definition of "public agency." Included in this definition are:

- The state;
- Any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof; and
- Any other entity receiving or expending and supported in whole or in part by public funds which are appropriated by the state or its political and taxing subdivisions.

The definition covers all state agencies, cities, counties, townships, school districts, and other special district governments as well as any agencies or instrumentalities of these entities and any officers of the above public entities.

In addition, although not included in the KORA itself, KSA 45-240 requires non-profit entities, except health care providers, that receive public funds of at least $350 per year to adhere to certain open records requirements. The 2005 Legislature added this provision to require non-profit entities, as noted above, to document the receipt and expenditure of public funds and make this information available to the public. Non-profit entities may charge a reasonable fee to provide this information.

Exclusions from Open Records Requirement

Certain entities and individuals that are excluded from the definition of "public agency" include:

- Any entity solely by reason of payment from public funds for property, goods, or services of the entity. This exemption is designed to exempt vendors who merely sell goods or services to the government, but the records of the public agencies making the purchases must be open to the public. See Frederickson, 33 Kan. L. Rev. 216-7;
- Any municipal or state judge; and
- Any officer or employee of the state or local political or taxing subdivision, if the office they are provided is not open to the public at least 35 hours a week.

Judges of the district court are excluded from the definition of public agency and judges' telephone records do not become public records merely because the telephone system is maintained by a county (Op. Atty Gen. 77 (1996)).

What Is a Public Record?

"Public record" is defined under KORA to mean "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency . . . ." (KSA 45-217(g)(1)).

Excluded from the definition of public record are:

- Records that are owned by a private person or entity and that are not related to functions, activities, programs, or operations funded by public funds;
- Records kept by individual legislators or members of governing bodies of political and taxing subdivisions; or
- Employers' records related to certain individually identifiable employee records. (KSA 45-217(g)(2) and (3)).

The above definition is quite broad. The comment has been made that the Act is meant to encompass "all recorded information—be it recorded on paper, video film, audiotape, photographs, mylar overlays for projectors, slides, computer disks or tape, or etched upon stone tablets."

Right of Public to Inspect and Make or Obtain Copies of Records

Members of the public have the right to inspect public records during regular office hours and any established additional hours. If the agency does not have regular office hours, it must establish reasonable hours when persons may inspect records. An agency without regular office hours may require a 24-hour notice of desire to inspect. Notice may be required to be in writing. All records are open for inspection unless closed pursuant to specific legal authority (KSA 45-218 (a) and (b)).

Any person may make abstracts or obtain copies of a public record. If copies cannot be made in the place where the records are kept, the records custodian must allow the use of other copying facilities (KSA 45-219(b)). Members of the public cannot remove a record without written permission of the custodian (KSA 45-218(a)).

Computerized information can meet the definition of a public record and must be provided in the form requested if the public agency has the capability of producing it in that form. The agency is not required to acquire or design a special program to produce information in a desired form, but it has discretion to allow an individual who requests such information to design or provide a computer program to obtain the information in the desired form. Op. Atty Gen. 152 (1988) (voter registration lists); Op. Atty Gen. 106 (1989); and Op. Atty Gen. 137 (1987).

However, the KORA explicitly states a public agency is not required to electronically make copies of public records by allowing a person to obtain the copies by attaching a personal device to the agency's computer equipment (KSA 2010 Supp. 45-219 (g)).

A public agency is not required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, or illustrations unless the items were shown or played at a public meeting, but the agency is not required to provide items copyrighted by someone other than the public agency (KSA 45-219(a)).

Duties of Public Agencies

Public agencies are required to do the following:

- Appoint a freedom of information officer to assist the public with open records requests and disputes. That officer is to provide information on the open records law, including a brochure stating the public's basic rights under the law (KSA 45-226 and KSA 45-227);
- Adopt procedures to be followed (KSA 45-220(a)); and
- Provide, upon request, office hours, name of custodian of record, fees, and procedures for obtaining records (KSA 45-220(f)).

Rights of Public Agencies

The public agency may:

- Require the request to be written, but not on a specific form (KSA 45-220(b));
- Require written certification that the requestor will not use names and addresses obtained from the records to solicit sales to those persons whose names are contained in the list (KSA 45-220(c));
- Deny access if the request places an unreasonable burden in producing the record or is intended to disrupt the agency (KSA 45-218(e)); and
- Require payment of allowed fees in advance. Fees may include costs of any computer services and staff time (KSA 45-218(f) and KSA 45-219(c)).

Prohibited Uses of Lists of Names and Addresses

A list of names and addresses shall not be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed (KSA 45-220(c)(2) and KSA 45-230). This provision does not prohibit commercial use generally; it just applies to use of the names to sell or offer to sell property or a service. This provision does not prohibit the use of lists of names obtained from public records to solicit the purchase of property from the persons listed (water meters; promissory note underlying contract for deed).

Any person, including the records custodian, who violates this provision of the law and gives or receives records for this purpose can be penalized with a civil fine not to exceed $500 in an action brought by the Attorney General or the county or district attorney (KSA 45-230).

Records That Must Be Closed

Some public records are closed mandatorily by federal law, state statute, or Supreme Court rule. These types of public records must be closed and generally are referenced in KSA 45-221(a)(1). Approximately 260 different statutes require closure of certain public records. A few examples include:

- Child in need of care records and reports, including certain juvenile intake and assessment reports (KSA 38-2209);
- Individually identifiable drug abuse treatment records (KSA 38-2213, KSA 45-221(a)(3));
- Unexecuted search or arrest warrants (KSA 21-5906);
- Grand jury proceedings records (KSA 22-3012); and
- Peer review records (KSA 65-4915(b)).

Records That May Be Closed

KSA 45-221(a)(1) to (50) lists other types of public records that are not required to be disclosed. The public agency has discretion and may decide whether to make these types of records available. However, the burden of showing that a record fits within an exception rests with the party intending to prevent disclosure. Some of these 53 different types of records which may be closed discretionarily include:

- Records of a public agency with legislative powers, when the records pertain to proposed legislation or amendments.

This exemption does not apply when such records are:
  - Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
  - Distributed to a majority of a quorum of any body with the authority to take action or make recommendations to the public agency with regard to the matters to which these records pertain (KSA 45-221(a)(21)).

The records in the above example, then, would be subject to KORA. Likewise with the following exception:

- Records of a public legislative agency, when the records pertain to research prepared for one or more members of the agency. Again, this exemption does not apply (*i.e.*, the records would be open) when such records are:
  - Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
  - 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 (KSA 45-221(a)(22)).
- Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure (KSA 45-221(a)(2));
- Medical, psychiatric, psychological, and alcohol or drug treatment records which pertain to identifiable individuals (KSA 45-221(a)(3));
- Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment in public agencies (KSA 45-221(a)(4));
- Letters of reference or recommendation pertaining to the character or qualification of an identifiable individual (KSA 45-221(a)(6));
- Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law (KSA 45-221(a)(5));
- Criminal investigation records (KSA 45-221(a)(10));
- 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 (KSA 45-221(a)(12));
- Attorney work product (KSA 45-221(a)(25)); and
- Public records containing information of a personal nature when public disclosure would constitute a clearly unwarranted invasion of personal privacy (KSA 45-221(a)(30)).

Sunset of Exemptions

A sunset provision for all exemptions was added in 2000. The provision required a review of exemptions within five years, or they would expire. Any exemptions continued after legislative review must be reviewed again five years later (KSA 45-229). The Legislature began its review process of these exemptions during the 2003 Interim and continued this review during the 2004 Session and the 2004 Interim. The review was completed during the 2005 Session and extended the life of more than 240 exemptions, which had been scheduled to expire on July 1, 2005. The extension, based on the legislation that resulted from this review, would have expired on July 1, 2011. The exceptions again were reviewed during the 2009 Interim. Recommendations from that review resulted in the extension of approximately the same number of exceptions by the 2010 Legislature. Twenty-eight exceptions were reviewed during the 2010 Interim and subsequently were approved in the 2011 Session. During the 2012 Session, exceptions reviewed and extended involve six subject areas and eight statutes (2012 HB 2569).

In 2013, the Legislature reviewed and extended exemptions in 15 statutes. Additionally, the Legislature modified the review requirement so that exceptions will no longer be subject to review and expiration if the Legislature has twice reviewed and continued the exception or reviews and continues the exception during the 2013 Session or thereafter (2013 HB 2012).

Enforcement of the Open Records Law

Investigative subpoenas may be issued by the Attorney General and district or county attorneys (KSA 45-228). Any person, the Attorney General, or a county or district attorney may file suit in district court. The suit must be brought in the county where the records are located (KSA 45-222). If the records are located out of state, there is no cause of action under KORA.

A district court may order an injunction or mandamus. The court is required to award attorney fees against a defendant if it finds denial of access was not in good faith or against a plaintiff if the court finds the plaintiff maintained the action not in good faith. Costs and reasonable attorney fees are to be paid, upon appeal, as part of costs (KSA 45-222).

Fines up to $500 for "each violation" may be levied against a public agency if the agency "knowingly violates any of the provisions of this act or that [it] intentionally fails to furnish information as required by this act . . . " (KSA 45-223). Cases seeking a fine only may be brought by the Attorney General or district or county attorney. Actions under KORA are to be given precedence by the court.

KSA 75-753 requires that on or before January 15 each year, the county or district attorney of each county report to the Attorney General all complaints received during the proceeding year concerning violations. The Attorney General is required to publish a yearly abstract of this information listing the name of the public agency which is the subject of the complaint and the disposition of the complaint.

Criminal Penalty for Altering Public Record

Altering, destroying, defacing, removing, or concealing any public record is a class A misdemeanor (KSA 21-3821).

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R-1
Home Rule

R-2
Eminent Domain

R-3
Boundary Changes—
Annexation

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Local Government

R-1 Home Rule

Introduction

The Kansas Supreme Court reaffirmed in 2004 that cities have broad home rule powers granted directly by the people of the State of Kansas and that the constitutional home rule powers of cities shall be liberally construed to give cities the largest possible measure of self government. The opinion, *State ex rel. Kline v. Unified Government of Wyandotte County/Kansas City, Kansas*, upheld the ability of cities to authorize by charter ordinance the Sunday sale of alcoholic liquor despite a state law prohibiting such sales. The Court found that the state liquor laws were nonuniform in their application to cities and therefore subject to charter ordinance. See also *Farha v. City of Wichita*, a 2007 case affirming the ruling on Kline.

This article examines briefly the history of home rule in Kansas, and explains the different variations of Kansas local government home rule.

> Most states confer home rule powers on some or all of their cities and counties. The U.S. Advisory Commission on Intergovernmental Relations in 1993 reported cities in 37 states and counties in 23 states have constitutional home rule powers. Another 11 states provide home rule for cities by statute and 13 additional states provide statutory home rule for counties. In Kansas, cities' home rule authority is authorized constitutionally, while counties are granted home rule powers by statute.

What Is Home Rule?

> *['Home rule' is] ... limited autonomy or self-government granted by a central or regional government to its dependent political units. It has been a common feature of multinational empires or states – most notably, the ancient Roman Empire and the British Empire – which have afforded measured recognition of local ways and measured grants of self-government provided that the local populations should remain politically loyal to the central government. It has also been a feature of state and municipal government in the United States, where state constitutions since 1875 have frequently been*

amended or revamped to confer general or specifically enumerated self-governing powers on cities and towns, and sometimes counties and townships. (Source: www.britannica.com/EBchecked/topic/270114/home-rule)

The United States' system of governance has many different levels. These levels – federal, state and local – all have a specific role to play in providing public services for the citizenry. At times, these levels of governance can overlap, or create gaps in the provision of services, leaving uncertainty about who has what type of authority.... (Source: "Dillon's Rule or Not?, National Association of Counties, Research Brief, January 2004, Vol. 2, No. 1.)

The question of authority between levels of government has taken different forms historically. In the United States, local governments are considered creatures of the state as well as subdivisions of the state and as such are dependent upon the state for their existence, structure, and scope of powers. State legislatures have plenary power over the local units of government they create, limited only by such restrictions they have imposed upon themselves by state law or by provisions of their state constitutions, most notably home rule provisions. The courts in the late 19th century developed a rule of statutory construction to reflect this rule of dependency known as "Dillon's Rule."

Dillon's Rule states that a local government has only those powers granted in express words, those powers necessarily or fairly implied in the statutory grant, and those powers essential to the accomplishment of the declared objects and purposes of the local unit. Any fair, reasonable, or substantial doubt concerning the existence of power is resolved by the courts against the local government. Local governments without home rule powers are limited to those powers specifically granted to them by the Legislature.

While local governments are considered dependent on the state and therefore not autonomous, the political landscape changed significantly in Kansas beginning in the early 1960s. The following section describes the development of home rule powers for cities, counties and, to a lesser extent, school districts.

City, County, and School District Home Rule—Brief History of Kansas Home Rule Provisions

A new era in city-state relations was inaugurated on July 1, 1961, the effective date of the City Home Rule Constitutional Amendment approved by voters at the November 1960 general election. Cities now can look directly to the *Kansas Constitution*, Article 12, Section 5, for the source of their powers. Cities are no longer dependent upon specific enabling acts of the Legislature. The Home Rule Amendment has, in effect, stood Dillon's Rule on its head by providing a direct source, from the people, of legislative power for cities.

Home rule for counties was enacted by statute in 1974. The county statutory grant generally is patterned after the city home rule constitutional amendment.

Schools in 2003 were granted expanded administrative powers referred to by some as limited home rule powers. This limited grant of additional administrative power to schools occurred as a result of several years of effort to expand the powers of school districts by the Kansas Association of School Boards and other groups.

Constitutional Home Rule Grant for Cities

The key constitutional language contained in Article 12, Section 5, of the *Kansas Constitution*, reflecting the broad scope of the grant of home rule power for Kansas cities is as follows:

- "Cities are hereby empowered to determine their local affairs and government including the levying of

taxes, excises, fees, charges, and other exactions. . . ."

- "Cities shall exercise such determination by ordinance passed by the governing body with referendum only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments applicable uniformly to all cities. . . and to enactments of the legislature prescribing limitations of indebtedness."

- "Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city."

- "Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government."

The Home Rule Amendment applies to all cities regardless of their size. Further, the Home Rule Amendment is self-executing in that there is no requirement that the Legislature enact any law implementing it, nor are cities required to hold an election or adopt a charter, constitution, or some type of ordinance declaring their intent to exercise home rule powers.

Cities also are granted the power to levy taxes, excises, fees, charges, and other exactions by the Home Rule Amendment. The Legislature, however, may restrict this power by establishing not more than four classes of cities—cities of the first, second, and third class having bee defined in law. These classes are not classes for general government purposes. Rather, these are constitutional classes for purposes of imposing revenue limitations or prohibitions.

The only example, to date, where the Legislature has classified cities for the purpose of imposing limits upon or prohibiting taxes has been in the area of local retailers' sales taxes. In fact, 2006 SB 55 addressed this issue by reducing the number of classes of cities to one for the purpose of local retailers' sales taxes.

> The rules are simple—cities can be bound only by state laws uniformly applicable to all cities, regardless of whether the subject matter of the state law is one of statewide or local concern. If there is a nonuniform law that covers a city, the city may pass a charter ordinance and exempt itself from all or part of the state law and provide substitute or additional provisions. If there is no state law on a subject, a city may enact its own local law. Further, if there is a uniform law that does not expressly preempt local supplemental action, then cities may enact additional non-conflicting local regulations compatible with the uniform state law.

County Statutory Grant of Home Rule

The County Home Rule Act provides that "the board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate …" subject only to the limits, restrictions, and prohibitions listed in the act. (KSA 19-101a) The statutory grant, likewise, contains a statement of legislative intent that the home rule powers granted to counties shall be liberally construed to give counties the largest measure of self-government. (KSA 19-101c)

County home rule is self-executing in the same manner as city home rule. The power is there for all 105 counties to use. No charter or local constitution need be adopted nor any election held to achieve the power except in the case of Johnson County, which is covered by a special law authorizing the adoption of a charter by county voters. Voters in Johnson County approved the charter in November 2002.

Counties can be bound by state laws uniformly applicable to all counties. Further, nonuniform laws can be made binding on counties by amending the county home rule statute, which no contains 38 limitations on county home rule. Counties may act under home rule power if there is no state law on the subject. Counties also may supplement uniform state laws that do not clearly preempt county action by passing non-conflicting local legislation.

School District Expanded Powers—Limited Home Rule

KSA 72-8205 was amended in 2003 to expand the powers of school boards as follows:

- The board may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop, and operate local public schools.
- The power granted by this subsection shall not be construed to relieve a board from compliance with state law. The power granted by this subsection shall not be construed to relieve any other unit of government of its duties and responsibilities which are prescribed by law, nor to create any responsibility on the part of a school district to assume the duties or responsibilities which are required of another unit of government.
- The board shall exercise the power granted by this subsection by resolution of the board of education.

The expanded administrative powers of school districts have not been reviewed by an appellate court to date.

City and County Home Rule Differences

The major distinction between county home rule and city home rule is the county home rule is granted by statute, whereas the city home rule is granted directly by the people. Because of its constitutional origins, only the voters of Kansas can ultimately repeal city home rule after two-thirds of both houses of the Kansas Legislature have adopted a concurrent resolution calling for amendment or repeal, or a constitutional convention has recommended a change. The Legislature can restrict city home rule powers only by enacting uniform laws that apply in the same way to all cities unless the subject matter is one of the few specific areas listed in the Home Rule Amendment, such as taxing powers and debt limitations. By contrast, the Legislature has a much freer hand to restrict or repeal statutory county home rule. Finally, the other factor distguishing city and county home rule is the existence of numerous exceptions (34) to county home rule powers found in the statutory home rule grant of power.

"Ordinary" versus "Charter" Ordinances or Resolutions

Ordinary Home Rule Ordinances

City home rule must be exercised by ordinance. The term "ordinary" home rule ordinance was coined after the passage of the Home Rule Amendment but is not specifically used in the Kansas Constitution. The intent of using the term is to distinguish ordinances passed under home rule authority which are not charter ordinances from all other ordinances enacted by cities under specific enabling acts of the Legislature. Similar terminology is used to refer to "ordinary" county home rule resolutions.

There are several instances where cities and counties may use ordinary home rule ordinances or resolutions. The first occurs when a city or county desires to act and there is no state law on

the subject sought to be addressed by the local legislation. A second instance is where cities or counties may enact ordinary home rule ordinances or resolutions when there is a uniform state law on the subject, but the law does not explicitly preempt local action. The city or county may supplement the state law as long as there is no conflict between the state law and the local addition or supplement. A third instance involves situations where either uniform or nonuniform enabling or permissive legislation exists, but a city or county chooses not to utilize the available state legislation and instead acts under home rule.

City Charter Ordinances and County Charter Resolutions

A city charter ordinance is an ordinance that exempts a city from the whole or any part of any enactment of the Legislature which is nonuniform in its application to cities and which provides substitute or additional provisions on the same subject. A county charter resolution may be used in essentially the same manner.

Procedures for passage of city charter ordinances require a two-thirds vote of the members of the governing body of the city. Publication of the charter ordinance is required once each week for two consecutive weeks in the official city newspaper. The charter ordinance is subject to a 10 percent protest petition and election procedures. County charter resolutions must be passed by a unanimous vote in counties where a three-member commission exists, unless the board determines ahead of time to submit the charter resolution to a referendum, in which case a two-thirds vote is required. In counties with a five or seven-member commission, a two-thirds vote is required to pass a charter resolution unless the charter resolution will be submitted to a vote, in which case a majority is required.

County charter resolutions must be published once each week for two consecutive weeks in the official county newspaper and are subject to a two percent or 100 electors (whichever is greater) protest petition and election procedure.

Conclusion

Cities and counties in Kansas have broad home rule powers, although the home rule powers of cities are more enduring due to the constitutional basis for these powers. The Kansas appellate courts, for the most part, have construed the home rule powers of both cities and counties in broad fashion, upholding the exercise of the powers. There are, however, some appellate decisions which have negated home rule actions and, in the process, have established restrictive rules of interpretation that cannot be reconciled with other home rule decisions. Whether the court has developed two conflicting lines of rationale for deciding home rule cases has not been resolved. The expanded administrative powers of school districts are referred to as limited home rule powers. The scope of these expanded powers is considerably less comprehensive when compared to the city and county home rule powers.

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Local Government

R-2 Eminent Domain

Eminent domain, in its simplest terms, is the inherent power of a governmental entity to take private property and convert it to public use. More specifically, it is the power of a public entity to take private property without the owner's consent, conditioned upon the payment of just compensation. Eminent domain is a right founded on the law of necessity which is inherent in sovereignty and essential to the existence of government.

The power of eminent domain belongs exclusively to the legislative branch and to those entities or individuals authorized by statute to exercise the power.

The government's exercise of the power of eminent domain is subject to several important constitutional limits, including the requirement for payment of just compensation and the requirement that the property owner be granted due process of law, including notice and an opportunity for a hearing.

U.S. Supreme Court *Kelo* Decision

The U.S. Supreme Court on June 23, 2005, ruled in *Kelo v. New London* that the "public use" provision of the "takings clause" of the 5th Amendment of the *U.S. Constitution* permits the use of eminent domain for economic development purposes.

The case involved an economic development plan for the City of New London, Connecticut. The city had been in economic decline for many decades. In 1996, the U.S. Navy closed its Undersea Warfare Center, causing the loss of more than 1,500 jobs. In 1998, Pfizer, Inc., a large pharmaceutical company, announced plans to build a large research facility in New London on a site adjacent to the Fort Trumbull neighborhood. This neighborhood had been characterized as one with a high vacancy rate for nonresidential buildings, old buildings in poor shape, and with fewer than half of the residential properties in average or better condition. The homes of the petitioners in this case, however, did not fall into these categories.

The nonprofit New London Development Corporation (NLDC) was formed to help the city plan for economic development. After the Pfizer announcement, the city council authorized NLDC to formulate an economic development plan for 90 acres in Fort Trumbull. The plan's

stated goals were to "create a development that would complement the facility that Pfizer was planning to build, create jobs, increase tax and other revenues, encourage public access to and use of the city's waterfront, and eventually to build momentum for the revitalization of the rest of the city, including its downtown area."

Most people in the Fort Trumbull area sold their property to NLDC, but seven did not. The voluntary sales comprised 100 of the 115 properties in the neighborhood. These landowners held 15 properties in two parcels of land being considered for development. They filed suit claiming that the use of eminent domain as contemplated by the plan violated the state and federal constitutions.

The U.S. Supreme Court, in a 5-4 decision, recognized that the *U.S. Constitution* prohibits a "taking" whose "sole purpose" is to transfer one person's private property to another private person, even if just compensation is paid. It emphasized, however, that this was not the issue before the Court. Rather, "The disposition of this case therefore turns on the question whether the City's development plan serves a 'public purpose'." The decision went on to stipulate that "Without exception, our cases have defined that concept broadly, reflecting our longstanding policy of deference to legislative judgments in this field." In writing for the majority, Justice Stevens noted, in fact, that "To effectuate this plan, the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development."

The Court determined that New London's economic development plan served a "public purpose" under the "public use" provision of the *U.S. Constitution*. Justice Stevens noted that, "Those who govern the City were not confronted with the need to remove blight in the Fort Trumbull area, but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference. The city has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, including–but by no means limited to–new jobs and increased tax revenue."

The Court did not preempt additional state action. "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose 'public use' requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised."

Kansas Court Upholds Right of Eminent Domain For Economic Development

The Kansas Supreme Court also has upheld the use of eminent domain to take private property for economic development purposes in two cases.

In the first case, *State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City* 265 Kan. 779, 790 (1998), the Court upheld provisions of the tax increment financing (TIF) law which authorized special obligation sales tax revenue (STAR) bonds and the use of eminent domain to build an auto race track in Wyandotte County. The Court held that the development of the auto race track facility and related projects were valid public purposes for which TIF and STAR bonds could be issued and eminent domain authority could be exercised.

More recently, in *General Building Contractors, LLC v. Board of Shawnee County Commissioners* 275 Kan. 525 (2003), the Court held that:

- Counties have the power of eminent domain under home rule and related statutes and have the power to condemn real property for purposes of industrial or economic development;
- County power of eminent domain must be exercised by resolution rather than motion; and
- The taking of private property for industrial or economic development is a valid public purpose.

The case involved the condemnation of a private business owner's property for a Target Distribution Center facility.

Overview of Government Eminent Domain Power in Kansas

The State Legislature has granted the power of eminent domain to several state agencies, listed below.

Secretary of Administration	State Board of Regents
Secretary of Transportation	State Historical Society
Secretary of Health and Environment	State Biological Survey

Local units of government in Kansas may exercise the power of eminent domain if the Legislature has delegated this authority to such unit or where the local government has home rule power. The rule often stated by Kansas courts prior to the General Building Contractors 2003 decision was that "the power of eminent domain can only be exercised by virtue of a legislative enactment. The right to appropriate private property to public use lies dormant in the state until legislative action is had, pointing out the occasions, modes, conditions, and agencies for its appropriation." See *Strain v. Cities Service Gas Co*., 148 Kan. 393, 83 P.2d 124 (1938).

Kansas statutes contain hundreds of specific sections authorizing the use of eminent domain by a specific unit of government for a specific purpose. See, *e.g.*, KSA 12-1736 (city may use eminent domain to acquire land for public buildings); KSA 19-1561 (county may use eminent domain to acquire land for county fair buildings); and KSA 73-411 (township may use eminent domain to acquire land for a veteran's monument). In some cases, the unit of government is given general authority to exercise the power of eminent domain.

Local Governments With Power of Eminent Domain That May Engage in Economic Development Projects

- Cities;
- Counties;
- Airport Authorities;
- Industrial Districts; and
- Public Building Commissions.

Eminent Domain Legislation by States in Response to *Kelo*

Thirty-nine states enacted legislation or passed ballot measures during 2005 - 2007 in response to the *Kelo* 2005 decision. The laws and ballot measures generally fall into the following categories:

- Restricting the use of eminent domain for economic development, enhancing tax revenue or transferring private property to another private entity (or primarily for those purposes);
- Defining what constitutes public use;
- Establishing additional criteria for designating blighted areas subject to eminent domain;
- Strengthening public notice, public hearing and landowner negotiation criteria, and requiring local government approval before condemning property; and
- Placing a moratorium on the use of eminent domain for a specified time period and establishing a task force to study the issue and report findings to the legislature.

Kansas Eminent Domain Restrictions—Economic Development

The 2006 changes contained in Sub. for SB 323 prohibited the use of eminent domain for economic development purposes, unless the Legislature approves the taking; changed certain eminent domain procedures; and required surveys for lands to be taken through the exercise of eminent

domain be performed by a licensed land surveyor or an engineer competent to conduct land surveys.

Takings for Benefit of a Private Entity Prohibition—Exceptions

The law (2006 Sub. for SB 323) provides that on and after July 1, 2007, the taking of private property by eminent domain for the purpose of selling, leasing or transferring it to another private entity including takings under the tax increment financing law is not to be permitted unless the taking meets one of the following:

- The property is deemed excess real property that was taken lawfully and incidental to the acquisition of right-of-way for a public road, bridge or public improvement project of the Kansas Department of Transportation or a municipality;
- The taking is by any public utility;
- The taking is by any gas gathering service, pipeline company or railroad;
- The private property owner has acquiesced in writing to the taking by any municipality;
- The property has defective or unusual conditions of title, or unknown ownership interests in the property and is taken by any municipality; or
- The property is unsafe for occupation by humans under the building codes.

Legislative Approval of Taking for Economic Development

Any taking of private property for the purpose of transferring it to any private entity, except as authorized above, must be expressly authorized by the Legislature on and after July 1, 2007, by enactment of legislation that identifies the specific tract or tracts to be taken. The Legislature is required to consider providing extra compensation to the person whose land will be taken that is at least 200 percent of the fair market value.

Tax Increment Law Change

The tax increment financing law also was amended to provide that on or after July 1, 2007, the power of eminent domain could be exercised only as provided in this act, *i.e.*, legislative approval by passage of a bill approving eminent domain for a specific project is required. Most of the eminent domain provisions had a one-year delay in the effective date to allow tax increment projects (*e.g.*, Manhattan) to be completed under provisions of prior law.

County Home Rule Exception—Added

The law added another exemption on and after July 1, 2007, to the county home rule law that provides that a county may not exempt itself from or effect changes in this Act.

Kansas Eminent Domain Procedure Act Changes

The Kansas Eminent Domain Procedure Act was further amended to allow a defendant 10 days to remove personal property from the owner's real property which has been condemned and to require the district court clerk to notify property owners of this 10-day provision; and to provide that an appeal would be deemed perfected upon the filing of a notice of appeal and applying this clarification retroactively to July 1, 2003. The legislation also added definitions of "municipality" and "taking" to the Act. "Municipality" is defined to include cities, counties, and unified governments.

Land Surveyor—Engineers

The legislation amended several statutes to require surveys of land to be taken by eminent domain be conducted by licensed land surveyors or by a professional engineer competent to conduct a land survey.

Effective Dates of Different Provisions of the Act

The effective date for most eminent domain provisions was July 1, 2007, to allow the completion of tax increment provisions. The effective date of the land surveyors projects was July 1, 2006. The effective date of the eminent domain appeals provision was the publication in the *Kansas Register*.

Additional Developments

In 2008, SB 518, now KSA 12-5801, *et seq.*, created the DeSoto/Johnson County Riverfront Authority, the purpose of which is to encourage private capital investment by fostering the creation of recreational, retail, entertainment, economic development, and housing within the riverfront.

The Authority could acquire property and property rights, water rights and riparian rights by purchase, lease, gift or otherwise, but could not take property by eminent domain.

In addition, the 2008 Legislature designated a 2008 interim study to investigate issues concerning the use of eminent domain as it relates to water rights and other issues concerning water rights. The 2008 Special Committee on Eminent Domain in studying the Condemnation of Water Rights reviewed the topic of eminent domain in the condemnation of water rights as was included in the statutory charge in KSA 82a-740. The Committee recommended SB 64 and SB 253. Both bills passed during the 2009 Session.

SB 64 modified several provisions of the Kansas Water Appropriation Act.

The first modification amended the definition of "water right" by striking the would "voluntary" in order to make it clear that a water right passes as an appurtenance with a conveyance of land in either voluntary or involuntary situations.

The second modification clarified that no person would be able to acquire a new water appropriation right without obtaining a water right through the Chief Engineer. Former law spoke to the acquisition of a water right, not a "new" water right. Since existing water rights pass with the conveyance of land when sold or transferred, the only time a right is granted from the Chief Engineer is for a "new" water appropriation right.

The third modification amended a section dealing with a person seeking to acquire a new water appropriation right and requires, in addition to the other information, that the person provide to the Chief Engineer a sworn statement or evidence of legal access to or control of the point of diversion and place of use, from the landowner, or his or her authorized representative.

The last modification restated and clarified the law by stating that the date of priority of every water right and not the purpose determines the right to divert and use water when the supply is not sufficient to satisfy all water rights. The bill clarified that when the lawful uses of water have the same date of priority, the order of preference is domestic, municipal, irrigation, industrial, recreational, and water power uses. The only water rights with the same date of priority are vested rights since all other appropriation rights have a date of priority.

SB 253 addressed modification of zoning regulations in cities and counties (*i.e.,* rezoning). In laws applicable to all cities and counties, the bill exempted rezoning related to mining operations, subject to the Surface-Mining Land Conservation and Reclamation Act (or KSA 49-601 *et seq.*), from any super-majority vote requirement of the city or county governing body.

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Local Government

R-3 Boundary Changes—Annexation

Introduction

There are basically three ways a municipality can change its boundaries: annexation, consolidation, or detachment. This paper will discuss the first of these boundary change methods.

Annexation is defined as "the territorial expansion of a municipal corporation through the addition of new land." Nationally, there are five major methods of annexation: (1) by state legislation; (2) by municipal ordinance or resolution; (3) by petition of the residents or landowners in the area to be annexed; (4) by judicial action; and (5) by boundary review commissions. Most states no longer use direct legislative action to provide for annexation. Instead, most states allow for annexation by way of general, permissive laws. Many states, including Kansas, provide for multiple methods of annexation. (Source: Briffault, Richard and Laurie Reynolds, *State and Local Government Law*, 6 Ed., West Group Publishing, July 2004, p. 180.)

Kansas: Current Law

Kansas law allows cities to annex land by several different methods, depending upon the circumstances. Unilateral annexation is permitted in Kansas for annexations that meet certain criteria. Also permitted are consent annexations (given other criteria) and annexations involving the approval of the board of county commissioners.

All unilateral and most consent annexations are addressed in one statute. KSA 12-520 sets out the conditions under which each of these may take place.

Unilateral annexation – Pursuant to KSA 12-520, subsection (a), a municipality may annex land unilaterally (*i.e.*, without obtaining landowner consent or voter approval) under any of the following circumstances:

- The land is platted and some part of the land adjoins the city. KSA 12-520(a)(1).
- The land lies within or mainly within the city and has a common perimeter with the city boundary of more than 50 percent. KSA 12-520(a)(4).
- Annexing the land will make the city's boundary line more harmonious (limit: 21 acres). KSA 12-520(a)(5).

- The tract is situated so that two-thirds of any boundary line adjoins the city (limit: 21 acres). KSA 12-520(a)(6).
- The land is owned by or held in trust for the city. KSA 12-520(a)(2).
- The land adjoins the city and is owned by another government (certain restrictions apply). KSA 12-520(a)(3).

Note: KSA 12-520c allows for annexation, by consent, of land that does not adjoin a city if certain conditions are met. This is discussed later in this paper.

A specific process must be followed for unilateral annexations. Public notification, notice to landowners within the area, and hearings are central to this process, but it is the city's governing body that makes the final decision to approve or reject the annexation. KSA 12-520a and 12-520b. Also, three years after annexation, the board of county commissioners is required to review and hold a hearing on the city's timetable for provision of services to the annexed area. If the board finds that the city has not provided the planned services, the property may be deannexed within one and one half years of the board's findings. (The time periods were reduced by 2011 SB 150, as noted below.)

Consent Annexation – Cities may annex some properties without a public hearing process if certain other circumstances exist, including landowner consent:

- Adjoining land – A city may annex adjoining land if the landowner files a written petition for or consent to the annexation with the city. KSA 12-520(a)(7).
- Noncontiguous land – The governing body of any city may by ordinance annex land not adjoining the city if all of the following conditions exist. An aggrieved owner or city may appeal to the district court. KSA 12-520c.
  - The land is located in the same county;
  - The owners of the land petition for or consent in writing to the annexation; and
  - The board of county commissioners determines the annexation will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within such county.

County Board as City Boundary Setter (KSA 12-521) – The board of county commissioners may be petitioned to act as boundary setter for:

- Annexations of land not covered in KSA 12-520; or
- Annexations of land covered in KSA 12-520 but for which the city deems it advisable not to annex under the provisions of that statute.

The city's petition requirement is followed by publication, public notice, notice to landowners within the area, and hearing requirements in the statute. SB 150, enacted by the Legislature in 2011 (2011 Session Laws, Ch.101), requires the board of county commissioners to approve any such petition by a two-thirds vote of its members. In addition, the bill makes a distinction between bilateral annexations of 40 acres or more and those of less than 40 acres, as follows: (a) It requires any such annexation involving 40 acres or more be put to a vote of the qualified electors, which the bill defines as owners of land in the area proposed to be annexed; and (b) if the area to be annexed is less than 40 acres, it allows the board of county commissioners to render a judgment on the petition unless the board previously had granted three annexations of adjoining tracts within a 60-month period.

Annexation of Certain Lands Is Prohibited – Certain annexations are prohibited under KSA 12-520. All of the following are prohibited from being annexed unilaterally, and one of the three is allowed only if the owner's written consent is received:

- Agricultural lands consisting of 21 acres or more, unless the owner's written consent is received. KSA 12-520(b).
- Improvement districts incorporated under KSA 19-2753 *et seq.* on or before January 1, 1987. KSA 12-520(c).

- Highway rights-of-way—unless the abutting property on one or both sides is annexed. KSA 12-520(f).

Other Kansas statutes forbid certain other annexations as follows:

- No city may annex *via* KSA 12-520 *(i.e.*, unilaterally or by the consent circumstances in that statute) a narrow corridor of land to gain access to noncontiguous tracts of land. The corridor of land must have a tangible value and purpose other than to enhance future annexations. KSA 12-520 (2010 Session Laws, Ch. 130, Sec. 1.).
- No city may annex unilaterally territory of improvement districts where the formation process for the district began on or before January 1, 1987. KSA 12-520(c).
- If the annexation is of 40 acres or more and the qualified electors reject the annexation, no city may annex any lands within that area for four years. (There are exceptions for government-owned land and for consent annexation.) KSA 12-521(e) (2011 Session Laws, Ch. 101, Sec. 7).
- No city may annex any other incorporated city, in part or in its entirety. KSA 12-524.
- No city may annex any territory of a United States military reservation under control of the Department of the Army (applies to annexation proceedings that began after December 31, 1981). KSA 12-529.

Additional Annexation Provisions – Finally, specific provisions exist regarding compensation for annexations of water districts. Those are contained in KSA 12-527. Also see KSA 66-1,176, *et seq*. regarding city annexation and termination of rights to serve customers and retail electric suppliers.

Recent Kansas Legislative History

Annexation has been addressed by the Kansas Legislature. During the 12 years prior to and including the 2012 Legislative Session, at least 31 bills were introduced and debated. Of the 31 bills, eight passed both legislative chambers. Of those eight, five were approved by the Governor, and three were vetoed.

The number of bills considered each biennium generally had been increasing, with a significant increase in the 2009-2010 biennium, until 2011-2012 when the number began to decline. The following table shows the number of annexation bills considered in each biennium:

Biennium	Number of Bills
2001-2002	3
2003-2004	5
2005-2006	7
2007-2008	6
2009-2010	15
2011-2012	7
2013-2014	1

The bills addressed several different aspects of annexation, both of general (statewide) applicability and of more limited pertinence. Many bills have repeated the proposed provisions, either exactly or in similar fashion. Twenty of the bills dealt at least in part with unilateral annexation, but the popular topic may have ended in 2010 being the last bills considered. The following table lists these unilateral annexation-related bills:

Biennium	Bills Containing Unilateral Annexation Provisions
2003-2004	HB 2043, HB 2654
2005-2006	HB 2185, HB 2229, HB 2230, **SB 24 (Approved),** SB 492
2007-2008	**HB 2058 (Approved)**, HB 2917, HB 2978
2009-2010	HB 2084, HB 2471, HB 2478, **SB 51 (Vetoed)**, SB 204, SB **214 (Approved)**, SB 254, SB 561
2011-2012	none

The following table lists the unilateral annexation-related topics and the bills in which they were contained:

Unilateral Annexation-Related Topics	Bills
Repeal outright	2005 HB 2185
Eliminate by requiring approval of board of county commissioners (BCC)	2003 HB 2043
Eliminate by requiring voter approval	2004 HB 2654; 2008 HB 2747
Prohibit unilateral unless BCC determines it will not have an adverse effect on county	2008 HB 2978; 2009 SB 118, SB 204, SB 561; 2010 HB 2478
Limit unilateral annexation to cities with 100,000+ population	2006 SB 492
Prohibit annexation of county-owned land unless city receives BCC permission	**2007 HB 2058 (Approved)**
Allow cities within 1/2 mile to challenge another city's unilateral annexation decisions	**2005 HB 24 (Approved)**
Require cities to consider 16 factors when annexing unilaterally	**2005 SB 24 (Approved)**

Another, more recent area of focus in legislation was annexation *via* approval by the board of county commissioners (*i.e.*, "county board as city boundary setter" or bilateral annexation). From 2007 through 2012, a total of 15 bills addressed this issue at least in part. The following table lists the topics related to this area and the bills that contained them:

Topic Re: Board of County Commissioner (BCC) Approval	Bills
Require voter approval of any BCC-approved annexation	2009 HB 2029. HB 2031; 2010 HB 2470; 2011 **SB 150 (Approved)**, SB 180, HB 2294
Prohibit BCC approval of the annexation of 21+ acres of unplanted agricultural land without landowner's consent	2009 HB 2029, HB 2030, **SB 51 (Vetoed)** (65 acres); 2010 HB 2470; 2011 SB 180, HB 2294
Prohibit annexation of county-owned land unless city receives BCC's permission	**2007 HB 2058 (Approved)**
Prohibit unilateral annexation unless BCC determines it will not have an adverse effect on county	2008 HB 2978; 2009 SB 118, SB 204; 2010 HB 2478, SB 561; 2011 HB 2294; 2012 HB 2478

Among other annexation-related topics, a number had been considered in multiple bills. Following is a brief description of three such topics:

- Revising the time line for service provision related to annexations – From 2004 through 2011, a total of seven bills were introduced and worked that would shorten the time line to determine whether promised services were provided to the annexed area before steps to deannex could begin. Although the specific time reductions were different in the bills, the issue was the same. One bill was introduced in 2004, one in 2008, two in 2009 (one of which – SB 51 – passed both legislative chambers but was vetoed), and one in 2010. Finally, 2011 SB 150 was signed by the Governor. That bill, in part, reduced from five years to three years the time that must elapse following annexation (or related litigation) before the board of county commissioners is required to hold a hearing to consider whether the city has provided the services set forth in its annexation plan and timetable. The bill also reduced from two and a half years to one and a half years the time that must elapse following the services hearing (or conclusion of litigation) before a landowner may petition to the board of county commissioners to deannex the land in question.
- Prohibiting "strip" annexation – This legislation has appeared in seven bills since 2008 and finally was approved in 2010 SB 214.
- Expanding the scope of the court review regarding challenged annexations – This legislation appeared in four bills and finally was approved in 2005 SB 24.

As mentioned previously, 2011 SB 150 – the last annexation bill to pass both chambers and be approved – made some significant changes in the annexation laws, particularly relating to bilateral annexation (*i.e.*, "county board as city boundary setter"). The most significant change was to require an election for specific bilateral annexations. The bill also required homestead rights attributable prior to annexation (in unilateral, bilateral, or most consent-annexation circumstances) to continue after annexation until the land is sold after the annexation.

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Retirement

S-1 Kansas Public Employees Retirement System Retirement Plans

KPERS Overview and Brief History of State Retirement Plans

The Kansas Public Employees Retirement System (known generally as KPERS and referenced in this article as the Retirement System) administers three statewide plans. The largest plan, usually referred to as the regular KPERS plan, or simply as KPERS, has three tiers that include state, school, and local groups composed of regular state and local public employees; school district, vocational school, and community college employees; Regents' classified employees and certain Regents unclassified staff with pre-1962 service; and state correctional officers. A second plan is known as the Kansas Police and Firemen's (KP&F) Retirement System for certain designated state and local public safety employees. A third plan is known as the Kansas Retirement System for Judges that includes the state's judicial system judges and justices.

All coverage groups are defined benefit, contributory retirement plans and have as members most public employees in Kansas. Tier 3 of the KPERS plan becomes effective for new employees on January 1, 2015, and although called cash balance plan, it is a defined benefit, contributory plan, according to the Internal Revenue Service (IRS). Tier 1 of the KPERS plan is closed to new membership and Tier 2 will close to most new membership on December 31, 2014, except for certain state correctional personnel who will continue to be eligible for membership as new employees who are hired on and after January 1, 2015.

The primary purpose of the Retirement System is to accumulate sufficient resources in order to pay benefits. Retirement and death benefits paid by the Retirement System are considered off-budget expenses. In FY 2000, the Governor made, with the Legislature approving, retirement benefit payments as non-reportable expenditures. Since the retirement benefit payments represent a substantial amount of money distributed annually to retirees and their beneficiaries, the historical growth in payments is tracked for informational purposes. Total benefits paid in FY 2000 exceeded $500.0 million for the first time. Today more than $1.0 billion is paid in annual retirement and death benefits.

The Retirement System also administers several other employee benefit and retirement programs: a public employee death and long-term disability benefits plan; an optional term life insurance plan; a voluntary deferred compensation plan; and a legislative session-only employee's retirement plan. The Legislature has assigned other duties to the agency

in managing investments of moneys from three state funds: the Kansas Endowment for Youth Fund, the Senior Services Trust Fund, and the Treasurer's Unclaimed Property Fund.

A nine-member Board of Trustees is the governing body for the Retirement System. Four members are appointed by the Governor and confirmed by the Senate. One member is appointed by the President of the Senate. One member is appointed by the Speaker of the House. Two members are elected by System members. One member is the State Treasurer. The Board appoints the Executive Director who administers the agency operations for the Board.

The Retirement System manages assets in excess of $13.8 billion. Annually, the Retirement System pays out more in retirement benefits than it collects in employer and employee contributions. The gap between current expenditures and current revenues is made up with funding from investments and earnings. The financial health of the Retirement System may be measured by its funded ratio, or the relationship between the promised benefits and the resources available to pay those promised benefits. In the most recent actuarial valuation, the funded ratio for the Retirement System was 56.4 percent on December 31, 2012. Using market value for assets, the funded ratio was 59.0 percent. Using market-based data, the unfunded liability was $9.7 billion on December 31, 2012. This is the amount of financing shortfall when comparing the Retirement System assets with promised retirement benefits. The actuarial unfunded liability of $10.25 billion did not reflect all of the recent investment losses or gains.

Brief History of KPERS

The Kansas Public Employees Retirement System (KPERS) was created by the 1961 Legislature, with an effective date of January 1, 1962. Membership in the original KPERS retirement plan (now referred to as KPERS Tier 1) was offered to state and local public employees qualified under the new law and whose participating employers chose to affiliate with KPERS. Another KPERS tier was created in 2007 for state, school, and local public employees becoming members on and after July 1, 2009. The new KPERS Tier 2 has many characteristics of the original plan, but with certain modifications to ensure that employees and employers will share in the total cost of providing benefits. The second KPERS tier is described in the last section of this document. A third tier will be implemented January 1, 2015, for all new employees.

School districts generally were not authorized to affiliate with KPERS until the 1970s, but there were three affiliating in 1963 as the first exceptions to the general rule. Two more school districts affiliated in 1966. Later in 1966, four of the five school districts which had affiliated with KPERS were dissolved by the Legislature effective on July 1, 1966. No other school districts became affiliated with KPERS until 1971, when a general law brought the old State School Retirement System (SSRS) and its individual members into KPERS.

The 1970 Legislature authorized affiliation with KPERS on January 1, 1971, for any public school district, area vocational-technical school, community college, and state agency which employed teachers. Other public officials and officers not addressed in the original 1961 legislation had been authorized, beginning in 1963, to participate in KPERS as the result of a series of statutory amendments to KSA 74-4910, *et seq.*, that broadened participation to include groups defined as public rather than governmental exclusively. Amendments to KSA 74-4901 also broadened the definition of which governmental officials and officers were eligible for KPERS membership.

Calculation of Retirement Benefits and Eligibility for KPERS

KPERS Tier 1 and Tier 2 retirement benefits are calculated by a formula based on years of credited service multiplied by a statutory percentage for the type of service credit multiplied by final average salary.

For credited service, two categories were defined in the 1961 KPERS legislation: participating service which was equal to 1.0 percent of defined salary for each year, and prior service which was equal to 0.5 percent of defined salary for each year. In

1965 legislation, the prior service multiplier was raised to 0.75 percent. In 1968 legislation, the prior service multiplier was raised to 1.0 percent, and the participating service multiplier was increased that year to 1.25 percent for all years of service.

In 1970 legislation, participating service for school employees was set as the same as for other regular KPERS members which was 1.25 percent at that time. The prior service multiplier for education employees was set at 1.0 percent for years under the SSRS and 0.75 percent for years of school service which were not credited under the SSRS. In 1982 legislation, the participating service credit for state, school and local KPERS members was increased from 1.25 percent to 1.4 percent of final average salary for all participating service credited after July 1, 1982.

In 1993 legislation, the multiplier was raised to 1.75 percent for all years participating service for members who retired on or after July 1, 1993. Three different qualifications for normal retirement were established: age 65; age 62 with 10 years of service; and 85 points (any combination of age plus years of service).

Contribution Rates for KPERS

KPERS Tier 1 and Tier 2 are participatory plans in which both the employee and employer make contributions. In 1961 KPERS legislation, employee contributions were statutorily set at 4.0 percent for the first $10,000 of total annual compensation. The $10,000 cap was eliminated by 1967 legislation. Tier 2 employee contribution rates are set at 6.0 percent by statute beginning July 1, 2009.

In the 1961 legislation, initial employer contributions were statutorily set at 4.35 percent (3.75 percent for retirement benefits and 0.6 percent for death and disability benefits) of total compensation of employees for the first year, with future employer contribution rates to be set by the KPERS Board of Trustees, assisted by an actuary and following statutory guidelines. The KPERS Board of Trustees engaged Martin E. Segal & Company as actuarial consultants.

In 1970, the employer contribution rate for public education employers was set at 5.05 percent from January 1, 1971 to June 30, 1972, with subsequent employer contribution rates to be set by the KPERS Board of Trustees. In 1981 legislation, the Legislature reset the 40-year amortization period for KPERS until December 31, 2022, and accelerated a reduction in the employer contribution rates in FY 1982 to 4.3 percent for state and local units of government (KPERS nonschool) and to 3.3 percent for education units of government (KPERS school).

During the 1980s, the Legislature capped the actuarial contribution rates for employers on numerous occasions in statutory provisions. In 1988 legislation, the Legislature established two employer contribution rates, one for the state and schools and one for the local units of government. Previously, the state and local employer rate had been combined as the KPERS nonschool group. The amortization period for the combined state and school group was extended from 15 to 24 years, with employer contribution rates set at 3.1 percent for the state and 2.0 percent for the local employers in FY 1990.

The 1993 legislation introduced the statutory budget caps that would limit the amount of annual increase for employer contributions. The 1993 legislation provided a 25.0 percent increase in retirement benefits for those who retired on and after July 1, 1993, and an average 15.0 percent increase in retirement benefits for those who retired before July 1, 1993. In order to finance the increased benefits, the Legislature anticipated phasing-in higher employer contributions by originally setting a 0.1 percent annual cap on budget increases. The gap between the statutory rates and the actuarial rates that began in the FY 1995 budget year has never been closed, and the Legislature has modified the annual cap to its present level of 0.6 percent in an effort to close the gap. Future cap increases are authorized in recent legislation.

The failure of KPERS participating employers to contribute at the actuarial rate since 1993 has contributed to the long-term funding problem. Other problems, such as investment losses, also have contributed to the shortfall in funding.

Retirement Benefits and Adjustments

The original 1961 KPERS legislation provided for the nonalienation of benefits. The KPERS Act stated that: "No alteration, amendment, or repeal of this act shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal." This provision is found in KSA 74-4923.

The KPERS retirement benefits were exempted in 1961 legislation from all state and local taxation. In other words, no taxes shall be assessed and no retroactive reduction of promised benefits may be enacted. Any change in benefits must be prospective, unless it involves a benefit increase which may be retroactive in application, as in the case of increasing the multiplier for all years of service credit.

In 1972 legislation, the Legislature provided for the first cost-of-living adjustment (COLA) to KPERS retirees by increasing benefits by 5.0 percent for anyone who had retired on or before June 30, as provided in the 1972 legislation. Over the years the Legislature provided additional *ad hoc* post-retirement benefit adjustments for retirees and their beneficiaries. No automatic COLA was authorized until the new KPERS Tier 2 was established in 2007 for future KPERS members as described in the last section of this document.

New KPERS Tier 2 and Tier 3 for members

In 2007 legislation, a Tier 2 for KPERS state, school and local employees was established, effective July 1, 2009, and with the existing KPERS members becoming a "frozen" group in Tier 1 that no new members could join. The employee contribution rate for the "frozen" KPERS Tier 1 remained 4.0 percent.

The KPERS Tier 2 for employees hired on or after July 1, 2009, continued the 1.75 percent multiplier; allowed normal retirement at age 65 with five years of service, or at age 60 with at least 30 years of service; provided for early retirement at age 55 with at least ten years of service and an actuarial reduction in benefits; included an automatic, annual 2.0 percent cost-of-living adjustment (COLA) at age 65 and older; and required an employee contribution rate of 6.0 percent.

In 2012 legislation, a Tier 3 for KPERS state, school and local employees was established, effective January 1, 2015, and with the existing KPERS members becoming a "frozen" group in Tier 2 that no new members could join, except for certain state correctional personnel. The employee contribution rate for the "frozen" KPERS Tier 2 remained set at 6.0 percent, but the COLA was eliminated and a new, higher multiplier of 1.85 percent was authorized to be applied retroactively for all years of credited service and for future years of service.

The new KPERS Tier 3 will have the following plan design components:

- Normal retirement age - age 65 and five years of service, or age 60 and 30 years of service;
- Minimum interest crediting rate during active years - 5.25 percent;
- Discretionary Tier 3 dividends - 4.0 percent maximum; modified formula based on KPERS funded ratio for awarding discretionary credits, unless all plans reach an 80 percent funded ratio, and then Board must pay dividends;
- Employee contribution - 6.0 percent;
- Employer service credit - 3.0 percent for less than five years of service; 4.0 percent for at least five, but less than 12 years of service; 5.0 percent year for at least 12 but less than 24 years of service; and 6.0 percent for 24 or more years of service;
- Vesting - five years;
- Termination before vesting - interest would be paid for the first two years if employee contributions are not withdrawn;
- Termination after vesting - option to leave contributions and draw retirement benefits when eligible, or withdraw employee contributions and interest but forfeit all employer credits and service;
- Death prior to retirement - five-year service requirement and if spouse had been named primary beneficiary, provide

retirement benefit for spouse when eligible;
- Tier 3 early retirement - age 55 and 10 years of service;
- Default form of retirement distribution - single life with ten-year certain;
- Annuity conversion factor - 6.0 percent;
- Benefits option - partial lump sum paid in any percentage or dollar amount up to 30.0 percent maximum;
- Post retirement benefit - COLA may be self-funded for cost-of-living adjustments;
- Electronic and written statements - KPERS Board shall provide information specified. Certain quarterly reporting would be required;
- Powers reserved to adjust plan design - The Legislature may prospectively change interest credits, employer credits, and annuity interest rates. The Board may prospectively change mortality rates;
- Actuarial cost of any legislation - fiscal impact assessment by KPERS Actuary required before and after any legislative enactments;
- Divorce after retirement - allow a retirant, if divorced after retirement, and if the retirant had named the retirant's ex-spouse as a joint annuitant, to cancel the joint annuitant's benefit option in accordance with a court order;
- If a member becomes disabled while actively working, such member shall be given participating service credit for the entire period of the member's disability. Such member's account shall be credited with both the employee contribution and the employer credit until the earliest of (i) death; (ii) attainment of normal retirement age; or (iii) the date the member is no longer entitled to receive disability benefits;
- A benefit of $4,000 is payable upon a retired member's death; and
- Employer credits and the guaranteed interest crediting are to be reported quarterly.

The 2012 legislation also further modified the KPERS Tier 1 plan design components and the participating employer funding requirements for contributions. Several other provisions enhanced supplemental funding for KPERS, first, by providing that 80.0 percent from sales of state property would be transferred to the KPERS Trust Fund and second, by providing for annual transfers of up to 50.0 percent of the balance would be transferred from the Expanded Lottery Act Revenue Fund to KPERS Trust Fund after other statutory expenses are met.

The KPERS Tier 1 changes included increasing member contributions from 4.0 percent to 5.0 percent on January 1, 2014, and to 6.0 percent on January 1, 2015, with an increase in multiplier to 1.85 percent for future service only, effective January 1, 2014. An alternative election, if approved by the IRS, would have allowed Tier 1 members to elect a reduction in their multiplier to 1.4 percent for future service only and retention of the current 4.0 percent employee contribution rate, effective January 1, 2014. No IRS approval was received in 2013 for an election.

The 2012 legislation also modified the rate of increase in the annual caps on participating employer contributions. The current 0.6 percent cap would increase to 0.9 percent in FY 2014, 1.0 percent in FY 2015, 1.1 percent in FY 2016, and 1.2 percent in subsequent fiscal years until the unfunded actuarial liability of the state and school group reaches an 80.0 percent funded ratio.

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Retirement

S-2 Judicial and Public Safety Retirement Plans

The Kansas Public Employees Retirement System (KPERS) and its Board of Trustees were established by 1961 legislation to provide public employee death and retirement benefits for assisting state and local governmental workers. KPERS is an umbrella organization that often is referred to as the Retirement System since its Board of Trustees administers three different retirement plans: the Kansas Retirement System for Judges, the Kansas Police and Firemen's (KP&F) Retirement System, and the regular KPERS plan. This article focuses on the two plans for judicial and public safety employees.

Prior to the establishment of KPERS in 1961, the Legislature had created four other retirement plans for governmental employees, including two for certain judicial branch state employees and two for public safety (law enforcement) state employees. All four plans eventually merged with KPERS in some manner, either consolidating with KPERS to provide membership for eligible members or transferring the administration of the continuing plans to administration by the KPERS Board of Trustees.

Early Judicial Branch Retirement Plans

The Kansas Retirement System for Judges was established by 1953 legislation to originally include justices of the State Supreme Court and district court judges. The plan was administered by the Kansas Judges Retirement Board. Membership on the board consisted of the Insurance Commissioner, the State Treasurer, the State Auditor, one justice of the State Supreme Court, and one district court judge.

The Retirement System for Official Court Reporters was established by 1955 legislation and the court reporter's retirement plan was administered by the Kansas Judges Retirement Board. The original source of funding for both of these retirement plans was from court fees paid into separate retirement funds that also were authorized by the Legislature. Both retirement plans were established to provide annuities upon retirement by members of each plan.

The Kansas Judges Retirement Board (formerly established by KSA 20-2604) and the Kansas Official Court Reporters Retirement Board (formerly established by KSA 20-2704) were directed to administer two separate retirement plans: one for district court judges and supreme court justices, and another one for court reporters. The board members of

the Kansas Judges Retirement Board also served as the board members for the Court Reporters retirement plan.

In 1975, both sets of authorizing statutes were repealed and the administration of the two plans was transferred to the KPERS Board of Trustees. When the Retirement System for Judges plan was modified on July 1, 1975, the KPERS Board of Trustees assumed only administrative duties regarding the management of the plan that was continued with substantially the same provisions as prior to the abolition of the old board. Some benefit changes were authorized in the Judges' plan by the 1975 Legislature. New court reporters were authorized to become KPERS members and any court reporter who was a member of the prior plan became a KPERS member on July 1, 1975. Retiring members were to be paid their annuities as previously authorized and the KPERS Board administered the payments for the plan's retired members.

Early Public Safety Retirement Plans

The 1947 Legislature established the State Highway Patrol Pension Board and the State Highway Patrol Pension Fund in order to provide for death benefits as well as disability and regular pensions for sworn members of the highway patrol and their beneficiaries. The 1947 law referred to the state pension board as having control and general management of the pension fund. Members of the board designated by the law included the Governor, the State Treasurer, and a patrol employee to be elected by other qualified members of the highway patrol. Any service subsequent to the organization of the state highway patrol on July 1, 1935, was to be considered as service credit for the board to use in computing benefits.

In 1951, the Legislature created the Kansas Bureau of Investigation Pension Board and the Kansas Bureau of Investigation Pension Fund in order to provide for death benefits as well as disability and regular pensions for sworn agents of the Kansas Bureau of Investigation (KBI) and their beneficiaries. The board was composed of the Attorney General, the State Treasurer, and an agent of the KBI who was to be elected by agents, and it was authorized to perform administrative duties as trustees of the fund.

The 1965 Legislature established the Kansas Police and Firemen's (KP&F) Retirement System to provide for disability and retirement benefits for public safety officers working for state and local agencies whose governing bodies voted to affiliate with KP&F.

In 1968, the Legislature authorized the Kansas Highway Patrol to become a participating employer on July 1 of that year, and all eligible employees became members of the new KP&F plan. The State Highway Patrol Pension Board was abolished and all assets from the State Highway Patrol Pension Fund were transferred to KPERS for administration. Also in 1968, the KBI became a participating employer on July 1 of that year, and all eligible employees became members of the new KP&F plan. The Kansas Bureau of Investigation Pension Board was abolished and all assets from the Kansas Bureau of Investigation Pension Fund were transferred to KPERS for administration.

Current Judicial Retirement Plan

Kansas law requires that all eligible Judicial Branch employees must become members. Those eligible employees include justices of the State Supreme Court and court of appeals, district court judges, and magistrate judges. Active members contribute 6.0 percent of gross earnings and contributions earn interest annually. If membership occurred before July 1, 1993, contributions earn 8.0 percent interest; or on or after July 1, 1993, contributions earn 4.0 percent interest.

Members automatically earn service credit for the years served in a covered position. Members become "vested" when first elected or appointed. This vesting provides a guaranteed retirement benefit for the rest of the member's life.

The maximum benefit is equal to 70.0 percent of final average salary. Final average salary is an average of the three highest of an individual's last 10 years of service. For members who were appointed or elected on or after July 1, 1987, the statutory multiplier is 3.5 percent for each year of

service, with a maximum of 70.0 percent of final average salary. If a member were appointed or elected before July 1, 1987, the statutory multiplier is 5.0 percent for up to ten years and 3.5 percent for each additional year, with a maximum of 70.0 percent of final average salary.

Members have basic group life insurance equal to 150.0 percent of annual salary. The State of Kansas pays for the cost of this benefit. The Retirement System also returns all of a member's contributions and interest if someone dies before retiring. Members can name different beneficiaries for this benefit. If a member dies before retirement, a spouse may be able to choose a monthly benefit for the rest of his or her life, instead of receiving the member's returned contributions and interest. For this benefit to apply, a spouse must have been designated as the sole primary beneficiary.

Current KP&F Retirement Plan

Kansas law requires that all eligible public employees of participating employers affiliated with KP&F must become members, except elected sheriffs. Active members contribute 7.15 percent of gross earnings, and employee contributions earn interest annually. If membership occurred before July 1, 1993, contributions earn 8.0 percent; or on or after July 1, 1993, contributions earn 4.0 percent. A number of state agencies have KP&F members, as do a number of local units of government, that elected to affiliate with KP&F. The employee contribution rate drops to 2.0 percent after members have 36 years of service credit. The employer contribution rate is set annually as the actuarially required amount. A maximum benefit of 90.0 percent may be earned.

Members automatically earn service credit for the years worked in a covered position. When enough service credit is earned to become vested, members are guaranteed a monthly retirement benefit for the rest of the member's life. This is called "vesting" the benefit. The KP&F retirement plan includes two tiers of regular members and other special members of local plans that have come under the KPERS Board of Trustees for administration of retirement benefit payments.

- **KP&F Tier 1.** Tier 1 members were employed before July 1, 1989, and did not elect to choose Tier 2 coverage. Tier 1 members vest with 20 years of service credit.
- **KP&F Tier 2.** All new KP&F members must become Tier 2 members. Tier 2 members vest with 15 years of service credit.
- **Transfer and Brazelton Special Members.** Transfer members are KP&F members who formerly participated in a local retirement plan and who chose to participate in KP&F after their participating employer affiliated with KP&F. Brazelton members participated in a class-action lawsuit in 1980. Because of the settlement, their contribution rate is 0.008 percent, and their retirement benefits are offset by Social Security.

Disability Benefits. There are KP&F disability benefits for active members. Tier 1 and Tier 2 members are covered by different disability benefits. Members are not eligible for disability benefits if injured while working for any employer other than their KP&F participating employer.

- **Tier 1 Service-Connected Disability Benefits.** Members receive an annual disability benefit, in on-going monthly payments, based on the higher of 50.0 percent of final average salary, or final average salary multiplied times 2.5 percent multiplied times years of service.
- If a member has eligible children, each receives an annual benefit of up to 10.0 percent of the member's final average salary (subject to a maximum) in on-going monthly payments. Children are eligible up to age 18, or age 23, if a full-time student. The maximum family benefit, including children's benefits, is 75.0 percent of the member's final average salary. If a member does not have eligible children, the maximum benefit is 80.0 percent of the member's final average salary.
- For Tier 1 non-service-connected disability, a member will receive an annual

benefit to be paid monthly based on the final average salary multiplied by 2.5 percent for each year of service credit. The minimum benefit is 25.0 percent of final average salary and the maximum benefit is 80.0 percent. A member must wait 180 days from the last day actively worked in order to apply for benefits.

- **Tier 2 Disability Benefits**. Disability benefits are the same, whether the disability is service-connected or non-service-connected. Members receive an annual benefit of 50.0 percent of final average salary in on-going monthly payments. There is no waiting period. Members continue receiving service credit until a person is no longer disabled, or until the member is eligible to retire. If a member becomes disabled and already is eligible to retire, the member cannot apply for disability benefits and must retire.

Working While Receiving Disability Benefits. If a disabled member returns to work for any KP&F participating employer, the disability benefits will stop automatically. There is no earnings limit for non-public safety employment if a disabled member goes back to work for a non-participating employer.

Death Benefits for Active Members. KP&F death benefits cover regular Tier I and Tier II members, Brazelton, and Transfer members. Benefits are paid automatically to a spouse or eligible children, or both. Children are eligible up to age 18, or age 23, if a full-time student. If a member is unmarried and has no eligible children, the person's beneficiary receives a one-time lump-sum benefit.

Service-Connected Death. A spouse receives an annual benefit of 50.0 percent of final average salary in on-going monthly payments for the rest of his or her life. A member's children, if eligible, also receive an annual benefit of up to 10.0 percent of final average salary. The maximum total benefit is 75.0 percent of final average salary. If a member does not have a surviving spouse or eligible children, a beneficiary receives a lump sum equal to the current annual salary.

Non-Service-Connected Death. A spouse receives a lump-sum payment of 100.0 percent of final average salary, plus an annual benefit of final average salary multiplied times 2.5 percent multiplied times the years of service in on-going monthly payments for the rest of his or her life. The maximum annual benefit is 50.0 percent of final average salary. If a member does not have a surviving spouse, any eligible children share the benefit. If a member does not have a surviving spouse or eligible children, a beneficiary receives a lump-sum equal to the current annual salary.

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Retirement

S-3 Kansas Defined Contribution Retirement Plans

In addition to the Kansas Public Employees Retirement System (KPERS) and the three defined benefit plans its Board of Trustees administers for public employees, the State of Kansas also provides three other defined contribution pension plans for certain state employees designated by statute as eligible for membership in such programs.

Defined contribution plans, however, sharply differ from defined benefit plans and are more like retirement savings accounts. Generally, the employee and the employer make contributions into the individual member's account that is self-directed for investment purposes. The employee bears all of the investment risk during the period of employment, and the final annuity at retirement will be the result of the contributions plus earnings (and losses) over time. There is no obligation on the part of the employer or state to fund a retirement benefit at a particular level of pay for retirees under a defined contribution plan.

Three defined contribution plans authorized by statute have been implemented, with all three having active members. Enabling legislation is found for each plan separately in three statutory sections: KSA 74-4925; 74-49b01 *et seq*.; and 74-4911f.

Regents' plan (KSA 74-4925). This program was authorized in 1961 for the State Board of Regents to assist faculty and administrators, who are in the unclassified service, by providing a retirement plan under Internal Revenue Code (IRC) section 403(b). The plan generally is referred to as the Regents Mandatory Retirement Plan. Originally, the Regents contributed 5.0 percent of salary and the eligible unclassified staff (typically faculty and administrators) contributed 5.0 percent of salary to an individual retirement account offered by the Teachers Insurance and Annuity Association – College Retirement Equities Fund (TIAA-CREF). Members became vested immediately and the account, including the employer contributions, was portable (could be moved if the person took another similar position whether in-state or out-of-state at another institution or eligible post-secondary employer). During the 1980s, the Legislature increased the contribution rates to 8.5 percent for the employer and 5.5 percent for the employee.

The Regents have adjusted the number of vendors offering investment accounts to unclassified members who are eligible to participate. Today, in addition to original vendor, TIAA-CREF, the ING Financial Advisors also provides accounts for Regents faculty and administrators.

Previously, the Security Benefit Group of Topeka had a contract with the Regents, but that contract was discontinued.

The Regents retirement program is an individual savings account plan with assets under the control of the member. Investments are self-directed, and there is no guaranteed pension after retirement. All eligible faculty and administrators are required to participate after the first year of employment at a Regents institution, but under some conditions new employees, if they had prior membership in a similar retirement plan, might be able to participate in their first year of employment at a Regents institution. Regents employees also may participate in the state's voluntary deferred compensation plan described subsequently in the next section.

Other state plans (KSA 74-49b01, *et seq.*, and 74-4911f). One program is authorized under IRC section 457(b) and established by statute. In 1976, the Legislature enacted a voluntary deferred compensation program for state employees. The Director of Personnel Services, subject to approval by the Secretary of Administration, was authorized to establish a tax-deferred employee savings plan. Local units of government also were allowed to participate in the deferred compensation program beginning in 1982. The state originally contracted with Aetna Investment Services to provide a self-funded program for state employee accounts since the statute required the participating members to pay all of the operating costs to administer the plan. Because the state deferred compensation plan offered a voluntary savings account, employees had to sign up to become contributing members.

Until 2001, there was no provision for a match by the employer to encourage more state employee participation in the program. Despite enabling legislation passed in 2001 and the provision currently in statute that would allow a matching employer contribution, the implementation of this matching provision has not taken place.

The contract with the original service provider, Aetna Investment Services, evolved into the current contract with ING Financial Advisors, the firm which acquired the Aetna U.S. operations. In 2008, the program supervision was transferred from the Director of Personnel Services to the KPERS Board of Trustees to administer the plan.

In 1988, the Legislature established a second deferred compensation program under Section 401(a) of the IRS Code for certain state officers who are designated in statute and for whom the state contributes 8.0 percent of salary to the individual's self-directed savings account. This selective program was superimposed on the existing deferred compensation program to utilize the contract with the service provider for the other existing voluntary state deferred compensation plan. However, under this 1988 plan, the state makes an employer contribution, while no employee matching contribution is required. The Legislature gradually expanded membership in this plan to include more positions in state government, including legislative session-only employees in 1996 as the largest group. Eligible state officers and employees include many appointed members of the executive branch, the Governor and Lieutenant Governor's staff, unclassified staff in the House and Senate leadership offices, and Session-only legislative staff. Many members of this plan, if full-time employees, initially are offered membership in KPERS if eligible, but if they declined to join KPERS, then they may elect membership in this plan. Some legislators may be members of this plan. They are eligible to join if they are retired from KPERS, and become eligible for membership in this plan if they are members of the Legislature.

Summary of plan characteristics. Since 1961, some Kansas state government employees, originally at Regents institutions, and later at other state agencies, have been able to participate in defined contribution programs, often referred to as deferred compensation plans. Three current plans have active members.

The Regents' plan includes mandatory employer assistance (8.5 percent) and employee contributions (5.5 percent); the regular deferred compensation plan allows state employees to make voluntary contributions (subject to federal limitations) and has authorizing language for an employer match that has not been implemented;

and the selective deferred compensation plan has statutory language as to who may participate and receive employer assistance (8.0 percent). The Regents plan investments are managed in individual accounts and serviced by two different contractors. No aggregate data are available for these individually directed investments, unlike the state deferred compensation plan which is a unit trust and with reportable participation as well as investment information.

The voluntary and selective deferred compensation plans as of June 30, 2013, included 15,183 members who were state officers and employees from state agencies and Regents institutions. The number of actively participating state officers and employees totaled 7,794 who were either making voluntary contributions or having the state provide assistance in the form of employer contributions on their behalf, if a member were eligible for such assistance payments. Assets for state officers and employees in the unit trust administered by ING Financial Advisors were valued at $606.3 million as of June 30, 2010. No break-down on the number of voluntary and selective members was provided in the annual report from which the above data were derived.

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Retirement

S-4 Working After Retirement

This article addresses the retirees of the Kansas Public Employees Retirement System (KPERS) and the policies adopted by the Legislature for working after retirement. The Legislature has alternated between a policy of restrictions and of no restrictions on retirees who go back to work for a KPERS participating employer after retirement from state agencies, local units of government, and school districts and other educational institutions.

As recently as 1987, there were no statutory restrictions on working after retirement. Prior to that time, there had been a movement away from earlier restrictions that previously had been in statutes. In recent years since 1993, the Legislature has made exceptions to the statutory restrictions, which suggests at least a partial movement away from the restrictions adopted after 1987. In fact, the first restrictive 1988 language lasted only one year and was replaced in 1989 by the Legislature with the general policy currently in effect for KPERS retirees.

Working after retirement statutes address the retirees of KPERS, of the Kansas Police and Firemen's (KP&F) Retirement System, and the Kansas Retirement System for Judges. Each plan will be discussed below as appropriate in the historical context of legislative actions.

Current Legislative Policy for KPERS, KP&F, and Certain Judicial Retirees

KPERS. Current statutory provisions generally impose a salary cap of $20,000 on KPERS retirees who return to work for the same KPERS participating employer from whom they retired. The salary cap legislation originally passed during the 1988 Session when a $6,000 limitation was imposed on KPERS retirees. Subsequent amendments raised the dollar amount of the cap and changed the circumstances under which the cap is applied. In 1993, the Legislature placed retirees of KP&F under an annual limitation, initially at the same dollar cap as KPERS retirees. When the statutory salary cap limitation is reached during a given calendar year, KPERS and KP&F retirees must either stop working or stop receiving their retirement benefits until the end of the calendar year. The cycle begins to be repeated with a new cap on calendar year income on each subsequent January 1. A permanent exemption from the KPERS cap was authorized for nurses who return to work for state institutions from which they retired, and a three-year exemption from the cap with a sunset of July 1, 2015, was authorized for school

professionals. Substitute teachers and legislative staff are exempt from the salary cap limitation on working after KPERS retirement.

Another statutory policy imposed a special assessment for other KPERS participating employers who hire KPERS retirees. The special assessment does not apply to hiring KP&F retirees. A statutory provision required participating employers who hire a retired KPERS member that did not retire from that participating employer to pay an actuarially-determined employer contribution plus the 4.0 percent employee contribution. The original provision passed during the 2006 Session. Beginning after the 2009 Session, school districts that rehire any licensed professional employee who retired from that same participating employer are required to pay the actuarially-determined employer rate plus 8.0 percent as the employee rate, with an expiration date of July 1, 2015, for this provision.

A final statutory policy required KPERS retirees to be off the payroll at least 60 days before returning to work after retirement for a participating employer. The previous period of separation had been 30 days, but the longer period was added in 2009. The 30-day separation requirement was added by the 1998 Legislature in response to a federal compliance review that recommended a specific separation time-period in order to determine that a person actually was retired. Prior to July 1, 1998, there had been no prohibition against retiring one day and going back to work for a KPERS participating employer the next day.

KP&F. Current statutory law reflects 1998 legislation that set the working after KP&F retirement salary cap limitation at $15,000 for retirees who returned to work for the same participating employer from whom they retired and who returned to work in a KP&F covered position. These KP&F retirees are subjected to a 30-day waiting period before they can return to work for any participating employer. The Legislature did not amend the KP&F salary cap or the KP&F days of waiting for KP&F when the KPERS statutes were amended in 2009 to increase the limitation and double the waiting period before being eligible to work after retirement for a participating employer.

Judges and Justices. The Chief Justice of the State Supreme Court has statutory authority to appoint retired judges and justices to hear cases, as authorized by a provision dating from 1967. Total compensation for post-retirement judicial work performed in a fiscal year, when combined with concurrent retirement payments, cannot exceed the salary of a district court judge, as set by statute.

Recent History of Working After Retirement

In 2006, the Legislature increased the working after retirement cap from $15,000 to $20,000 for retirees who returned to work for the same participating employer from who they retired. The increased cap of $20,000 also applied to elected public officials who retired from KPERS-covered positions and continued to serve in an elected public office that also is covered by KPERS.

In addition, the 2006 Legislature specifically addressed public school teachers and working after KPERS retirement by changing existing law. The legislation amended the statutory definition of a professional employee to exclude, beginning in the 2006-2007 school year, any person who retired from school employment as a KPERS member, regardless of whether an agreement on terms and conditions of professional service between a board of education and an exclusive representative of professional employees provided to the contrary. The legislation also changed the definition of “teacher” to exclude, beginning in the 2006-2007 school year, any person who retired from school employment as a KPERS member.

Also in 2006, the Legislature imposed a special assessment on all KPERS participating employers who hired a retired KPERS member. A statutory provision required that participating employers who employed a retired KPERS member would be responsible for paying an actuarially-determined employer contribution plus the 4.0 percent employee contribution. The provision applied to state, school and local KPERS participating employers who hired a retired KPERS member beginning July 1, 2006. Any KPERS retiree previously employed before July 1, 2006, by a

participating employer was exempted from the new law. The first actuarially-determined employer rates in FY 2007 were 5.84 percent for the state group, 9.75 for the school group, and 7.69 percent for the local group of participating employers.

In 2008, the Legislature removed a sunset that would have repealed an exemption for licensed nurses at state institutions who had been exempted from the working after KPERS retirement salary cap that was to expire after three years on June 30, 2008.

The 2008 Legislature also amended the statutory provisions related to working after KPERS retirement that applied to teachers. A change in the definition of "teacher" provided that a teacher means (1) a teacher defined by KSA 72-5436 and (2) any professional employee who retired from school retirement and previously was covered by KPERS.

In 2009, the Legislature extended the break in employment required after KPERS retirement from 30 days to 60 days before retirees can return to work for any KPERS participating employer. The Legislature clarified that any retirees who return to work for a KPERS participating employer, even if associated with a third-party contractor who provided services to a school district or other employer, would be covered by the working after KPERS retirement salary cap if working for the same participating employer from whom they retired.

The 2009 Legislature also established a three-year exemption from the working after KPERS retirement salary cap for school professionals who return to work for their former KPERS participating school employer. The legislation provided for the participating employers to pay KPERS the actuarially-calculated amount of employer contributions plus 8.0 percent for each school professional working after retirement. The provisions were scheduled to sunset on July 1, 2012. A report from KPERS to the Joint Committee on Pensions, Investments and Benefits is required to be submitted after the sunset date.

The 2012 Legislature extended the sunset date to July 1, 2015, for the exemption from the working after KPERS retirement salary cap for school professionals who return to work for their former KPERS participating school employer. The legislation continued the provision for the participating employers to pay KPERS the actuarially-calculated amount of employer contributions plus 8.0 percent for each school professional working after retirement.

Retired Judicial Branch Judges, Justices, and Working after Retirement

Prior to the inclusion of the Kansas Retirement System for Judges under the administration of the KPERS Board of Trustees in 1975, the 1967 Legislature statutorily authorized any retired justice or district court judge to be assigned by the Chief Justice of the State Supreme Court to perform judicial duties in any district that the retiree was willing to undertake. The legislation further provided that the retiree would serve without compensation, but would receive actual and necessary expenses to be paid in the same manner as reimbursements for a district judge. The post-retirement program was modeled after the federal judicial practice of allowing judges to take "senior" status after retiring and to continue hearing cases as needed.

The 1976 Legislature added judges of the Court of Appeals to the statutory provisions to make them eligible for working after retirement and assignment of cases by the Chief Justice.

The 1980 Legislature modified the compensation provision by allowing retired judges and justices to receive *per diem* compensation beginning July 1, 1980, of which the total amount of *per diem* compensation, plus the annual retirement benefit, could not be greater than the annual salary of a district court judge. In addition, the retired judges and justices were allowed to collect the subsistence allowance, mileage allowance, and other actual and necessary expenses.

The 1981 Legislature made all judicial annuities and other retirement benefits, including the working after retirement *per diem* compensation, exempt from state taxation, and also excluded such amounts from execution, garnishment, attachment, or any other process or claim,

including decrees for support or alimony. The annual *per diem* compensation for post-retirement work, plus the annual retirement benefit, continued to be capped to an amount not greater than the annual salary of a district court judge.

The 1993 Legislature added district magistrate judges to the list of retirees eligible for the working after retirement and assignment to duties by the Chief Justice of duties after retirement.

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Retirement

S-5 KPERS Long-Term Funding Plan

The Kansas Public Employees Retirement System (known as KPERS and referenced in this document as the Retirement System) administers three statewide plans. One plan includes state, school, and local groups composed of regular state and local public employees, school district and community college employees, Regents classified employees and certain Regents unclassified staff with pre-1962 service, and state correctional officers. A second plan known as the Kansas Police and Firemen's (KP&F) Retirement System includes certain designated state and local public safety employees. A third plan known as the Kansas Retirement System for Judges includes the state's judicial system judges and justices. All coverage groups are defined benefit, contributory retirement plans and have as members most public employees in Kansas.

The primary purpose of the Retirement System is to accumulate sufficient resources in order to pay benefits. Today more than $1.0 billion is paid in annual retirement and death benefits. Payments exceed the contributions from employees and employers, leaving the balance in benefit payments to come from investment earnings. Long-term disability benefit payments also are paid to disabled members. Of the three plans, only the regular KPERS plan is experiencing a long-term funding problem. The other two plans are funded on an actuarial basis, and employer contributions are adjusted annually in order to provide adequate funding on an actuarial reserve basis. The regular KPERS plan, however, is limited in the amount of annual budget increases by statutory caps on the state, school, and local participating employers. Therefore, the participating employer contributions for regular KPERS are not paid at the actuarial amounts, but rather are paid at the statutorily capped amounts. The employee contributions also are capped by a statutory maximum amount that currently is being paid annually.

The Retirement System faces two challenges in terms of long-term funding. The first challenge involves the regular KPERS program's long-term funding of all three groups (state, school, and local), and the second challenge specifically involves the KPERS School Group which is no longer in actuarial balance to achieve full-funding for promised benefits under provisions of current law. Both challenges are impacted by two situations. First, there is an annual gap between current revenue (contributions) and expenditure (benefits) that must be funded from investment income. Second, there is a shortfall in annual employer contributions computed as the difference between the actuarial rate

(which indicates how much should be paid by employers) versus the statutory rate (which determines how much is paid by employers). The resulting reduced funding increases the unfunded actuarial liability, which is the difference between assets and promised benefits. The Legislature focused its attention on the long-term retirement funding issue during recent sessions. As recently as two years ago, all plans, including the KPERS School Group, were in actuarial balance and were expected to reach full-funding by FY 2033. However, in the last two actuarial valuations, the KPERS School Group was determined to be "out of balance" and in danger of not having enough resources to pay all promised benefits by the end of its amortization period in 2033.

Latest Actuarial Projections

The most recent actuarial valuation, dated December 31, 2012, found that the Retirement System's long-term funding status remains challenged. The unprecedented negative investment experience in 2008 was a significant setback in the Retirement System's long-term funding. Despite the 2008 investment losses, the State and Local groups remain in actuarial balance. For the School group, the statutory and actuarial contribution rates are projected to converge by 2019 if all assumptions are met in future years and if the excess amount collected from state agencies is used to subsidize the school group.

As of December 31, 2012, the Retirement System's actuarial funded ratio decreased from 59.2 percent the previous year to 56.4 percent and the unfunded actuarial liability increased from $9.2 billion the previous year to $10.3 billion for all groups (state, school, and local; KP&F; and judges). Even with recent funding improvements approved by the Legislature, the dollar amount of the unfunded actuarial liability is projected to increase for a number of years before it begins to decline.

School Group Issue

The KPERS School Group's (excluding the State Group) unfunded actuarial liability increased from $5.8 billion in 2011 to $6.4 billion in the December 31, 2012, valuation report, which is more than one-half of the Retirement System's total unfunded actuarial liability. For this group, the actuarial liability is $12.6 billion and the actuarial value of assets is $6.2 billion. The funded ratio on an actuarial basis decreased slightly from 52.1 percent the previous year to 49.4 percent. Anything below 60 percent funding is considered reason for concern.

Summary

The twin challenges facing the Retirement System both involve funding: all of the retirement plans need more money to address a long-term financing problem, and the School Group needs an even greater share of that new money to solve its funding issue.

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Retirement

S-6 KPERS Early Retirement, Normal Retirement, and Early Retirement Incentive Plans

For the Kansas Public Employees Retirement System (KPERS) that includes state, school, and local governmental employees, the KPERS actuary reviews the actual experience every three years to compare it with anticipated experience (actuarial assumptions) in order to reexamine certain assumptions to see if the actual experience differed from the assumed pattern over the period.

Two of the actuarial assumptions include the estimated rates of retirement, one for early retirement without obtaining full, unreduced benefits at age 55 (and at least 10 years of credited service), and the other for normal retirement with unreduced benefits at 85 points (sum of age plus years of service credit), age 62 (with at least 10 years of service credit), or age 65 (with at least one year of service credit).

There has been statutory authorization since 1983 for both school districts and community colleges to establish early retirement incentive plans. Approximately half the school districts and most of the community colleges established the statutorily-authorized plans, although in recent years many such statutory plans have been closed to new hires.

Actuarial Findings for the 85-Point Rule. For the period 2007 to 2009, the KPERS actuary found that 110.0 percent of school-eligible employees, and 104.0 percent of local-eligible employees, with 85 points and prior to age 62, actually retired when compared with the assumed rate of retirement. The state-eligible employees under the same circumstances retired at the rate of 82 percent of the assumed rate. Both schools and local governments offered *ad hoc* early retirement plans during this period of 2007 to 2009, while the State did not offered such a plan until 2011.

In terms of actual retirements during the 2007 to 2009 period, the KPERS actuary found that under the rule of 85 points, there were retirements by 22.2 percent of those school district eligible employees between the ages of 53 and 62. That retirement rate exceeded the anticipated rate of 21.4 percent by 0.8 percent. For the local units of government, there were retirements by 14.1 percent of those eligible between the ages of 53 and 62. That retirement rate exceeded the anticipated rate of 13.1 percent by 1.0 percent.

The retirement rate for the state group under the rule of 85 for those between the ages of 53 to 62 was 12.6 percent, compared with the anticipated rate of 13.9 percent, which was 1.3 percent lower than expected. There was no early retirement incentive plan for state employees during this period from 2007 to 2009.

Under the rule of 85 points, the retirement rate for the school group was 22.2 percent of those eligible, for the local group was 14.1 percent, and for the state group was 12.6 percent.

Actuarial Findings for Normal Retirement. For employees ages 62 to 75, the KPERS actuary found greater differences from the expected patterns in two of the three groups – state and local. The school group was anticipated to retire at a rate of 29.3 percent, compared with the actual experience of 29.1 percent. The state group was anticipated to retire at a rate of 27.2 percent, compared with the actual experience of 25.6 percent. The local group was anticipated to retire at a rate of 15.9 percent, compared with the actual experience of 14.8 percent.

Actuarial Findings for Early Retirement. For employees ages 55 to 62 and not eligible for the 85 point rule or normal retirement, the KPERS actuary found slight differences from the expected patterns in the three groups. The school group was anticipated to retire at a rate of 7.4 percent, compared with the actual experience of 7.3 percent. The state group was anticipated to retire at a rate of 7.4 percent, compared with the actual experience of 7.3 percent. The local group was anticipated to retire at a rate of 6.7 percent, compared with the actual experience of 6.6 percent.

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State Finance

T-1 Kansas Laws to Eliminate Deficit Spending

Various laws or statutory sections are designed to provide certain safeguards with respect to state budgeting and managing of expenditures, and to prevent deficit financing. These laws and statutes are summarized below.

Constitutional Provisions

Sometimes certain provisions of the *Kansas Constitution* are cited with regard to financial limitations. For instance, Section 24 of Article 2 says that "No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law."

Section 4 of Article 11 states "The Legislature shall provide, at each regular session, for raising sufficient revenue to defray the current expenses of the state for two years."

Sections 6 and 7 of Article 11 relate to incurring public debt for the purpose of defraying extraordinary expenses and making public improvements. Such debt shall not, in the aggregate, exceed $1 million without voter approval of a law passed by the Legislature. The Kansas Supreme Court, in several cases over the years, has said these sections apply only to debts payable from the levy of general property taxes and thus do not prohibit issuance of revenue bonds to be amortized from non-property tax sources.

Unencumbered Balance Required

KSA 75-3730, enacted in 1953, states that all commitments and claims shall be preaudited by the Division of Accounts and Reports as provided in KSA 75-3731. "No payment shall be made and no obligation shall be incurred against any fund, allotment, or appropriation, except liabilities representing the expenses of the legislature, unless the Director of Accounts and Reports shall first certify that his or her records disclose there is a sufficient unencumbered balance available in such fund, allotment, or appropriation to meet the same."

State General Fund Ending Balance Law

Part of 1990 HB 2867 (then KSA 75-6704) provided that the Governor and Legislature must target year-end State General Fund balances

expressed as a percentage of fiscal year expenditures and demand transfers, as follows: at least 5 percent for FY 1992, 6 percent for FY 1993, 7 percent for FY 1994, and 7.5 percent for FY 1995 and thereafter (now KSA 75-6702). Beginning in the 1992 Legislative Session, an "Omnibus Reconciliation Spending Limit Bill" is to be relied upon to reconcile total State General Fund expenditures and demand transfers to the applicable ending balance target. The law does not require any future action by the Governor or Legislature if the target is missed when actual data on receipts, expenditures, and the year-end balance become known.

Allotment System

The allotment system statutes (KSA 75-3722 through 3725) were enacted in 1953 as part of the law which created the Department of Administration. In response to a request from Governor Carlin, the Attorney General issued an opinion (No. 82-160) on July 26, 1982, which sets forth some of the things that can and cannot be done under the allotment system statutes. Some of the key points in that opinion are:

- With certain exceptions, noted below, the Governor (through the Secretary of Administration and Director of the Budget) has broad discretion in the application of allotments in order to avoid a situation where expenditures in a fiscal year would exceed the resources of the State General Fund or a special revenue fund. Allotments need not be applied equally or on a *pro rata* basis to all appropriations from, for example, the State General Fund. Thus, the Governor may pick and choose "as long as such discretion is not abused."
- Demand transfers from the State General Fund to another fund are not subject to the allotment system because technically, appropriations are made from the other fund and not the State General Fund. Such transfers include those to the Local Ad Valorem Tax Reduction Fund, County and City Revenue Sharing Fund, City-County Highway Fund, State Highway Fund, State Water Plan Fund, and School District Capital Improvements Fund.
- The allotment system cannot be used in any fiscal year for the purpose of increasing the year-ending balance of a fund nor for controlling cash shortages that might occur at any time within a fiscal year. Thus, if a "deficit" were to be projected at the end of the fiscal year, the allotment system could be used to restore the State General Fund balance to zero.

The Legislature and the Courts and their officers and employees are exempt from the allotment system under KSA 75-3722.

The $100 Million Balance Provision

Part of 1990 HB 2867 (KSA 75-6704) authorizes the Governor to issue an executive order or orders, with approval of the State Finance Council, to reduce State General Fund expenditures and demand transfers if the estimated year-end balance in the State General Fund is less than $100 million. The Director of the Budget must continuously monitor receipts and expenditures and certify to the Governor the amount of reduction in expenditures and demand transfers that would be required to keep the year-end balance from falling below $100 million. Debt service costs, the State General Fund contribution to school employees retirement (KPERS-School), and the demand transfer to the School District Capital Improvements Fund created in 1992 are not subject to reduction.

If the Governor decides to make reductions, they must be on a percentage basis applied equally to all items of appropriations and demand transfers, *i.e.*, across-the-board with no exceptions other than the three mentioned above. In contrast to the allotment system law, all demand transfers but one are subject to reduction.

In August 1991 (FY 1992), the Governor issued an executive directive, with the approval of the State Finance Council, to reduce State General Fund expenditures (except debt service and the KPERS-School employer contributions) by 1 percent. At the time of the State Finance Council action, the

projected State General Fund ending balance was projected at approximately $76 million.

Certificates of Indebtedness

KSA 75-3725a, first enacted in 1970, authorizes the State Finance Council to order the Pooled Money Investment Board (PMIB) to issue a certificate of indebtedness when the estimated resources of the State General Fund will be sufficient to meet in full the authorized expenditures and obligations of the State General Fund for an entire fiscal year, but insufficient to meet such expenditures and obligations fully as they become due during certain months of a fiscal year. The certificate must be redeemed from the State General Fund no later than June 30 of the same fiscal year in which it was issued. If necessary, more than one certificate may be issued in a fiscal year. No interest is charged to the State General Fund. However, to whatever extent the amount of a certificate results in greater spending from the State General Fund than would occur if expenditures had to be delayed, there may be some reductions in interest earnings that otherwise would accrue to the State General Fund.

To cover cash flow issues, the State Finance Council authorized issuance of certificates of indebtedness, as follows:

- $65 million in December FY 1983;
- $30 million in October FY 1984;
- $75 million in April FY 1986;
- $75 million in July FY 1987;
- $140 million in December FY 1987 (replaced the July certificate);
- $75 million in November FY 1992;
- $150 million in January FY 2000;
- $150 million in January FY 2001;
- $150 million in September FY 2002;
- $200 million in December FY 2002;
- $450 million in July FY 2003;
- $450 million in July FY 2004;
- $450 million in July FY 2005;
- $450 million in July FY 2006 ;
- $200 million in December FY 2007;
- $350 million in December FY 2008;
- $300 million in June FY 2009;
- $250 million in December FY 2009;
- $225 million in February FY 2009;
- $700 million in July FY 2010;
- $700 million in July FY 2011;
- $600 million in July FY 2012;
- $400 million in July FY 2013; and
- $300 million in July FY 2014.

The amount of a certificate is not “borrowed” from any particular fund or group of funds. Rather, it is simply a paper transaction by which the State General Fund is temporarily credited with the amount of the certificate and state moneys available for investment and managed by the PMIB. The PMIB is responsible under the state moneys for investing available moneys of all agencies and funds, as well as for maintaining an operating account to pay daily bills of the state. (Kansas Public Employee Retirement System invested money is not part of “state moneys available for investment” nor is certain money required to be separately invested by the PMIB under statutes other than the state moneys law.)

Certificates of indebtedness could be used if allotments were imposed or if expenditures were reduced under the $100 million balance provision, or if neither such action were taken.

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State Finance

T-2 Local Demand Transfers

This briefing report provides an explanation of the five local State General Fund demand transfers (the Local Ad Valorem Tax Reduction Fund, the County and City Revenue Sharing Fund, the Special City-County Highway Fund, the School District Capital Improvements Fund, and the School District Capital Outlay Fund), including: the statutory authorization for the transfers; where applicable, the specific revenue sources for the transfers; recent treatment of the demand transfers as revenue transfers; and funding provided for the transfers in recent years. In addition, other demand transfers (the State Water Plan Fund, the State Fair Capital Improvements Fund, and the Regents Faculty of Distinction Fund), which do not flow to local units of government, are discussed briefly.

Distinction between Demand Transfers and Revenue Transfers

- **Demand transfers** are expenditures specified by statute rather than appropriation acts. An important characteristic of a demand transfer is that the amount of the transfer in any given fiscal year is based on a formula or authorization in substantive law. The actual appropriation of the funds traditionally was made through that statutory authority, rather than through an appropriation. In recent years, however, adjustments to the statutory amounts of the demand transfers have been included in appropriation bills. State General Fund demand transfers are considered to be State General Fund expenditures.

- A State General Fund **revenue transfer** is specified in an appropriation bill and involves transferring money from the State General Fund to a special revenue fund. Any subsequent expenditure of the funds is considered an expenditure from the special revenue fund.

Five statutory demand transfers flow to local units of government:

- Two of the local transfers are funded from sales tax revenues: the Local Ad Valorem Tax Reduction Fund (LAVTRF) and the Country and City Revenue Sharing Fund (CCRSF). By law, both are to be distributed to local governments for property tax relief. By statute, the LAVTRF should receive 3.6 percent of sales and use tax receipts, and the CCRSF should receive 2.8 percent. While the percentage is established in statute, it

should be noted that, in recent years, the transfers often have been capped at some level less than the full statutory amount or not funded at all.

- The other local transfer based on a specific revenue source is the Special City-County Highway Fund (SCCHF), which was established in 1979 to prevent the deterioration of city streets and county roads. Each year, by statute, this fund is to receive an amount equal to the state property tax levied on motor carriers.

- The fourth transfer to local units of government is not based on a specific tax resource. The School District Capital Improvements Fund (SDCIF) is used to support school construction projects. By statute, the State Board of Education is to certify school districts' entitlements determined under statutory provisions and funding is then transferred from the State General Fund to the SDCIF.

- The fifth transfer to local units of government is the School District Capital Outlay Fund. The 2005 Legislature created the capital outlay state aid program as part of its response to the Kansas Supreme Court's opinion in school finance litigation. The program is designed to provide state equalization aid to school districts for capital outlay mill levies up to 8 mills.

Treatment of Demand Transfers as Revenue Transfers. In recent years, the local demand transfers, with the exception of the School District Capital Outlay Fund, have been changed to revenue transfers. By converting demand transfers to revenue transfers, these funds cease to be State General Fund expenditures and are no longer subject to the ending balance law. The LAVTRF, CCRSF, and SCCHF were last treated as demand transfers in FY 2001, and the School District Capital Improvement Fund transfer was changed to a revenue transfer in FY 2003.

Recent Funding for the Local Demand/Revenue Transfers. The SDCIF was the only local State General Fund transfer recommended for FY 2014.

- Full-year funding (at a level below the statutory amount) was last recommended for the LAVTRF and the CCRSF in FY 2002.

- In FY 2003, as part of approved State General Fund allotments, the second half of the scheduled transfers to the LAVTRF, CCRSF, and SCCHF were suspended, and no transfers have been made since FY 2004.

- Because of balances in the SCCHF, local governments received the full amounts of the SCCHF transfer in both FY 2003 and FY 2004, although only one of two scheduled transfers was made in FY 2003 and no State General Fund transfer was made in FY 2004. The FY 2005, FY 2006, FY 2007, and FY 2008 transfers to the SCCHF were approved at the FY 2003 pre-allotment amount. The FY 2009 transfer was approved at $6.7 million. No funding has been approved since FY 2009.

- The transfer to the SDCOF was last made in FY 2009.

The following table reflects actual and approved local demand or revenue transfers (in thousands of dollars) for FY 2011-FY 2014:

	Actual FY 2011	Actual FY 2012	Actual FY 2013	Approved Amount FY 2014	Change from FY 2013 $	Change from FY 2013 %
School District Capital Improvements Fund	$ 96,141	$104,788	$ 111,550	$ 116,300	$ 4,750	4.3%
School District Capital Outlay Fund	0	0	0	0	0	--
Local Ad Valorem Tax Reduction Fund	0	0	0	0	0	--
County and City Revenue Sharing Fund	0	0	0	0	0	--
City-County Highway Fund	0	0	0	0	0	--
TOTAL	$ 96,141	$ 104,788	$ 111,550	$ 116,300	$ 4,750	4.3%

No transfers recommended for the LAVTRF or CCRSF for FY 2010-FY 2014, or for the CCHF for FY 2010-FY 2014

Other Demand Transfers. In addition to the local demand/revenue transfers, three other transfers do not flow to local units of government:

- One transfer provides matching funds for capital improvement projects at the **Kansas State Fair.** The amounts to be transferred are intended to match amounts transferred by the State Fair to its Capital Improvements Fund, up to $300,000. *No transfer was approved for FY 2014.*
- Another provides for a statutory $6.0 million transfer from the State General Fund to the **State Water Plan Fund.** *No transfer was approved for FY 2014.*
- The third provides for a transfer to the **Regents' Faculty of Distinction Fund.** This provides for a transfer to supplement endowed professorships at eligible educational institutions. *A transfer of $120,000 was authorized for FY 2014.*

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Kansas Legislative Research Department

T-1
Kansas Laws to Eliminate Deficit Spending

T-2
Local Demand Transfers

T-3
District Court Docket Fees

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State Finance

T-3 District Court Docket Fees

Docket Fees. Kansas has had a uniform system of district court docket fees since 1974. The docket fee system implemented in 1974 involved a uniform fee paid to the court for the cost of services. The original docket fees were $35 for civil cases and varying fees for criminal cases, depending upon the nature of the crime. From 1984 to 1995, local law libraries could charge differing library fees that were in addition to statutorily set docket fees, which caused docket fees to be non-uniform. In addition to statutorily set docket fees and a few fees that are set by Supreme Court Rule, the Kansas Supreme Court imposed a surcharge on district court docket fees. The Supreme Court Docket Fee surcharge was implemented from April 1, 2002 to June 30, 2006, to generate additional revenues to operate the Judicial Branch.

In 1996, the Legislature enacted legislation that returned docket fees to a uniform level and also added docket fees for filing post-divorce motions for changes in child custody, modifications of child support orders, or changes in visitation. The 2006 Legislature enacted legislation specifying that only the Legislature can establish fees or moneys for court procedures including docket fees, filing fees, or other fees related to access to court procedures.

The 2006 Legislature raised docket fees for four purposes: to provide additional funding for the State General Fund associated with an approved judicial salary increase, to provide an increase in funding for the Kansas Law Enforcement Training Center Fund, to provide funding for the Kansas Judicial Council's judicial performance evaluation process, and for the Child Exchange and Visitation Centers Fund. The 2009 Legislature raised docket fees to provide funding for the first phase of a statewide non-judicial personnel salary adjustment and raised the docket fee in criminal cases by $1 to fund a $1 increase to the Prosecuting Attorneys' Training Fund.

With regard to distribution of docket fees, the law provides that certain state and local entities will receive a specified portion of district court docket fees and that the balance will be credited to the State Treasury. The Office of Judicial Administration collected $21.3 million in district court docket fees for the State Treasury in FY 2012. The amount in the State Treasury is allocated on a percentage basis among a number of state agency funds, as shown in the table on the next page.

Fines Penalties and Forfeitures. In FY 2012, the Judicial Branch collected $19.2 million in fines, penalties, and forfeitures. The 33.6 percent of funds collected are earmarked for assisting victims of crime,

alcohol, and drug abuse programs, children's services, and other law enforcement-related activities. The remainder is transferred to the State General Fund for general operations.

Other Fees. In addition to Docket Fees, the Judicial Branch also imposes other fees and assessments on individuals who avail themselves of the judicial system. The Judicial Branch collected $16.6 million in other fees and assessment in FY 2012. These fees support law enforcement related activities within the Kansas Bureau of Investigation, Office of the Attorney General, Board of Indigents' Defense Services, and the Department of Corrections.

The 2009 Legislature authorized the Supreme Court to enact a new surcharge in FY 2009. The surcharge is approved on a year-to-year basis by the Legislature. In FY 2011, the Legislature extended the surcharge through FY 2012 and increased the surcharge by 25.0 percent. Surcharge revenue is not considered to be a docket fee and is tracked separately from the fees and deposited in the Judicial Branch Surcharge Fund. In addition to surcharge revenue, the Legislature transferred $778,518 from the Judicial Performance Fund to the Judicial Branch Surcharge Fund in FY 2011. The surcharge on docket fees raised $11.8 million in FY 2012.

The table on the next page shows the amount of each docket fee, the statutory citation or Supreme Court Rule that authorizes the fee, and how it is distributed. Those funds that receive docket fee receipts "off the top" are shown (the County General Fund, the Law Library Fund, the Indigents' Defense Services Fund, and the Law Enforcement Training Center Fund), along with amounts credited to the State Treasury. Amounts credited to the State Treasury may be either a specified dollar amount or the balance remaining after other statutory allocations have been made.

Name of Fund	Administering Authority	FY 2013 Percent of Fees	FY 2013 Revenue to Fund	FY 2014 Percent of Fees	FY 2014 Revenue to Fund (Est.)
Access to Justice Fund	Chief Justice, Kansas Supreme Court	4.24 %	$ 847,945	0.00 %	$ 0
Judicial Branch Nonjudicial Salary Initiative Fund (Clerk's Fees)	Chief Justice, Kansas Supreme Court	15.37	3,073,800	0.00	0
Judicial Branch Education Fund (Clerk's Fees)	Chief Justice, Kansas Supreme Court	1.81	361,976	0.00	0
Judicial Technology Fund	Chief Justice, Kansas Supreme Court	3.66	731,952	0.00	0
Dispute Resolution Fund	Judicial Administrator, OJA	0.29	57,996	0.00	0
Judicial Council Fund	Judicial Council	0.96	191,987	0.96	177,188
Judicial Performance Fund	Judicial Council	3.05	609,960	0.00	0
Crime Victims Assistance Fund	Attorney General	0.48	95,994	0.00	0
Protection from Abuse Fund	Attorney General	2.31	461,970	0.00	0
Kansas Juvenile Delinquency Prevention Trust Fund	Commissioner of Juvenile Justice	1.07	213,986	0.00	0
Juvenile Detention Facilities Fund	Commissioner of Juvenile Justice	2.35	469,969	0.00	0
Trauma Fund	Secretary of Health and Environment	1.27	253,983	0.00	0
Permanent Families Account in the Family and Children Investment Fund (Clerk's Fees)	Judicial Administrator, OJA	0.18	35,998	0.00	0
Child Exchange and Visitation Center	Attorney General	0.58	115,992	0.00	0
Judicial Branch Nonjudicial Salary Adjustment Fund	Chief Justice, Kansas Supreme Court	15.54	3,107,797	0.00	0
Judicial Branch Docket Fee Fund	Chief Justice, Kansas Supreme Court	0.00	0	99.04	18,281,555
State General Fund	Kansas State Legislature	46.84	9,367,389	0.00	0
Docket Fee Total		*100.00 %*	*$ 19,998,696*	*100.00 %*	*$ 18,457,058*

Name of Fund	Administering Authority	FY 2013 Percent of Fees	FY 2013 Revenue to Fund	FY 2014 Percent of Fees	FY 2014 Revenue to Fund (Est.)
	Fines, Penalties and Forfeitures				
Crime Victim's Compensation Fund	Attorney General	10.94 %	$ 2,011,094	10.94 %	$ $2,011,094
Crime Victim's Assistance Fund	Attorney General	2.24	411,778	2.24	411,778
Comm. Alcoholism and Intoxication Programs Fund	Social and Rehabilitation Services	2.75	505,531	2.75	505,531
Dept of Corr. Alcohol and Drug Abuse Treatment Fund	Department of Corrections	7.65	1,406,295	7.65	1,406,295
Boating Fee Fund	Department of Wildlife, Parks, and Tourism	0.16	29,413	0.16	29,413
Children's Advocacy Center Fund	Attorney General	1.10	202,212	1.10	202,212
EMS Revolving Fund	Emergency Medical Services Board	2.28	419,131	2.28	419,131
Trauma Fund	Secretary of Health and Environment	2.28	419,131	2.28	419,131
Traffic Records Enhancement Fund	Department of Transportation	2.28	419,131	2.28	419,131
Criminal Justice Information Systems Line Fund	Kansas Bureau of Investigations	2.91	534,944	2.91	534,944
State General Fund	Kansas State Legislature	66.40	12,206,276	66.40	12,206,276
Fines, Penalties and Forfeitures Total		*100.00 %*	*$ 18,382,946*	*100.00 %*	*$ 18,382,946*

Name of Fund	Administering Authority	FY 2013 Percent of Fees	FY 2013 Revenue to Fund	FY 2014 Percent of Fees	FY 2014 Revenue to Fund (Est.)
		Other Fees and Assessments			
Bar Admission Fee fund (Bar Application Fees)	Commission on Judicial Qualifications	Fee	$ 311,760	Fee	$ 237,150
Court Reporters Fee Fund (Court Report Fees)	Judicial Administrator, OJA	Fee	20,453	Fee	20,003
Judicial Branch Nonjudicial Salary Adjustment Fund (Marriage Fee)	Chief Justice, Kansas Supreme Court	Fee	514,633	Fee	514,634
Indigent Defense Services Fund (Application & Assessment)	Board of Indigent Defense Services	Fee	78,867	Fee	546,946
Judicial Branch Education Fund (Fines & Licenses)	Chief Justice, Kansas Supreme Court	Fee	132,474	Fee	124,000
Judicial Branch Surcharge Fund	Chief Justice, Kansas Supreme Court	Fee	10,053,601	Fee	9,600,000
KBI-DNA Database Fee (DNA Sample Fee)	Kansas Bureau of Investigations	Fee	540,509	Fee	404,593
Law Enforcement Training Center Fund (Assessment on Criminal Proceedings)	KCPOST	Fee	2,232,849	Fee	2,327,172
Library Report Fee Fund	Judicial Administrator, OJA	Fee	75,726	Fee	128,950
Duplicate Law Book Fund	Judicial Administrator, OJA	Fee	4,289	Fee	4,500
Family and Children Investment Fund (Marriage Fee)	Judicial Administrator, OJA	Fee	165,730	Fee	165,730
Protection from Abuse Fund (Marriage Fee)	Attorney General	Fee	425,290	Fee	425,290
Crime Victim's Assistance (Marriage Fee)	Attorney General	Fee	184,932	Fee	184,932
Community Alcoholism and Intoxication Programs Fund (DL Fee)	Kansas Department of Aging and Disability Services	Fee	458,210	Fee	458,210
Juvenile Detention Facilities Fund (DL Fee)	Kansas Department of Corrections	Fee	183,284	Fee	183,284
Forensic Laboratory and Materials Fee Fund (DL Fee)	Kansas Department of Health and Environment	Fee	183,284	Fee	183,284
Driving Under the Influence Equipment Fund (DL Fee)	Kansas Department of Health and Environment	Fee	91,642	Fee	91,642
Community Corrections Supervision Fee Fund	Kansas Department of Corrections	Fee	953,063	Fee	1,420,664
Interest and County Code Violations	Judicial Administrator, OJA	Fee	31,191	Fee	31,191
Other Fees and Assessments Total			*$ 16,641,787*		*$ 17,052,175*
Grand Total of all Fees, Fines, Penalties and Forfeitures Assessed			**$ 55,023,429**		**$ 53,892,179**

FY 2014 FULLCOURT DISTRIBUTION CHART - (revised 07/01/2013)

Case Type	Cite	CRM #	Fee	Docket Fee	JBS	TOTAL	*State*	*Tr Rpt*	*County*	*aw Libr*	*PATF*	*IDS*	*LETC*
Adoption Docket Fee	59-104	60		$48.50	$22.00	$70.50	*Balance*	*C*	*$0.00*	*x*	*$0.00*	*$0.00*	*$0.00*
ADSAP	8-1008		$150.00		$0.00	$150.00	*$0.00*		*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Appellate Court Review	20-1a04	2		$125.00	$10.00	$135.00	*$125.00*		*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Arrest Expungement	22-2410	44		$100.00	$19.00	$119.00	*$100.00*	*C*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Attachment Order	28-178		$0.00		$12.50	$12.50	*$0.00*	*Q*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Bar Discipline Fee Fund	2005 SC 28		$100.00		$0.00	$100.00	*$100.00*	*K*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
BIDS Admin. Fee	22-4529		$100.00		$0.00	$100.00	*$100.00*	*F*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
CC Supervision Fee Fund (DUI Fine)	8-1567		$250.00			$250.00	*$250.00*	*O*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Child in Need of Care	38-2215	50		$34.00	$22.00	$56.00	*Balance*	*C*	*$0.00*	*x*	*$1.00*	*$0.50*	*$0.00*
Children's Advocacy Center Fund	20-370		$400.00		$0.00	$400.00	*$400.00*	*J*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Civil Docket Fee	60-2001	5		$154.00	$22.00	$176.00	*Balance*	*C*	*$10.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Commitment of Sexually Violent Predator	59-29a01; 59-104	76		$33.50	$22.00	$55.50	*Balance*	*C*	*$0.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Conservatorship Docket Fee	59-104	65		$69.50	$22.00	$91.50	*Balance*	*C*	*$0.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Conviction Expungement	21-6614			$100.00	$19.00	$119.00	*$100.00*	*C*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
County Code Violation	19-101e(d)	43		$20.00	$0.00	$20.00	*$2.00*	*Q*	*$18.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Criminal (felony)	28-172a	41		$171.00	$22.00	$193.00	*Balance*	*C*	*$0.00*	*x*	*$2.00*	*$0.50*	*$15.00*
Criminal (misdemeanor)	28-172a	42		$136.00	$22.00	$158.00	*Balance*	*C*	*$0.00*	*x*	*$2.00*	*$0.50*	*$15.00*
Criminal (murder/manslaughter)	28-172a	40		$180.50	$22.00	$202.50	*Balance*	*C*	*$0.00*	*x*	*$2.00*	*$0.50*	*$15.00*
Divorce/Paternity Docket Fee	60-2001	21		$154.00	$22.00	$176.00	*Balance*	*C*	*$10.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Domestic Violence Fee	20-369		$100.00		$0.00	$100.00	*$0.00*		*$100.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Driver's License Reinstatement Fee	8-2110		$59.00		$22.00	$81.00	*$59.00*	*I*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Filing Will & Affidavit	59-104	67		$48.50	$22.00	$70.50	*Balance*	*C*	*$0.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Fine	20-2714					x	*x*	*A*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Fish & Game	28-172a	46		$74.00	$22.00	$96.00	*Balance*	*C*	*$0.00*	*x*	*$2.00*	*$0.50*	*$15.00*
Foreign Adoption Docket Fee	28-170; 59-2144	61		$14.00	$22.00	$36.00	*$14.00*	*C*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Foreign Judgment (another county)	60-2203a	7		$14.00	$22.00	$36.00	*$14.00*	*C*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Foreign Judgment (another state)	60-3005; 60-2001	6		$154.00	$22.00	$176.00	*Balance*	*C*	*$10.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Forfeited Recognizance	28-172a			$72.50	$22.00	$94.50	*Balance*	*C*	*$0.00*	*x*	*$2.00*	*$0.50*	*$15.00*
Guardianship Docket Fee	59-104	65		$69.50	$22.00	$91.50	*Balance*	*C*	*$0.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Hospital Lien	65-409	13		$14.00	$22.00	$36.00	*$14.00*	*Q*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Hrg in Aid of Execution	28-178		$0.00		$12.50	$12.50	*$0.00*	*N*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Human Trafficking Victim Assistance Fund	2013 HB 2034					x	*x*	*P*					
Juvenile Expungement	38-2312			$100.00	$19.00	$119.00	*$100.00*	*C*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*

FY 2014 FULLCOURT DISTRIBUTION CHART - (revised 07/01/2013)

Case Type	Cite	CRM #	Fee	Docket Fee	JBS	TOTAL	State	Tr Rpt	County	aw Libr	PATF	IDS	LETC
Juvenile Offender	38-2314	51		$34.00	$22.00	$56.00	Balance	C	$0.00	x	$1.00	$0.50	$0.00
Juvenile Probation Fee (felony)	20-167; A.O. 251*		$120.00		$0.00	$120.00	$0.00		$120.00	$0.00	$0.00	$0.00	$0.00
Juvenile Probation Fee (misdemeanor)	20-167; A.O. 251*		$60.00		$0.00	$60.00	$0.00		$60.00	$0.00	$0.00	$0.00	$0.00
Juvenile Tobacco	28-172a	52		$74.00	$22.00	$96.00	Balance	C	$0.00	x	$2.00	$0.50	$15.00
KBI DNA Database Fee	75-724		$200.00		$0.00	$200.00	$200.00	L	$0.00	$0.00	$0.00	$0.00	$0.00
KBI Laboratory Fee	28-176		$400.00		$0.00	$400.00	$0.00		$0.00	$0.00	$0.00	$0.00	$0.00
Limited Civil Docket Fee ($500 or less)	61-4001	25		$35.00	$19.00	$54.00	Balance	C	$5.00	x	$0.00	$0.00	$0.00
Limited Civil Docket Fee (over $500)	61-4001	26		$55.00	$19.00	$74.00	Balance	C	$10.00	x	$0.00	$0.00	$0.00
Limited Civil Docket Fee (over $5000)	61-4001; 61-2802	27		$101.00	$19.00	$120.00	Balance	C	$10.00	x	$0.00	$0.00	$0.00
Lis Pendens	28-170	14		$14.00	$22.00	$36.00	$14.00	Q	$0.00	$0.00	$0.00	$0.00	$0.00
Marriage License	23-2510	78	$59.00		$26.50	$85.50	$59.00	H	$0.00	$0.00	$0.00	$0.00	$0.00
Mechanic's Lien	28-170	15		$14.00	$22.00	$36.00	$14.00	Q	$0.00	$0.00	$0.00	$0.00	$0.00
Municipal Court Appeals	28-172a	1		$72.50	$22.00	$94.50	Balance	C	$0.00	x	$2.00	$0.50	$15.00
Oil & Gas Mechanic's Lien	28-170	18		$14.00	$22.00	$36.00	$14.00	Q	$0.00	$0.00	$0.00	$0.00	$0.00
Order for Garnishment	28-178		$0.00		$12.50	$12.50	$0.00	N	$0.00	$0.00	$0.00	$0.00	$0.00
Order or Writ of Execution	28-178		$0.00		$12.50	$12.50	$0.00	N	$0.00	$0.00	$0.00	$0.00	$0.00
Personal Property Tax	28-170	11		$14.00	$22.00	$36.00	$14.00	Q	$0.00	$0.00	$0.00	$0.00	$0.00
Post Divorce Motion	28-179	22		$40.00	$22.00	$62.00	$42.00	C	$0.00	$0.00	$0.00	$0.00	$0.00
Post-Judgment Promotion of Ch 61 to Ch 60	28-170	31		$24.00	$22.00	$46.00	Balance	Q	$0.00	$0.00	$0.00	$0.00	$0.00
Probate Conservatorship/Guardianship	59-104	65		$69.50	$22.00	$91.50	Balance	C	$0.00	x	$0.00	$0.00	$0.00
Probate Descent	59-104	68		$49.50	$22.00	$71.50	Balance	C	$0.00	x	$0.00	$0.00	$0.00
Probate Estates	59-104	69		$109.50	$22.00	$131.50	Balance	C	$0.00	x	$0.00	$0.00	$0.00
Probate Transcript (another county)	59-104	70		$23.50	$22.00	$45.50	Balance	C	$0.00	x	$0.00	$0.00	$0.00
Probate Transcript (another state)	59-104	71		$108.50	$22.00	$130.50	Balance	C	$0.00	x	$0.00	$0.00	$0.00
Probate Trust	59-104	66		$69.50	$22.00	$91.50	Balance	C	$0.00	x	$0.00	$0.00	$0.00
Probation Fee (felony)	21-4610a		$120.00		$0.00	$120.00	$0.00	M	$50.00	$0.00	$0.00	$0.00	$0.00
Probation Fee (misdemeanor)	21-4610a		$60.00		$0.00	$60.00	$0.00	M	$25.00	$0.00	$0.00	$0.00	$0.00
Refusal to Grant Letters	59-104	72		$48.50	$22.00	$70.50	Balance	C	$0.00	x	$0.00	$0.00	$0.00
SB 123 Drug Treatment			x			x			$0.00	$0.00	$0.00	$0.00	$0.00
Small Claims ($500 or less)	61-2704	35		$37.00	$12.50	$49.50	Balance	C	$5.00	x	$0.00	$0.00	$0.00
Small Claims ($500.01 to $4,000)	61-2704	36		$57.00	$12.50	$69.50	Balance	C	$10.00	x	$0.00	$0.00	$0.00
State Tax Warrant	28-170	10		$24.00	$22.00	$46.00	$24.00	Q	$0.00	$0.00	$0.00	$0.00	$0.00
Statutory Bond	28-170	12		$14.00	$22.00	$36.00	$14.00	Q	$0.00	$0.00	$0.00	$0.00	$0.00

FY 2014 FULLCOURT DISTRIBUTION CHART - (revised 07/01/2013)

Case Type	Cite	CRM #	Fee	Docket Fee	JBS	TOTAL	*State*	*Tr Rpt*	*County*	*aw Libr*	*PATF*	*IDS*	*LETC*
Termination of Joint Tenancy	59-104	73		$48.50	$22.00	$70.50	*Balance*	*C*	*$0.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Termination of Life Estate	59-104	74		$48.50	$22.00	$70.50	*Balance*	*C*	*$0.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Traffic	28-172a	45		$74.00	$22.00	$96.00	*Balance*	*C*	*$0.00*	*x*	*$2.00*	*$0.50*	*$15.00*
Traffic Appearance Bond	8-2107			$75.00	$22.00	$97.00	*$75.00*	*C*	*$0.00*	*x*	*$2.00*	*$0.50*	*$15.00*
Transfer LM to CV ($500 or less)	61-2910; 60-2001	28		$119.00	$22.00	$141.00	*Balance*	*C*	*$5.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Transfer LM to CV (over $5,000)	61-2910; 60-2001	30		$53.00	$22.00	$75.00	*Balance*	*C*	*$0.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Transfer LM to CV (over $500)	61-2910; 60-2001	29		$99.00	$22.00	$121.00	*Balance*	*C*	*$0.00*	*x*	*$0.00*	*$0.00*	*$0.00*
Treatment of Alcoholism or Drug Abuse	59-104	80		$34.50	$22.00	$56.50	*Balance*	*C*	*$0.00*	*x*	*$1.00*	*$0.50*	*$0.00*
Treatment of Mentally Ill	59-104	81		$34.50	$22.00	$56.50	*Balance*	*C*	*$0.00*	*x*	*$1.00*	*$0.50*	*$0.00*
Worthless Check Fee	21-3707		$10.00		$0.00	$10.00	*$0.00*		*$10.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
WP Reinstatement	32-1049a		$50.00		$22.00	$72.00	*$50.00*	*Q*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Writ or Order of Sale	28-178		$0.00		$12.50	$12.50	*$0.00*	*N*	*$0.00*	*$0.00*	*$0.00*	*$0.00*	*$0.00*

A.O. 251* - Admin. Order No. 251 establishes, “a juvenile supervision fee in an amount no higher than the amount set for adult supervision fee.”

KSA 20-3129(b) states, “The clerks of the district courts in Sedgwick county and Johnson county may tax an additional fee in an amount determined by the trustees of the law library in each county for the benefit and account of the law library in each such county. Such additional library fee shall not be more than $4 in all cases.”

“On and after July 1, 2013, the sheriff of each Kansas county shall charge a fee of $15 for serving, executing and returning process, as well as for any unsuccessful attempts to serve, execute or return process.” KSA 28-110(a)(2).

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State Government

U-1 Veterans and Military Personnel Issues

Select Benefits Provided by the State of Kansas to Military Personnel

The State of Kansas, through several state agencies, provides certain benefits to current and former members of the military and, in some cases, to their spouses, widows and widowers, and children. Many of those benefits are summarized below. Most of the listed benefits are created in statute; a few are created by appropriations proviso or by agency policy.

BENEFITS ASSISTANCE

Kansas Commission on Veterans' Affairs

The Kansas Commission on Veterans' Affairs (KCVA) provides Kansas veterans, their relatives, and other eligible dependents with information, advice, direction, and assistance through the coordination of programs and services in the fields of education, health, vocational guidance and placement, and economic security. The KCVA Claims Assistance Program assists veterans in obtaining appropriate benefits from the U.S. Department of Veterans Affairs.

Veterans Claims Assistance Program

Veterans' service organizations may apply both monetary and non-monetary support (called a "match") in order to continue to qualify for and receive service grants under the Veterans Claims Assistance Program (VCAP). The VCAP Advisory Board makes recommendations on match funding levels. These recommendations are considered by the KCVA.

EDUCATION

Residency

Military personnel, veterans, their spouses and dependents are considered residents by community colleges and Board of Regents institutions under the following circumstances:

- The military member is on active duty, living in Kansas; or
- The veteran continues to live in Kansas after honorable discharge, if that individual lived in Kansas for at least two years previously.

Scholarships and Other Educational Opportunities

Various scholarships and educational opportunities are available for military personnel and their dependents, including:

- Scholarships are available to Kansas residents who have served in the military since September 11, 2001, in international waters or on foreign soil in support of military operations for at least 90 days (or less, if injured). The Board of Regents determines rules for participation.
- ROTC scholarships are available at Board of Regents institutions, Washburn University, and community colleges.
- Educational institutions, including area vocational schools and technical colleges, are to provide for enrollment without charge of tuition or fees for dependents or unremarried widows or widowers of any Kansas resident who died while, and as a result of, serving in military service on or after September 11, 2001. (The institution may be reimbursed, subject to appropriations.)
- Obligations to the State for taking certain types of state scholarships can be postponed for military service.
- Eligible National Guard members are to be paid the amount of tuition and required fees charged by the educational institution for enrollment in courses necessary to complete an educational program.
- Free tuition and fees are authorized for dependents of those who are prisoners of war or missing in action.
- Free tuition and fees are authorized for dependents of those who died as a result of a service-connected disability suffered during the Vietnam conflict.
- The Interstate Compact on Education Opportunities for Military Children transitions students to new schools by providing records transfer and facilitating the student placement process. Provisions apply to children of active members of the military, including those members injured and medically discharged, and those retired members for up to one year after retirement.

EMERGENCY FINANCIAL ASSISTANCE

The Adjutant General may enter into grants and interest-free loans with members of the Kansas National Guard and of reserve forces and their families to assist with financial emergencies. A checkoff on individual income tax return forms allows individuals to contribute to the Military Emergency Relief Fund.

EMPLOYMENT

Hiring - Veterans Preference

The veterans' preference applies to initial employment and first promotion with state government and with counties and cities in "civil service" positions. Veterans are to be preferred if "competent," which is defined to mean "likely to successfully meet the performance standards of the position based on what a reasonable person knowledgeable in the operation of the position would conclude from all information available at the time the decision is made."

A "Veteran" is one who has been honorably discharged from service in the armed forces and includes spouses in certain situations:

- The spouse of a veteran who has a 100 percent service-connected disability;
- The unremarried spouse of a veteran who died while, and as a result of, serving in the armed forces; or
- The spouse of a prisoner of war.

Certain types of jobs are excluded from the preference, *e.g.*, elected positions, city or county at-will positions, positions that require licensure as a physician, and positions that require the employee to be admitted to practice law in Kansas.

The hiring authority is required to take certain actions, including noting in job notices that the hiring authority is subject to veterans' preference, and explaining how the preference works and how veterans may take advantage of the preference.

Pensions and Life Insurance

State pension participants away from state jobs for military service may be granted up to five years of state service credit for their military service. An employee may buy up to six years of service credit that is not granted, and purchased service need not be preceded or followed by state employment.

Additionally, an absence for extended military service is not considered termination of employment unless the member withdraws accumulated contributions.

Basic life insurance, worth 150 percent of annual salary, continues while the employee is on active duty. An employee may continue to have optional life insurance by paying the premiums for 16 months; after that, the policy may be converted to an individual policy.

Position Reinstatement

An officer or employee of the State or any political subdivision does not forfeit that position when entering military service; instead, the job has a "temporary vacancy," and the original jobholder is to be reinstated upon return. Anyone called or ordered to active duty by the state and who gives notice to his or her public or private employer and reports back to that employer within 72 hours of discharge is to be reinstated to the former position (unless it was a temporary position). A state employee who returns to classified service within 90 days after an honorable discharge is to be returned to the same job or another job comparable in status and pay in the same geographic location. A state employee's appointing authority may grant one or more pay step increases upon return.

Professional Licenses - Credit for Military Education and Training

A law enacted in 2013 directs state agencies issuing professional licenses to accept from an applicant for license the education, training, or service completed in the military. The education, training, or service must be equal to the existing educational requirements established by the agency, and the individual must have received an honorable discharge or a general discharge under honorable conditions.

Professional Licenses - Maintaining License While Serving

A license to engage in or practice an occupation or profession issued by the State is valid while the licensee is in military service and for up to six months following release, without the licensee paying a renewal fee, submitting a renewal application, or meeting continuing education or other license conditions. (This provision does not apply to licensees who engage in the licensed activity outside of the line of duty while in military service.) No such license may be revoked, suspended, or canceled for failure to maintain professional liability insurance or failure to pay the surcharge to the Health Care Stabilization Fund.

Professional Licenses - Non-Resident Military Spouse

A law enacted in 2012 requires some state licensing agencies to issue a license to a nonresident military spouse for the spouse to lawfully practice a regulated profession in Kansas. The licensee must meet certain requirements, including:

- Hold a current license in another jurisdiction;
- Not had the license limited, suspended, or revoked;
- Not been disciplined in another jurisdiction;

- Pay fees required by the Kansas licensing agency; and
- Submit a signed application and affidavit that the application information provided is correct.

Protected Consumers

The 2010 Legislature added veterans to the list of protected consumers under the Kansas Consumer Protection Act. This includes members of the military, veterans, the surviving spouses of veterans, and immediate family members of individuals serving in the military.

State Employee Direct Payment Benefits

Benefits-eligible employees in the State's executive branch who are on military leave as activated reserve component uniformed military personnel may be eligible for one-time activation payments of $1,500.

Additionally, benefits-eligible State employees who are called to full-time military duty and are mobilized and deployed may receive the difference between their military pay, plus most allowances, and their regular State of Kansas wages, up to $1,000 per pay period.

HIGHWAYS AND BRIDGES

The State of Kansas honors veterans by designating portions of highways in their name. The Department of Transportation provides a Memorial Highways and Bridges Map on its website at http://www.ksdot.org/burtransplan/maps/SpecialInterest.asp.

HOUSING AND CARE

Certain veterans, primarily those with disabilities, are eligible for housing and care at the Kansas Soldiers' Home, near Fort Dodge, and the Kansas Veterans Home, Winfield. The KCVA states priority for admission of veterans will first be made on the basis of severity of medical care required.

HUNTING, FISHING, AND PARKS

Several types of permit and licensing benefits are available to military personnel and veterans. The Department of Wildlife, Parks and Tourism may:

- Issue annual hunting and fishing licenses without charge to any honorably discharged Kansas veteran who has a service-related disability of 30 percent or more. The disability must be certified by the KCVA.
- Reissue big game or wild turkey limited draw permits to military personnel forced to forfeit such a permit due to deployment for armed conflict or war.
- Make available ten wounded warrior deer permits (primarily nonresident) each calendar year. These wounded warrior permits are available to disabled veterans who sustained injuries in combat and have a service-connected disability of not less than 30 percent.
- Issue free annual park vehicle permits to Kansas Army or Air National Guard members, with a limit of one per family.

Additionally, nonresident active duty military personnel who are stationed within Kansas may purchase licenses, permits, stamps, and other issues of the Department of Wildlife, Parks and Tourism (except lifetime licenses) under the same conditions as a resident. A person who was a resident immediately prior to entry into the armed forces, and members of his or her immediate family who live with him or her, also will be treated like residents for this purpose.

INSURANCE

Personal Insurance

No personal insurance shall be subject to cancellation, non-renewal, premium increase, or adverse tier placement for the term of a deployment, based solely on that deployment.

Private Health Insurance

A Kansas resident with individual health coverage, who is activated for military service and therefore becomes eligible for government-sponsored health insurance, cannot be denied reinstatement to the same individual coverage following honorable discharge.

TAXES

Income Tax - Checkoff Provisions

An income tax checkoff has been placed on the state individual income tax form, whereby taxpayers may voluntarily contribute to the Kansas Hometown Heroes Fund. All moneys deposited in the Fund are required to be used solely for the veteran services program of the KCVA.

Property Tax - Deferral

A full-time member of the military who is or soon will be deployed outside of the United States for at least six months, may defer payment of taxes on real property for up to two years. A claim for the deferral must be filed with the county clerk.

Property Tax - Homestead

Eligible claimants for the Homestead Property Tax Refund Program include certain disabled veterans and surviving spouses of active duty military personnel who have died in the line of duty. Disabled veterans are defined to include Kansas residents who have been honorably discharged from active service in the armed forces or Kansas National Guard and who have been certified to have a 50 percent or more permanent disability sustained through military action or accident or resulting from disease contracted while in such active service. Surviving spouses of disabled veterans remain eligible unless they remarry.

Vehicle Taxes

No tax is to be levied on one or two vehicles owned by a Kansas resident who is in the full-time military service of the United States, is absent from the state solely by reason of military orders on the date registration is due, and maintains the vehicles outside of this state.

VEHICLE-RELATED BENEFITS

Driver's License Requirements - Waiver

The Director of Vehicles, Kansas Department of Revenue, may waive the skills test for an applicant for a commercial driver's license, if that applicant provides evidence of certain military commercial vehicle driving experience. The applicant's military driving experience must meet the requirements of 49 CFR 383.77, including requirements that the applicant was operating a vehicle representative of the commercial motor vehicle the applicant expects to operate and the applicant has not been convicted of any offense (such as driving under the influence of alcohol or a controlled substance) that would disqualify a civilian commercial driver. An applicant still will be required to pass the Kansas knowledge test for driving a commercial motor vehicle. Also, some state requirements for written and driving testing may be waived for an applicant for a Class M (motorcycle) driver's license who has completed motorcycle safety training in accordance with Department of Defense requirements.

License Plates - "Families of the Fallen"

"Families of the Fallen" license plates for passenger vehicles and small trucks may be issued to "Department of Defense-recognized next of kin of deceased military personnel," defined as any person entitled to receive the Department of Defense Gold Star lapel button or the lapel button for next of kin of deceased active duty personnel.

License Plates - Military Designation

Veterans and current members of the military may receive a distinctive license plate, upon proper registration and payment of the regular license fee. A decal will indicate the appropriate military branch in which the person served or is serving. Decals also are available to indicate the person was awarded certain medals, badges, ribbons, and crosses. The fee is $2 per decal. Specific Vietnam War veteran license plates were added in 2010.

License Plates - Select Plates Provided

Free license plates for passenger vehicles and trucks with gross weights of 20,000 pounds or less are available to certain veterans:

- Military service veterans and civilians who were held as prisoners of war; and
- Military service veterans who have been determined by the U.S. Department of Veterans Affairs to be entitled to compensation for 50 percent (changed from 100 percent in 2009) disability or entitled to compensation for the loss, or permanent loss of use, of one or both feet or one or both hands, or for permanent visual impairment of both eyes.

VIETNAM WAR ERA MEDALLION PROGRAM

The Vietnam War Era Medallion Program provides eligible veterans with a medallion, a medal, and a certificate of appreciation. The Medallion Program is open to veterans who served within the United States or in a foreign country, regardless of whether the veteran was under 18 years of age at the time of enlistment.

To be eligible for participation in the Medallion Program, the veteran must:

- Have served on active duty in the U.S. Military Service at any time beginning February 28, 1961, and ending May 7, 1975;
- Be a legal resident of Kansas, or have been a legal resident of Kansas, at the time the veteran entered or was discharged from military service or at the time of the veteran's death; and
- Have been honorably separated or discharged from the military, still be on active service in an honorable status, or was in active service at the time of the veteran's death.

VOTING OPPORTUNITIES

Overseas military personnel and their family members may vote a full ballot for all elections; may apply for, receive, and return their ballots by electronic means; and may vote a write-in ballot.

OTHER BENEFITS

Anti-Discrimination Towards Military Personnel

Kansas law prohibits discrimination on the basis of military status. (Alleged violations are a civil matter.)

Concealed Carry Licenses

A member of the active duty military without a Kansas driver's license or a Kansas nondriver's license identification card may still obtain a concealed carry license number. The Attorney General assigns unique concealed carry license numbers to military applicants. Upon completing all other requirements for a concealed carry permit, a member of the armed forces would be granted a license under the Personal and Family Protection Act.

Military Burials

Certain veterans and their eligible dependents may be buried in state veterans' cemeteries. Cemeteries are located in Fort Dodge, Fort Riley, WaKeeney, and Winfield. The final disposition of a military decendent's remains would supersede existing statutory listing of priorities for such remains. The provision applies to all active duty

military personnel and gives priority to the federal Department of Defense Form 93 in controlling the disposition of the descendent's remains for periods when members of the U.S. armed forces, reserve forces, or national guard are on active duty. A certified copy of an original discharge or other official record of military service may be filed with the Adjutant General, who will provide copies free of charge if they are needed to apply for U.S. Department of Veterans Affairs benefits.

"Veteran" Designation on Driver's Licenses and Identification Cards

Beginning July 1, 2014, a veteran may have "VETERAN" printed on the front of a state-issued driver's license or non-driver identification card, by showing proof of military service in the form of a DD214 or equivalent form. The veteran must have received an honorable discharge or general discharge under honorable conditions. The Secretary of Revenue may provide names and addresses from motor vehicle records to the KCVA for the purpose of assisting the Commission in notifying veterans of the facilities, benefits, and services available to veterans in the State of Kansas.

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State Government

U-2 State Employee Issues

This report discusses a variety of issues regarding state employees, including an explanation of classified and unclassified employees, benefits provided to state employees, recent salary and wage adjustments authorized by the Legislature, general information on the number of state employees, and the characteristics of the classified workforce.

Classified and Unclassified Employees. The state workforce is composed of classified and unclassified employees. Classified employees comprise nearly two-thirds of the state workforce, while unclassified employees comprise the remaining one-third. Classified employees are selected through a competitive process, while unclassified positions can be filled through direct appointment, with or without competition. While unclassified employees are essentially "at will" employees who serve at the discretion of their appointing authority, classified employees are covered by the "merit" or "civil service" system, which provides additional employment safeguards.

- All actions including recruitment, hiring, classification, compensation, training, retention, promotion, discipline, and dismissal of state employees shall be:
  - Based on merit principles and equal opportunity; and
  - Made without regard to race, national origin or ancestry, religion, political affiliation, or other non-merit factors and shall not be based on sex, age, or disability except where those factors constitute a bona fide occupational qualification or where a disability prevents an individual from performing the essential functions of a position.
- Employees are to be retained based on their ability to manage the duties of their position.

State Employee Benefits. Among the benefits available to most state employees are medical, dental, and vision plans; long-term disability insurance; deferred compensation; and a cafeteria benefits plan which allows employees to pay dependent care expenses and non-reimbursable health care expenses with pre-tax dollars. In addition, state employees accrue vacation and sick leave. The vacation leave accrual rate increases after 5, 10, and 15 years. In general, the state also provides nine to ten days of holiday leave for state employees.

Retirement Plans. Most state employees participate in the Kansas Public Employees Retirement System (KPERS). Employees contributions

occur bi-weekly based on salary. The amount of the contribution varies between 4.0 percent and 6.0 percent depending on the date of hire. The state contribution is set by law each year. In addition to the regular KPERS program, there are plans for certain law enforcement groups, correctional officers, judges and justices, and certain Regents unclassified employees. Contributions from both the employee and the state differ from plan to plan.

Characteristics of State Employees. According to the 2012 State Workforce Report, which the Department of Administration prepared, a profile of classified and unclassified state employees reflects the following:

The "average" classified employee:	The "average" unclassified employee:
is 47 years of age;	is 48 years of age;
has 13 years of state service; and	has 11 years of state service; and
earns an average annual salary of $37,599.	earns an average annual salary of $62,771.

Compensation of State Employees. Kansas statutes direct the Director of Personnel Services, after consultation with the Director of the Budget and the Secretary of Administration, to prepare a pay plan for classified employees which "shall contain a schedule of salary and wage ranges and steps." The statutes also provide, however, that this pay plan can be modified by provisions in an appropriation bill or other act. When the Governor recommends step movement on the classified pay plan and a general salary increase, or both, funding equivalent to the percentage increase for classified employees generally is included in agency budgets to be distributed to unclassified employees on a merit basis.

- The previous Kansas Civil Service Basic Pay Plan consisted of 34 pay grades, each with 13 steps.
- The difference between each step was approximately 2.5 percent, and the difference between each salary grade was approximately 5.0 percent.
- Employees typically are hired into a job at the minimum of the salary grade.
- Until recently, assuming satisfactory work performance, the classified employees would receive an annual 2.5 percent step increase, along with any other general adjustment in salary approved by the Legislature. No classified step movement was recommended or approved from FY 2001 to FY 2006. In FY 2007, the Legislature approved a 2.5 percent step movement, effective September 10, 2006. There has been no further step movement since FY 2009.

New Classified Employee Pay Plans. The 2008 Legislature established five new pay plans for Executive Branch classified state employees and authorized multi-year salary increases for classified employees, beginning in FY 2009, who are identified in positions that are below market in salary.

The legislation enacted the recommendations of the State Employee Oversight Commission's five basic pay plans for classified employees. The exact provisions of the five pay plans are not specified by the legislation, but there is a reference to the pay plans as recommended by the State Employee Oversight Commission. The five pay plans, as recommended by the State Employee Oversight Commission, include:

- Basic Vocational Pay Plan (3,844 employees in 57 classifications) that is a step plan, but with more narrow pay grades than previously existed;
- General Classified Pay Plan (11,917 employees in 282 classifications) that is a hybrid model with movement based on steps up to market and an open range, regulated through the use of zones, beyond market, and would include such classes as Human Service Specialists and Mental Health Developmental Disability Technicians;
- Management Pay Plan (256 employees in 20 classifications) that has open pay grades with pay movement based in position-in-range and performance, and

would include such classes as public service executives and corrections managers;
- Professional Individual Contributor Pay Plan (2,751 employees in 130 classifications) that is an open range model with market anchors and would include such classes as nurses and scientists; and
- Protective Services Pay Plan (3,215 employees in 42 classifications) that is a step model and would include such classes as uniformed officers of the Department of Corrections and the Kansas Highway Patrol.

The legislation authorized a four-year appropriation totaling $68.0 million from all funds, including $34.0 million from the State General Fund, for below-market pay adjustments (excluding the FY 2009 appropriation of $16.0 million). Due to budgetary considerations, the appropriation for FY 2012 was eliminated, bringing the total appropriation to $58.7 million. The State Finance Council approved an appropriation of $11.4 million, including $8.1 million from the State General Fund for FY 2013.

The legislation also created the State Employee Pay Plan Oversight Committee. The Oversight Committee included seven voting members and two non-voting ex officio members:

- One member appointed by the President of the Senate;
- Two members appointed by the Speaker of the House;
- One member appointed by the Minority Leader of the Senate;
- One member appointed by the Minority Leader of the House;
- Two members appointed by the Governor, with at least one being a representative of a state employee labor union; and
- Two non-voting *ex officio* members: the Secretary of Administration or the Secretary's designee, and the Secretary of Labor or the Secretary's designee.

At least one member of the Oversight Committee is required to be a member of the Senate and one member is required to be from the House of Representatives. The Oversight Committee is required to annually report to the Legislature at the beginning of each legislative session on the progress made in the development, implementation and administration of the new pay plans and the associated performance management process. The Oversight Committee will sunset on July 1, 2014.

Finally, the legislation codified a compensation philosophy for state employees. The philosophy was crafted by the State Employee Pay Philosophy Task Force and endorsed by the State Employee Compensation Oversight Commission during the 2007 interim period. The pay philosophy includes:

- The goal of attracting and retaining quality employees with competitive compensation based on relevant labor markets;
- A base of principles of fairness and equity to be administered with sound fiscal discipline; and
- An understanding that longevity bonus payments shall not be considered as part of the base pay for classified employees.

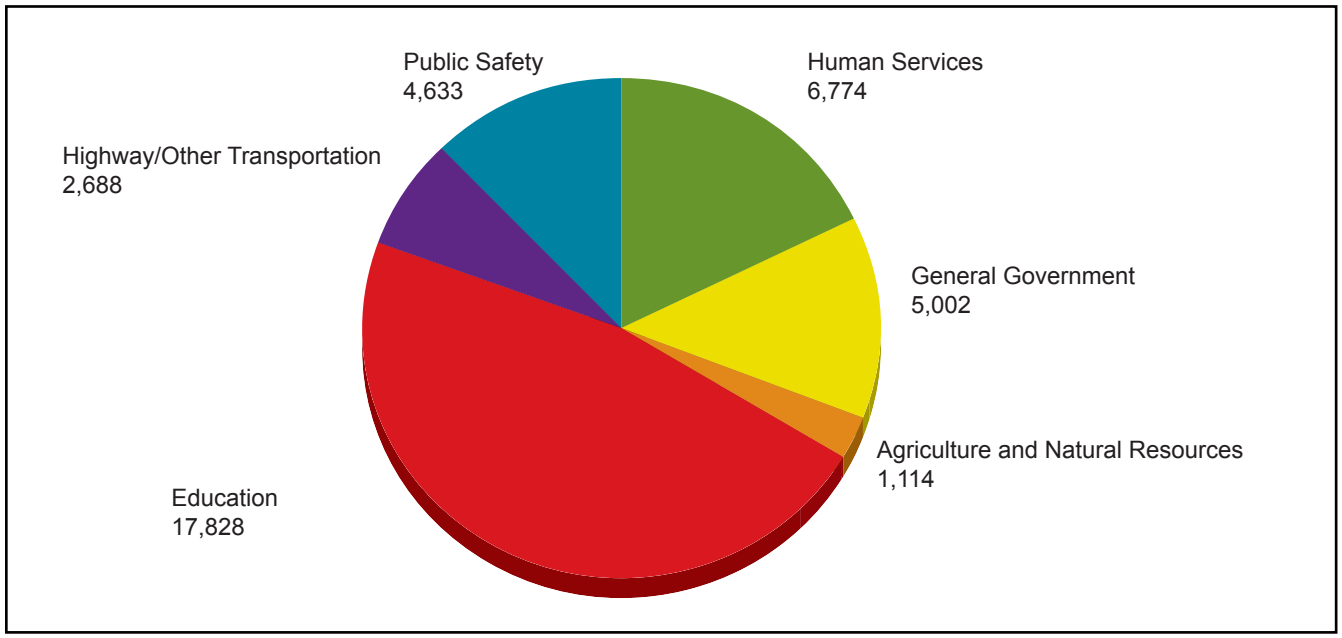
The following table reflects classified step movement and base salary increases since FY 1997:

Fiscal Year	Salary Adjustment
1997	Step Movement: 2.5 percent Base Adjustment: None
1998	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
1999	Step Movement: 2.5 percent Base Adjustment: 1.5 percent
2000	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
2001	Step Movement: 2.5 percent Base Adjustment: None
2002	Step Movement: None Base Adjustment: 3.0 percent, with 1.5 percent effective for full year, and 1.5 percent effective for half a year
2003	Step Movement: None Base Adjustment: None
2004	Step Movement: None Base Adjustment: 1.5 percent effective for last 23 pay periods
2005	Step Movement: None Base Adjustment: 3.0 percent
2006	Step Movement: None Base Adjustment: 2.5 percent, with 1.25 percent effective for full year, and 1.25 percent effective for half a year
2007	Step Movement: 2.5 percent, effective September 10, 2006 Base Adjustment: 1.5 percent
2008	Step Movement: None Base Adjustment: 2.0 percent
2009	Step Movement: None Base Adjustment: 2.5 percent Below Market Salary Adjustments
2010	Step Movement: None Base Adjustment: None Below Market Salary Adjustments
2011	Step Movement: None Base Adjustment: None Below Market Salary Adjustments
2012	Step Movement: None Base Adjustment: None
2013	Step Movement: None Base Adjustment: None

FY 2014. The 2013 Legislature approved a total of 38,027.2 full-time equivalent (FTE) positions, a net decrease of 302.1 positions below the FY 2013 number.

- Full-time equivalent (FTE) positions are permanent positions, either full-time or part-time, but mathematically equated to full-time. For example, two half-time positions equal one full-time position.
- Non-FTE unclassified permanent positions are essentially unclassified temporary positions that are considered "permanent" because they are authorized to participate in the state retirement system.

The following chart reflects approved FY 2014 FTE positions by function of government:



Largest Employers. The following table lists the 10 largest state employers and their numbers of FTE positions:

Agency	FTE Positions
University of Kansas	4,984
Kansas State University	4,669
Social & Rehabilitation Services, Department of	2,799
Transportation, Department of	2,694
University of Kansas Medical Center	2,577
Wichita State University	1,810
Judicial Branch	1,778
Revenue, Department of	1,028
Larned State Hospital	925
Pittsburg State University	823
* Source: 2012 State Workforce Report	

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State Government

U-3 Indigents' Defense Services

Board of Indigents' Defense Services (Public Defender Offices)

The *U.S. Constitution* bestows rights upon criminal defendants, including the right to be represented by an attorney. The Board of Indigents' Defense Services (BIDS) provides criminal defense services through:

- Public defender offices in various parts of the state;
- Contract attorneys (private attorneys who contract with BIDS); and
- Assigned counsel (private attorneys who are appointed by the court to serve as counsel for a defendant).

BIDS also has the responsibility of covering other costs associated with the defense of the criminal case, such as expert witnesses and transcripts. Death penalty defense cases cost BIDS even more to defend than other crimes.

Legal Services for Prisoners, Inc., a non-profit corporation, is statutorily authorized to submit its annual operating budget to BIDS. Legal Services for Prisoners provides legal assistance to indigent inmates in Kansas correctional institutions.

In addition to the trial-level public defender offices and trial-level assigned counsel, BIDS operates offices to handle the defense of capital crimes and conflicts, as well as offices that can handle the appeals of both capital and non-capital convictions.

Public Defender Offices

BIDS operates nine trial-level public defender offices throughout the state and two satellite offices:

- 3rd Judicial District Public Defender (Topeka);
- Junction City Public Defender;
- Sedgwick County Regional Public Defender;
- Reno County Regional Public Defender;
- Salina Public Defender;
- 10th Judicial District Public Defender (Olathe);
- Western Regional Public Defender (Garden City)*;

- Southeast Kansas Public Defender (Chanute) and Satellite Office (Independence);
- Wichita Conflicts Office; and
- Death Penalty Defense Unit - Sedgwick County Satellite Office.

* The Southwest Public Defender Office closed its office in Liberal on September 1, 2009, because it was no longer cost effective. Most of the caseload is now handled by contract attorneys.

BIDS also operates the following offices in Topeka:

- Appellate Defender;
- Death Penalty Defense Unit;
- Capital Appeals;
- Capital Appeals and Conflicts; and
- Northeast Kansas Conflict Office.

BIDS reports that it monitors the cost per case quarterly to determine the most cost effective system to deliver the right to defense services, and makes changes to maintain effectiveness.

Assigned Counsel

It is not possible for all criminal defendants who need services to be represented by the state-operated public defender offices. For example, if two individuals are co-defendants in a particular matter, it would present a conflict of interest for the public defender's office to represent both individuals. Additionally, in some areas of the state, officials from BIDS believe it is not cost effective to operate a public defender office. Such considerations include the cost per case and the number of criminal cases in that particular area. BIDS has been able to contract with private attorneys in some parts of the state to provide defense services at reduced rates. In addition, local judges appoint private attorneys willing to accept appointments for defense cases as assigned counsel.

Effective January 18, 2010, assigned counsel are compensated at a rate of $62 per hour for their work, as a result of Board action to reduce the costs and meet budget cuts. The rate of compensation for assigned counsel was raised from $30 per hour to $50 per hour in 1988 in response to a Kansas Supreme Court case. The 2006 Legislature approved an increase in compensation from $50 per hour to $80 per hour starting in FY 2007. BIDS was directed to monitor assigned counsel expenditures and open public defender offices where it is cost effective and continues to do so.

Accordingly, BIDS conducted public hearings for 11 counties where it would no longer be cost effective to use assigned counsel at $80 per hour. BIDS responded to local requests to maintain the assigned counsel delivery system in these counties by offering a reduced hourly rate. This was accepted and rates of $62 per hour and $69 per hour are now paid, which is more cost-effective than opening public defender offices in those counties. The 2007 Legislature changed the language of the assigned counsel compensation statute to allow the agency to negotiate a rate of compensation less than the previously mandated $80 per hour.

The agency's board currently reviews exceptional claims for fees submitted by assigned counsel. Fees for felony cases that are not exceptional and do not go to trial are capped at $1,240. Fees for cases that go to trial and are not declared exceptionally the court are capped at $6,200 Additional amounts may be paid by BIDS if the judge approves the fees for exceptional cases.

Prior to FY 2006, BIDS paid assigned counsel expenditures from the operating expenditures account in its State General Fund appropriation. All professional services were considered assigned counsel costs, including not only fees to attorneys appointed as assigned counsel, but also expert witness fees and transcript fees. The FY 2006 Budget recommended by the Governor and approved by the 2005 Legislature included a separate line item appropriation for assigned counsel expenditures to more accurately account for expenditures made to assigned counsel.

Other Costs Affecting the Agency

Expert Witness and Transcript Fees

BIDS also pays the fees for expert witnesses and for transcripts on cases. Most experts have agreements with the agency to provide services at a reduced rate.

Death Penalty Cases

The constitutionality of the Kansas Death Penalty was upheld by the U.S. Supreme Court. More information about the Kansas Death Penalty is available in the Death Penalty section of this briefing book.

The Death Penalty Defense Unit was established to handle the defense of cases where the death penalty could be sought. However, as with other defense cases, circumstances such as conflicts of interest and availability could require that outside counsel be contracted to provide the defense services.

Capital offense cases cost more to defend. Not only do such cases take more time for trial, but also the defense attorney must be qualified to defend a capital case. A report completed by the Judicial Council in 2004 found that, "The capital case requires more lawyers (on both prosecution and defense sides), more experts on both sides, more pre-trial motions, longer jury selection time, and a longer trial." Kansas Judicial Council, Report of the Judicial Council Death Penalty Advisory Committee, p. 17, January 29, 2004.

The Legislative Division of Post Audit issued a Performance Audit Report in December 2003, Costs Incurred for Death Penalty Cases: *A K-GOAL Audit of the Department of Corrections*. This report noted several findings related to the cost of death penalty cases in Kansas:

- BIDS usually bears the cost of defending a capital murder case;
- Contracted attorneys for such cases are paid $100 per hour, with no fee cap. Post Audit found that some states impose fee caps and pay less per hour, or both, to assigned defense counsel. Post Audit also noted that American Bar Association guidelines state limitations on fees in death penalty cases are improper; and
- The Report recommended BIDS ensure the Death Penalty Defense Unit has a sufficient number of qualified death penalty public defenders so future cases do not have to be contracted out because of workload, and it also recommended continuing to look at establishing a conflicts office.

BIDS has made arrangements for more of its public defenders to receive the necessary training to become qualified to defend death penalty cases. The goal remains to reduce the need to use assigned counsel on capital cases.

Legal Services for Prisoners

Legal Services for Prisoners, Inc. provides legal services to inmates in Kansas correctional facilities. The goal of this program is to ensure that prisoners' rights to the courts are met to pursue non-frivolous claims. The annual budget for Legal Services for Prisoners is submitted to BIDS. Although it is not a state agency, funding for Legal Services for Prisoners goes through BIDS.

Other Offices Operated By the Board of Indigents' Defense Services

Appellate Defender Office

The Appellate Defender Office, located in Topeka, was established to represent indigent felony defendants on appeal.

Northeast Kansas Conflict Office

The Northeast Kansas Conflict Office was established to deal with a large number of conflict cases in Shawnee County. The office also handles off-grid homicide cases in Lyon County. This office is budgeted with the Trial Level Public Defender Offices and is located in Topeka.

Sedgwick County Conflict Office

This office was established to defend cases in which the Sedgwick County Public Defender Office has a conflict of interest, thereby saving the cost of using contract attorneys or assigned counsel.

Death Penalty Defense Unit

The Death Penalty Defense Unit was established with the re-enactment of the death penalty in Kansas. Because of the complexity of capital cases, attorneys providing defense services in such cases must be specially qualified to handle such cases. The cost of "coordinating" private attorneys to handle death penalty cases was high. In response, the agency established the Death Penalty Defense Unit with in-house attorneys to handle death penalty cases.

Capital Appeals and Conflicts Office

The Capital Appeals and Conflicts Office is budgeted through the Death Penalty Defense Unit. Appeals of capital cases are the office's first priority, although the office does handle some of the cases from the Appellate Defender Office as well as some of the caseload burden of the Appellate Defender Office, as time allows.

Capital Appeals Office

The Capital Appeals Office was established in 2003 to handle additional capital appeals. Specifically, this office was created to handle the conflict of the Carr appeals. Reginald and Jonathan Carr were both convicted of murder in Sedgwick County and sentenced to death. While the Capital Appeals and Conflicts Office could handle the representation of one of these two men, it would create a conflict of interest to represent both. The establishment of this office also allows BIDS to handle twice as many capital appeals. Funding for this office is budgeted through the Death Penalty Defense Unit.

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State Government

U-4 Joint Committee on Special Claims Against the State

Since near the turn of the twentieth century, legislative committees have furnished a venue for persons who thought they were injured in some manner by the activity of a state agency.

The statutory purpose of the present day Joint Committee on Special Claims Against the State is to hear claims for which there is no other recourse to receive payment. The Joint Committee is the place of last resort when there is no other way of appropriating money to pay a claim against the state.

The Joint Committee was the only venue available for these purposes until passage in the early 1970s of the Tort Claims Act which allowed state agencies to accept a limited amount of liability. A Tort Claims Fund established in the Attorney General's Office now offers recourse for other actions brought against the state. The state does assume certain responsibility for its actions under the tort claims statutes; however, there are certain areas under those statutes where the state has no liability.

The fact that state agencies are immune under statute does not mean that a citizen cannot be injured by some action of the state. Because state agencies are immune, a potential claimant may have no remedy other than coming to the Joint Committee. Thus, the claims which come to the Joint Committee involve an issue of equity and do not always involve the issue of negligence on the part of the state or a state employee.

Committee Membership

The Joint Committee on Special Claims Against the State has seven members, consisting of three members of the Senate and four members of the House of Representatives. At least one House member and one Senate member must be an attorney licensed to practice law in the State of Kansas. Additionally, at least one Representative must be a member of the House Committee on Appropriations and at least one Senator must be a member of the Senate Committee on Ways and Means. The chairperson of the Joint Committee alternates between the House and Senate members at the start of each biennium. The members appointed from each chamber must include minority party representation. Any four members of the Joint Committee constitutes a quorum. Action of the Joint Committee may be taken by an affirmative vote of a majority of the members present, if a quorum is present.

Claims Process

The claimant starts the claims process by completing and submitting a claim form.

The claim form is available on the Internet through both the Legislature's website and the Legislative Research Department's website, or it may be requested in hard copy by contacting the Legislative Research Department.

None of the rules of evidence apply to the Joint Committee. It is an informal environment which contains no impediments to getting the issues to the forefront. Therefore, the Joint Committee is considered a court of equity.

The claim form includes a portion in which the claimant indicates whether he or she wishes to appear in person for the hearing. In-person hearings for claimants who currently are incarcerated are conducted via telephone conference.

Claimants who request to appear in person for their hearing are notified 15 days in advance of the hearing via certified mail as prescribed in KSA 46-914. Additionally, the claim form includes a portion that must be notarized prior to consideration of the claim.

State agencies and employees are charged with providing the Joint Committee with information and assistance as the Committee deems necessary.

The Joint Committee is authorized by KSA 46-917 to adopt procedural guidelines as may be necessary for orderly procedure in the filing, investigation, hearing, and disposition of claims before it. The Joint Committee has adopted 12 guidelines to assist in the process. These guidelines are available on the Internet through both the Legislature's website and the Legislative Research Department's website, or can be requested in hard copy by contacting the Legislative Research Department.

The Joint Committee traditionally holds hearings during an Interim Session from June through December of the year. The Committee is mandated by statute to hear all claims filed by November 1st during that Interim Session.

The Committee can meet during the Legislative Session only if both the President of the Senate and the Speaker of the House of Representatives authorize the meetings, pursuant to KSA 46-918.

Committee Recommendations

The Joint Committee makes recommendations regarding the resolution of the claims and is not bound by rules of evidence. The Committee is required by KSA 46-915 to notify the claimants of its recommendation regarding the claim within 20 days after the claims hearing.

The Joint Committee submits its recommendations for payment of claims it has heard in the form of a bill presented to the Legislature at the start of each session.

Claims Payments

Payment for claims that are approved by the Legislature and signed into law by the Governor are paid by the Division of Accounts and Reports. Prior to such payment being made, claimants are required to sign a release.

When an inmate owes an outstanding unpaid amount of restitution ordered by a court, money received by the inmate from the state as a settlement of a claim against the state is withdrawn from the inmate's trust account as a set-off, per KSA 46-920.

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Kansas Legislator Briefing Book 2014

State Government

U-5 Capitol Restoration

The Capitol Restoration project that began in 1998 will be completed in December 2013. Total cost of the project is estimated at $332.4 million including roof and dome replacement, expedited decisions, and completion of the Visitor's Center and Statehouse grounds, including $7.0 million from the Kansas Department of Transportation (KDOT) for construction of roads and sidewalks around the Capitol building.

The Capitol Restoration project is predominantly financed by a series of bond issuances. Debt service is paid from the State General Fund. Bonds were approved in FY 2001 for $40.0 million, FY 2002 for $15.0 million, FY 2005 for $19.8 million, FY 2006 for $26.9 million, FY 2007 for $16.2 million, FY 2008 for $55.0 million, FY 2009 for $38.8 million, FY 2010 for $38.0 million, FY 2011 for $36.0 million, FY 2012 for $34.3 million, and FY 2013 for $5.4 million, bringing the total amount approved to $332.4 million for bonding.

Current Budget Estimate (in millions)	
FY 2001: Infrastructure—including rerouting mechanical, electrical, and plumbing systems; four underground mechanical vaults; demolition for NE Elevator and East Wing	$ 40.0
FY 2002: Parking Garage	15.0
FY 2005: East Wing interior restoration; NE Elevator, exterior masonry investigation	19.8
FY 2006: West Wing interior restoration; West Wing roof repair; reconditioning of SW Elevator	26.9
FY 2007: Cost increases related to West Wing interior restorations	16.2
FY 2008: South Wing interior restoration and Rotunda first floor restoration; new NE and SE Elevators	55.0
FY 2009: Exterior restoration repairing eroded, cracked exterior walls	38.8
FY 2010: North Wing interior restoration, rotunda floors two through six restoration, copper Dome exterior restoration	38.0
FY 2011: North Wing and Rotunda	36.0
FY 2012: Roof Replacement, Dome Replacement, Chillers, North Wing Refinishes and Expedited Decisions	34.3
FY 2013: Visitor's Center completion and landscaping	12.4
TOTAL	$ 332.4

On December 12, 2001, the state project manager issued a start work order on the first infrastructure project to relocate utilities and excavate for the utility vaults. Construction started on October 8, 2002, for the parking garage. Soon to follow was construction on the Northwest vault that started December 2, 2002. East Wing construction began on July 21, 2003. Construction of the Visitor's Center shell started on August 4, 2003. West Wing construction started on November 2, 2005.

The South Wing construction started on November 26, 2007. The Exterior Masonry project started on January 1, 2008. The North Wing construction began in December 2009 and is projected to complete in September of 2012. Replacement of the roof and Dome began in July of 2012. The Visitor's Center interior completion began in the spring of 2013. The Chief Architect indicates that the Capitol will be complete and construction crews fully demobilized from the site in December 2013.

Brief Project History

The Legislative Coordinating Council (LCC) authorized the Capitol renovation process in 1998 by adopting LCC Policy 55, which established a Capitol Restoration Commission (CRC). At the Commission's initial meeting on March 3, 1998, it adopted a mission statement and goals for the project, and agreed to request $200,000 in the Department of Administration's FY 1999 budget to fund a historic structure report on the State Capitol building. The amount was included in the budget passed by the 1998 Legislature and approved by the Governor.

Another CRC meeting took place on May 19, 1998, at which time a project status report was reviewed and a concept statement regarding committee rooms and locations was adopted.

At the CRC's meeting of November 5, 1998, the Department of Administration's representative stated that a request for proposal (RFP) had been issued to secure a preservation architect to start the historic structures report.

The next meeting of the CRC took place on March 11, 1999. A status update was presented on the historical structure report, indicating that it would be completed in approximately eight months.

Treanor Architects was paid $200,000 from the original FY 1999 appropriation for that report, according to records from the Department of Administration. A contract for all services totaled $389,084 and included two principal subcontractors, Lynch Consulting, LLC, and TCI (The Collaborative, Inc.), as well as other subcontractors.

The 1999 Legislature included funding of $825,000, all from the State General Fund in FY 2000, for Statehouse ground and facilities improvements, including an unspecified amount for the Statehouse historic structures report's completion. Department of Administration records indicate payments totaling $189,084 from this funding source were paid to Treanor Architects in FY 2000 and FY 2001. Payments to Treanor totaled $389,084 in FY 2000 and FY 2001.

At the March 7, 2000, CRC meeting, the Chairperson announced that the Preliminary Historic Structure Report was finished and copies of the Kansas State House Historic Structure Report status as of January 26, 2000, were distributed. At the March 7, 2000, meeting, the CRC adopted a recommendation to introduce legislation for a capitol preservation funding proposal for $40.0 million in bonds.

During the 2000 Legislature, SB 660 was introduced by the Senate Ways and Means Committee upon recommendation of the CRC to provide a funding mechanism for the Capitol preservation and restoration process. SB 660, as amended, was passed by the 2000 Legislature and approved by the Governor. The bill authorized $40.0 million in bonds to be repaid from the State General Fund.

At the next CRC meeting of April 25, 2000, copies of an executive summary, titled "Preservation and Restoration: Kansas State House," were distributed. The Chairperson noted that the purpose of the meeting was to receive updated information from the architects and to adopt both the master

plan for space allocation and the phasing of the project. The Chairperson introduced Mike Treanor of Treanor Architects, to explain space allocation proposals in a document titled "Kansas State Capitol Master Plan, Proposed Space Allocation and Project Phasing." The CRC approved the master plan.

The executive summary described a project with four phases, beginning with the East Wing, then moving to the West Wing and the South Wing, and concluding with the North Wing and Rotunda. The project was anticipated to take five to eight years at an estimated cost of $90 to $120 million. The report cautioned that the cost estimate was qualified and that as time progressed, the "numbers will become more refined by the project team.

Detailed planning work began in September 2000 when the Department of Administration contracted with Treanor Architects to do the architectural design work. A budget had been developed by the state's project manager, who assumed a construction budget of $97,574,807 and architectural fees of $10,974,510 for a design and construction budget of $108,549,317. During the planning phase, the state project manager and Treanor developed a baseline budget, estimating construction for $119,598,731 and architectural fees of $13,981,391, for a total baseline budget of $132,580,122.

On March 9, 2001, the Department of Administration contracted with J.E. Dunn for construction management services. In September 2001, J.E. Dunn, Treanor, and the state project manager developed a revised budget estimate that included an underground parking garage and Visitor's Center's for the project. By December 2001, the revised project budget was estimated at $144,989,376. However, no project funding was added for the visitor center shell in the subsequent estimate since the shell area would be used as a construction entrance and staging site. On May 6, 2002, the project manager reported that the project would cost $135,046,800. The CRC approved the estimated amount on November 20, 2002, when it accepted the "Program and Budget Review" presentation.

The November 20, 2003, and November 17, 2004, CRC meetings received an update on the project from Treanor Architects and J.E. Dunn Construction Company.

The 2005 budget estimate increased to $162,227,091 during a CRC meeting. The CRC approved the increased amount on December 19, 2005. By December 14, 2006, the estimated cost had increased to $172,541,931 and was accepted by the CRC.

The December 2007 budget estimate added $38.8 million for the Exterior Masonry project which had not been included in previous estimates. The exterior masonry project and related Kansas Development Finance Authority (KDFA) bond expenses increased the projected budget to $285.0 million.

The December 2008 meeting of the CRC determined that approximately $145 million had been expended year to date on the Capitol Restoration. The Chief Architect indicated that cost reductions had been made from the original proposal including decreasing the number of staircases from the 1st to 2nd floor from four to two and delaying the purchase of surveillance equipment. The Chief Architect also indicated that the current amount of bonding authority would not complete the Capitol Restoration and that work on the North Wing would be suspended pending the appropriation of further funding.

The 2011 Legislature added bonding authority in FY 2012 for the Capitol Restoration project for the issuance of $34.3 million in bonds for Capitol Restoration. Major items for the Capitol included the replacement of the roof ($11.3 million), replacement of the dome ($10.3 million), replacement of the air conditioning chillers ($2.7 million), completion of the interior finishes of the North Wing ($6.0 million), previous cost increases for the West Wing ($2.8 million), and unforeseen failure and delaminating of plaster walls in the West Wing ($1.1 million). The approved bonding authority increased the estimate for the project to $319.9 million.

The State Finance Council in FY 2013 added $5.4 million in bonding authority for completion of the

visitor's center and $7.0 million from the KDOT for construction of roads and sidewalks around the capitol. KDOT indicates that the $7.0 million will come fully from operational or federal monies and will not impact approved projects. The construction contractor and architect also project $5.0 million in savings from previous phases and $3.1 million in savings due to contingency funds and soft cost reductions. This $8.1 million is not included as part of the budget estimate, as it was savings from previous phases of the project and not new expenditures.

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Kansas Legislative Research Department

U-1
Veterans and Military Personnel Issues

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U-3
Indigents' Defense Services

U-4
Joint Committee on Special Claims Against the State

U-5
Capitol Restoration

U-6
Senate Confirmation Process

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State Government

U-6 Senate Confirmation Process

State law in Kansas requires that certain appointments by the Governor or other state officials be confirmed by the Senate prior to the appointee exercising any power, duty, or function of office. If a majority of the Senate votes on the question of confirmation of an appointment to an office and the appointment is not confirmed, the office shall become vacant at that time (KSA 75-4315b).

When the Senate is not in session, a standing committee of the Senate – the Confirmation Oversight Committee – reviews appointments and makes recommendations related to the appointments to the full Senate.

The Confirmation Oversight Committee has six members with proportional representation from the two major political parties (KSA 46-2601). One of the members of the Committee is the Majority Leader, or the Majority Leader's designee, who serves as Chairperson. The Minority Leader of the Senate, or the Minority Leader's designee, serves as Vice-chairperson.

If a vacancy occurs in an office or in the membership of a board, commission, council, committee, authority, or other governmental body and the appointment to fill the vacancy is subject to confirmation by the Senate, the Confirmation Oversight Committee may authorize, by a majority vote, the person appointed to fill the vacancy to exercise the powers, duties, and functions of the office until the appointment is confirmed by the Senate.

A list of those positions subject to Senate confirmation are included below along with flow charts showing the confirmation process for gubernatorial appointees and non-gubernatorial appointees.

Alphabetical List of Appointments Subject to Senate Confirmation

Adjutant General
Administration, Secretary
Aging and Disability Services, Secretary
Agriculture, Secretary
Alcoholic Beverage Control, Director
Bank Commissioner
Banking Board
Bioscience Authority
Central Interstate Low-Level Radioactive Waste Commission

Children and Families, Secretary
Civil Service Board
Commerce, Secretary
Corporation Commission
Corrections, Secretary
Court of Appeals, Judge
Court of Tax Appeals, Judges and Chief Hearing Officer
Credit Union Administrator
Crime Victims Compensation Board
Electric Transmission Authority
Employment Security, Board of Review
Export Loan Guarantee Committee
Fire Marshal
Gaming Agency, Executive Director
Healing Arts, Executive Director of State Board
Health and Environment, Office of Inspector General
Health and Environment, Secretary
Highway Patrol, Superintendent
Historical Society, Executive Director
Hospital Authority, University of Kansas
Human Rights Commission
Indigents' Defense Services, State Board
Kansas Bureau of Investigation, Director
Kansas City Area Transportation District
Kansas Development Finance Authority, Board of Directors
Kansas National Guard, General Officers
Labor, Secretary
Librarian, State
Long-Term Care Ombudsman
Lottery Commission
Lottery Commission, Executive Director
Mo-Kan Metropolitan Development District and Agency Compact
Pooled Money Investment Board
Property Valuation, Director
Public Employee Relations Board
Public Employees Retirement Board of Trustees
Public Trust, State (Treece buyout)
Racing and Gaming Commission
Racing and Gaming Commission, Executive Director
Regents, State Board
Revenue, Secretary
Securities Commissioner
Transportation, Secretary
Water Authority, Chairperson
Water Office, Director
Wildlife, Parks and Tourism, Secretary

Senate Confirmation Process: Non-Gubernatorial Appointments

Step 1

- The Chairperson of the Confirmation Oversight Committee is notified by the appointing authority that an appointment has been made requiring Senate confirmation.

Step 2

- The appointing authority submits completed copies of the appointee's nomination form, statement of substantial interest, tax information release form, and written request for a background investigation to the Kansas Legislative Research Department (KLRD) *via* the Committee Chairperson.

Step 3

- The Director of KLRD submits a written request to the Kansas Bureau of Investigation (KBI) for a background check, including fingerprints.
- The Director also submits a request to the Department of Revenue to release the appointee's tax information.

Step 4

- KBI and the Department of Revenue officials complete the background and tax investigations. The information is sent to KLRD.

Step 5

- The Director of KLRD informs the appointing authority and nominee that the file is complete and available for review.

Step 6

- The appointing authority and nominee may exercise the option to review the information and decide whether to proceed with the nomination.

Step 7

- If the appointing authority and nominee decide to proceed with the nomination, the Director of the KLRD informs the Chairperson and Vice-chairperson of the Committee that the file is available for review.

Step 8

- The nominee's appointment is considered by the Senate Committee on Confirmation Oversight.

Senate Confirmation Process: Gubernatorial Appointments

Step 1

- The Governor appoints an individual to a vacancy requiring Senate confirmation.

Step 2

- The Governor's Office collects completed copies of the appointee's nomination form, statement of substantial interest, tax information, and background investigation, including fingerprints.

Step 3

- The Governor's Office submits completed copies of the appointee's nomination form, statement of substantial interest, and acknowledgement of release of tax and criminal records information forms to the Kansas Legislative Research Department (KLRD) *via* the Committee Chairperson.

Step 4

- KLRD and the Office of the Revisor of Statutes staff review the file for completeness.

Step 5

- If the file is complete, KLRD staff informs the Chairperson fo the Committee that the file is available for review.

Step 6

- The nominee's appointment is considered by the Senate Commiottee on Confirmation Oversight.

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Taxation

V-1 Homestead Program

When Kansas enacted the Homestead Property Tax Refund Act in 1970, it became the sixth state to enact a "circuit-breaker" style of property tax relief.

A "circuit-breaker" is a form of property tax relief in which the benefit is dependent on income or other criteria and the amount of property taxes paid. The moniker developed as an analogy to the device that breaks an electrical circuit during an overload, just as the property tax relief benefit begins to accrue once a person's property taxes have become overloaded relative to his or her income.

Including Kansas:

- 34 states currently have some form of circuit-breaker program.
- 27 states allow renters to participate in the programs.

Eligibility Requirements:

- Household income of $32,400 or less; and
- Someone in the household is:
  - Age 55 or above;
  - A dependent under age 18;
  - Blind; or
  - Otherwise disabled.
- Renters were eligible (15 percent of rent is equivalent to property tax paid), until tax year 2013.

Program Structure

The current Kansas Homestead program is an entitlement for eligible taxpayers based upon their household income and their property tax liability. The maximum available refund is $700 and the minimum refund is $30.

Recent Legislative History

A 2006 change to the Homestead program expanded it by approximately $4.5 million. The Legislature in 2007 enacted an even more significant expansion in the program, which increased the size of the program by an additional $9.9 million.

	Eligible Claims Filed	Amount	Average Refund
FY 2006	72,927	$16.643 million	$229
FY 2007	79,661	$21.220 million	$265
FY 2008	96,020	$31.127 million	$324
FY 2009	102,586	$32.819 million	$320
FY 2010	132,136	$42.872 million	$324
FY 2011	120,029	$42.860 million	$357
FY 2012	115,719	$37.586 million	$325

Among the key features of the 2007 expansion law:

- The maximum refund available under the program was increased from $600 to $700.
- 50 percent of Social Security benefits were excluded from the definition of income for purposes of qualifying for the program.
- A residential valuation ceiling prohibits any homeowner with a residence valued at $350,000 or more from participating in the program.

Hypothetical Taxpayers

The impact of the 2006 and 2007 program expansion legislation is demonstrated on the following hypothetical taxpayers:

Elderly couple with $1,000 in property tax liability and $23,000 in household income, $11,000 of which comes from Social Security benefits.

Homestead Refund

Pre-2006 Law	2006 Law	2007 Law
$72	$150	$385

Single mother with two young children, $750 in property tax liability and $16,000 in household income. Allowing hypothetical taxpayers:

Homestead Refund

Pre-2006 Law	2006 Law	2007 Law
$240	$360	$420

Disabled renter paying $450 per month in rent, with $9,000 of household income from sources other than disability income.

Homestead Refund

Pre-2006 Law	2006 Law	2007 Law
$480	$528	$616

Beginning in tax year 2013, renters are no longer eligible for the program.

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Taxation

V-2 Liquor Taxes

Kansas has three levels of liquor taxation, each of which imposes different rates and provides for a different disposition of revenue.

Liquor Gallonage Tax. The first level of taxation is the gallonage tax, which is imposed upon the person who first manufactures, sells, purchases, or receives the liquor or cereal malt beverage (CMB).

Liquor Enforcement of Sales Tax. The second level of taxation is the enforcement or sales tax, which is imposed on the gross receipts from the sale of liquor or CMB to consumers by retail liquor dealers and grocery and convenience stores; and to clubs, drinking establishments, and caterers by distributors.

Liquor Drink Tax. The third level of taxation is levied on the gross receipts from the sale of liquor by clubs, caterers, and drinking establishments.

Gallonage

Since the tax is imposed upon the person who first manufactures, uses, sells, stores, purchases, or receives the alcoholic liquor or CMB, the tax has already been paid by the time the product has reached the retail liquor store – or in the case of CMB, grocery or convenience store.

When the liquor store owner purchases a case of light wine from a distributor, the 30 cents per gallon tax has already been built in as part of that store owner's acquisition cost.

Rates

	Per Gallon
Beer and CMB	$0.18
Light Wine	$0.30
Fortified Wine	$0.75
Alcohol and Spirits	$2.50

Gallonage tax receipts in FY 2013 were approximately $22.0 million. Of this amount, nearly $10.0 million was attributed to the beer and CMB tax.

Gallonage Tax – Disposition of Revenue

	State General Fund	Community Alcoholism and Intoxication Programs Fund (CAIPF)
Alcohol and Spirits	90%	10%
All Other Gallonage Taxes	100%	--

Liquor gallonage tax rates have not been increased since 1977.

Enforcement and Sales

Enforcement. Enforcement Tax is an in-lieu-of sales tax imposed at the rate of 8 percent on the gross receipts of the sale of liquor to consumers and on the gross receipts from the sale of liquor and CMB to clubs, drinking establishments, and caterers by distributors.

- A consumer purchasing a $10 bottle of wine at a liquor store is going to pay 80 cents in enforcement tax.

The club owner buying the case of light wine (who already had paid the 30 cents per gallon gallonage tax as part of his acquisition cost) also would now pay the 8 percent enforcement tax.

Sales. CMB purchases in grocery or convenience stores are not subject to the enforcement tax, but rather are subject to state and local sales taxes. The state sales tax rate is 6.15 percent, and combined local sales tax rates range as high as 5.0 percent.

CMB sales, therefore, are taxed at rates ranging from 6.15 to 11.15 percent.

Besides the rate differential between sales of strong beer (and other alcohol) by liquor stores and CMB by grocery and convenience stores, there is a major difference in the disposition of revenue.

Enforcement and Sales Tax Disposition of Revenue

	SGF	State Highway Fund	Local Units
Enforcement (8 percent)	100.00%	---	---
State Sales (6.15 percent)	82.93%	17.07%	---
Local Sales (up to 5 percent)	---	---	100.00%

Enforcement tax receipts in FY 2013 were approximately $60.5 million. Grocery and convenience store sales tax collections from CMB are unknown.

The liquor enforcement tax rate has not been increased since 1983.

Drink

The liquor drink tax is imposed at the rate of 10 percent on the gross receipts from the sale of alcoholic liquor by clubs, caterers, and drinking establishments.

The club owner (who had previously paid the gallonage tax and then the enforcement tax when acquiring the case of light wine) next is required to charge the drink tax on sales to its customers. Assuming the club charged $4.00 for a glass of light wine, the drink tax on such a transaction would be 40 cents.

Drink Tax – Disposition of Revenue

	SGF	CAIPF	Local Alcoholic Liquor Fund
Drink Tax (10 percent)	25%	5%	70%

Liquor drink tax revenues in FY 2013 were about $38.8 million, of which $9.8 million were deposited in the SGF.

The liquor drink tax rate has remained unchanged since imposition in 1979.

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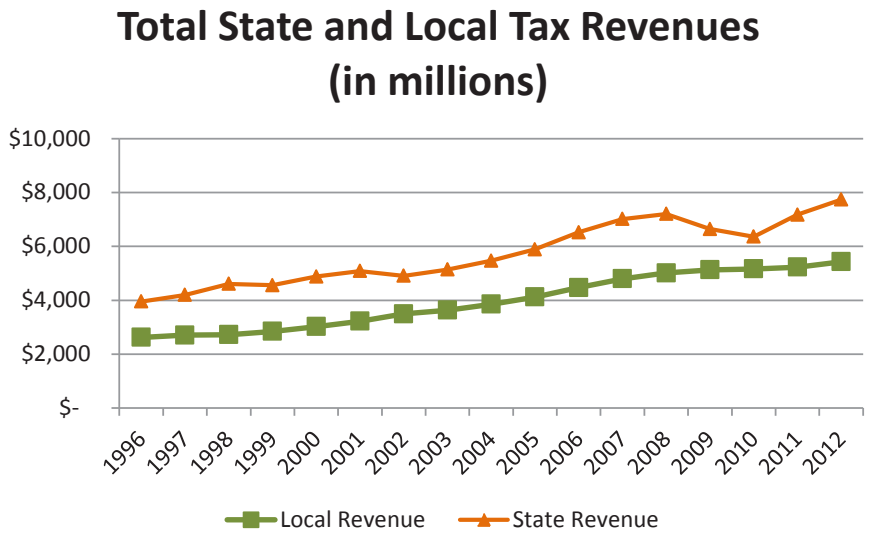
Kansas Legislator Briefing Book 2014

Taxation

V-3 Historical Overview of State and Local Revenue

Total state revenue and total local revenue have generally increased over the period between FY 1996 and FY 2012. The increase in total state revenue from FY 1996 to FY 2012 is $3.8 billion or 95.7 percent.



The following graph shows the annual percent change in total state and local revenue. This more clearly shows in which years receipts increased or decreased from the previous fiscal year. The average rate of change over the entire period is 4.4 percent growth. The greatest decrease occurred in FY 2009, which decreased by 7.8 percent from FY 2008. The greatest increase in revenue collections occurred in FY 2011, which increased 12.8 percent from FY 2010.

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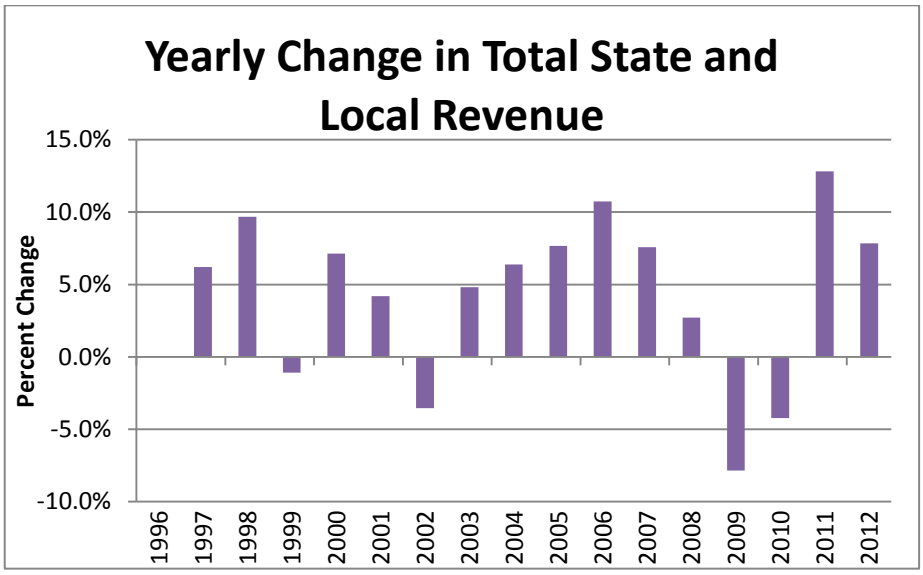
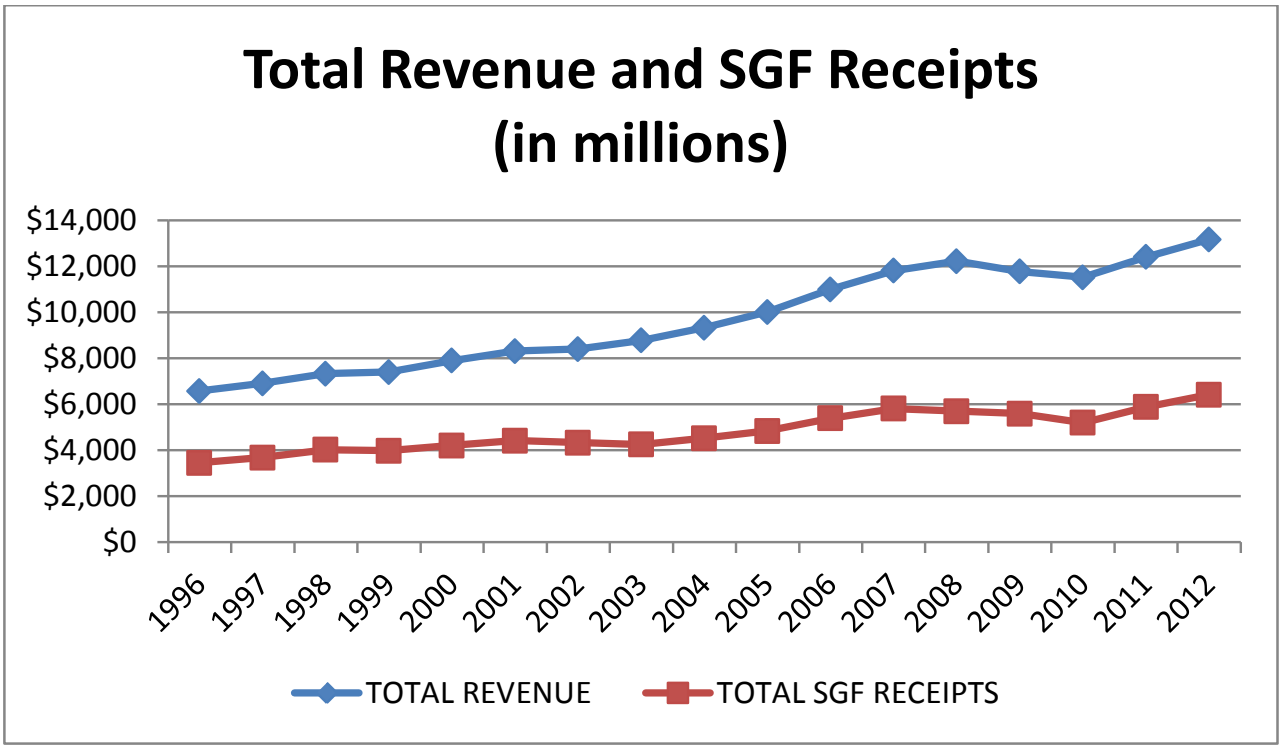


The portion of total state and local revenue going into the State General Fund (SGF) has generally declined over the period between FY 1996 and 2012. On average during this period, about 50.1 percent of state and local revenue initially entered the SGF. The lowest portion of total moneys in SGF occurred in 2010, when 45.1 percent of total revenue was captured by SGF, while the greatest percentage into SGF occurred in 1998, at 54.8 percent.



The total revenue composition by major category has evolved over the years. More descriptive information is available in the Tax Facts publication available on the KLRD website. The following table shows the percentage of SGF Tax Revenue by tax source at different points in the last three decades. Individual income tax has remained the primary source of SGF receipts and has increased from 37.6 percent to 46.3 percent from FY 1985 to FY 2013. The portions of SGF receipts from sales and use taxes have both increased in that period, though the portion from sales tax fell slightly between FY 2000 and FY 2013. Several other tax sources decreased in total proportion from FY 1985 to FY 2000 and then increased between FY 2000 and FY 2013, including corporate income, insurance premiums, severance, and cigarette/tobacco taxes. The two tax sources with decreasing contributions to the SGF over the time period are liquor and beer and "all other" sources.

Percent of SGF Tax Revenue by Source

	FY 1985	FY 2000	FY 2013
Individual Income	37.6 %	45.3 %	46.3 %
Sales	29.8	35.2	34.5
Corporate Income	8.9	6.1	6.4
Use	4.3	5.1	5.4
Insurance Premium	4.4	1.4	2.5
Liquor and Beer	2.2	1.4	1.4
Severance	6.3	1.3	1.6
Cigarette/Tobacco	2.8	1.3	1.5
All Other	3.7	2.9	0.4
	100.0 %	100.0 %	100.0 %

The final table compares the tax burden of Kansas and the surrounding states, and their rank among all 50 states and the District of Columbia. A lower ranking indicates a higher tax burden, while a higher ranking indicates a lesser burden. The information was taken from a 2013 study, which used the most recent data from 2010 and 2011, and does not reflect any recent changes in legislation. As of FY 2011, Kansas had the highest state tax collection per capita in comparison to surrounding states at $2,383 per capita. This tax collection was, on average, 6.1 percent of Kansans' personal income, which ranked second highest among the surrounding states and 27th out of all states. Kansas ranked 19th among all states in state and local tax burden per capita, falling behind both Colorado and Nebraska regionally, with $3,802 in state and local taxes per capita. Kansas ranked 22 in state and local taxes as a percent of personal income at 9.7 percent, which ranks similarly to Nebraska regionally.

50 STATE TAX BURDEN RANKING OF KANSAS AND SURROUNDING STATES

	FY 2011 State Tax Collection Per Capita		FY 2011 (a) State Tax Burden as Percent of Personal Income		FY 2010 State and Local Tax Burden Per Capita		FY 2010 State and Local as Percent of Personal Income	
	Amount	Rank	Percent	Rank	Amount	Rank	Percent	Rank
Nebraska	$ 2,262	31	5.7 %	33	$ 3,853	17	9.7 %	21
Missouri	1,648	46	4.5	45	3,328	30	9.0	34
Oklahoma	2,057	37	5.8	29	3,060	40	8.7	36
Colorado	1,863	40	4.1	49	4,104	16	9.1	32
Iowa	2,368	24	6.2	24	3,660	26	9.6	23
Kansas	2,383	23	6.1	27	3,802	19	9.7	22

Source: Tax Foundation Facts & Figures
Note: The information was taken from the latest 2013 edition, which uses data from 2010 and 2011.
(a) Calculated using 2011 State Tax Collection and 2010 Average Personal Income

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Kansas Legislative Research Department

W-1
State Funding for Transportation

W-2
Driver's License as Identification

W-3
Informational and Traffic Control Signs

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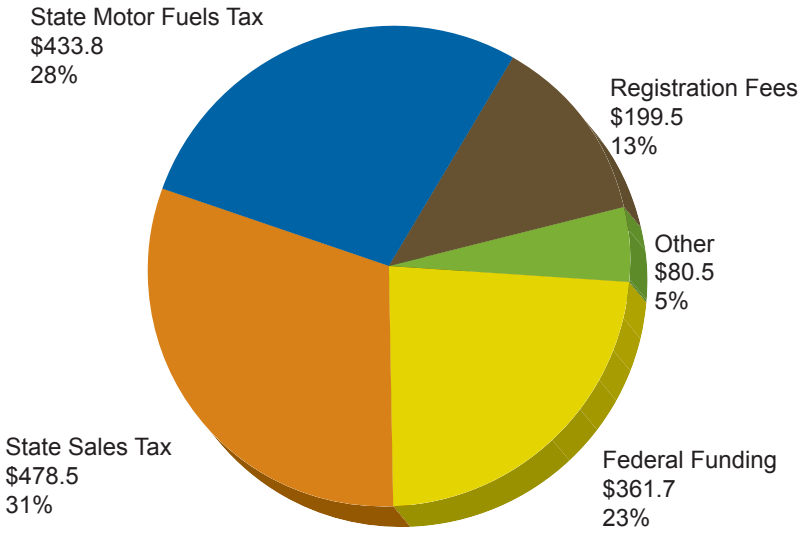
Transportation and Motor Vehicles

W-1 State Funding for Transportation

The *Kansas Constitution's* Article 11, Section 10, says that "The State shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels." For many years, the state sources that provide the most funding for transportation programs have been motor fuels taxes, sales tax, and registration fees, as illustrated in the pie chart below. This article provides some history and general information regarding these state funding sources, including information regarding the changes in funding associated with two bills enacted during the 2010 Session: Senate Sub. for Senate Sub. for HB 2650, the Transportation Works for Kansas (or T-Works) Program, and Senate Sub. for HB 2360, which affects sales tax rates and distribution.

Projected KDOT 2014 Revenues as of September 2013 (in millions)



Federal funding dropped from $590.0 million (38 percent) anticipated for FY 2012 to $361.7 million (23 percent) anticipated for FY 2014.

State Motor Fuels Tax

History. Kansas has imposed a tax on vehicle fuels since 1925, when it imposed a tax of 2 cents a gallon on gasoline. The table to the right

lists the effective dates of tax increases for motor fuels. The increases in 1989 through 1992 were part of the Comprehensive Highway Plan as it was enacted in 1989, and those in 1999 and 2001 were part of the original ten-year Comprehensive Transportation Program enacted in 1999. These taxes remain at the rates given in the table; no subsequent bills have changed these rates.

A tax of 17 cents a gallon was imposed on E-85 gasohol beginning in 2006. Certain fuel purchases, including aviation fuel and fuel used for non-highway purposes, are exempt from the tax.

The average U.S. household spent $2,912, or just less than 4 percent of income before taxes, on gasoline in 2012, according to an estimate by the U.S. Energy Information Administration. The amount of fuel tax paid by each taxpayer depends on the amount of fuel purchased. The table below, "Approximate Annual State Gasoline Tax Payments by Individual Taxpayers," illustrates those amounts with different scenarios of miles driven and vehicle miles per gallon.

Motor Fuel Tax Rates, 1925-2012

Effective Date	Gasoline	Diesel
1925	2¢	
1929	3¢	
1941		3¢
1945	4¢	4¢
1949	5¢	5¢
1956		7¢
1969	7¢	8¢
1976	8¢	10¢
1983	10¢	12¢
1984	11¢	13¢
1989	15¢	17¢
1990	16¢	18¢
1991	17¢	19¢
1992	18¢	20¢
1999	20¢	22¢
2001	21¢	23¢
2002	23¢	25¢
2003	24¢	26¢

Approximate Annual State Gasoline Tax Payments by Individual Taxpayers

Miles		Gasoline Tax	Fuel at $3.00/gal	Fuel at $4/gal
Per Year	Per Gallon	Amount Paid in Fuel Taxes at Current 24¢	Overall Fuel Bill if Total Price is $3/Gallon	Overall Fuel Bill if Total Price is $4/Gallon
12,000	15	$192	$2,400	$3,200
12,000	25	$115	$1,440	$1,920
12,000	35	$82	$1,029	$1,371
30,000	15	$480	$6,000	$8,000
30,000	25	$288	$3,600	$4,800
30,000	35	$206	$2,571	$3,429
			State Tax % of Price: 8.00%	State Tax % of Price: 6.00%

All amounts rounded to the nearest dollar

Federal fuel taxes. Drivers also pay federal fuel taxes of 18.4 cents a gallon for gasoline, gasohol, and special fuels, and 24.4 cents a gallon for diesel fuel. The federal taxes on gasoline and diesel fuel have not increased since 1993.

Other states' fuel taxes. All states tax motor vehicle fuels. Most use a set amount per gallon, but some use sales taxes. At least three states index their gasoline taxes to inflation, and other rates can change based on factors such as the highway repair budget. The American Petroleum Institute publishes maps quarterly that show average gasoline and diesel fuel taxes in each state. (Each amount shown is a weighted average, meaning that any taxes that can vary across a state's jurisdiction are averaged according to the population of the local areas subject to each particular tax rate.) Those maps are available through http://www.api.org/statistics/fueltaxes/. States' total gasoline taxes, per gallon and including excise taxes plus other state taxes and fees, range from 30.8¢ in Alaska to 71.6¢ in California as of October 2013.

	State	Total Gasoline Tax (cents per gallon)
3 highest	California	71.6
	Hawaii	68.7
	New York	68.3
	U.S. Average	*49.5*
Kansas and Nearby States	Nebraska	45.6
	Kansas	43.4
	Colorado	40.4
	Missouri	35.7
	Oklahoma	35.4
3 lowest	South Carolina	35.2
	New Jersey	32.9
	Alaska	30.8

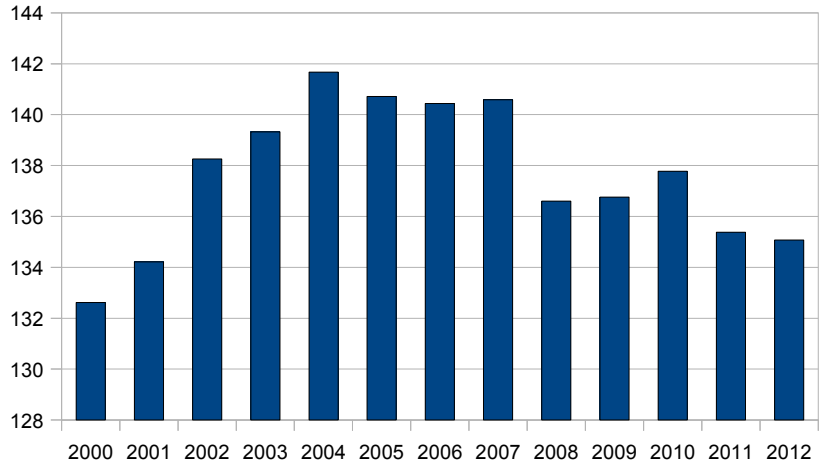
Source: American Petroleum Institute, October 2013

Fuel tax revenues. Amounts raised from fuel taxes fluctuate but generally have declined with decreases in fuel usage attributed to increased fuel efficiency in vehicles, overall increased fuel prices, and other factors. This is a nationwide trend, particularly since 2004. For reasons including these decreases and fairness in amounts paid for the amount of infrastructure used, the National Conference of State Legislatures and the National Surface Transportation Infrastructure Financing Commission have urged moving toward a system based on vehicle miles traveled. No states have yet adopted a system based on vehicle miles traveled, although the states of Oregon, Nevada, Colorado, and Minnesota and several other government entities have piloted programs. The 2012 Washington Legislature also authorized a pilot program; a $100 annual fee on electric vehicles also was enacted with the bill.

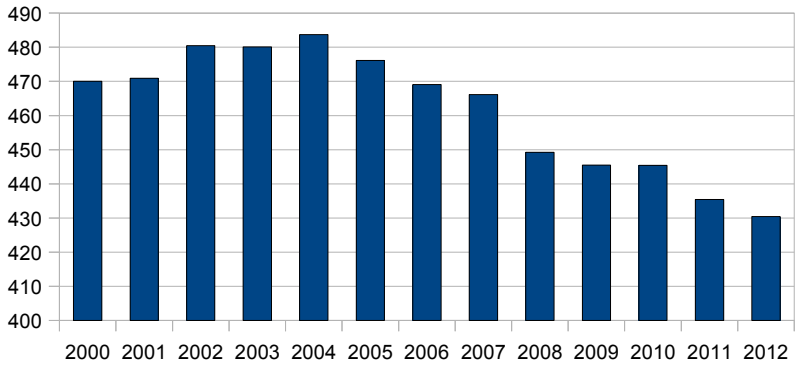
Kansas Fuel Tax Revenues	
(in millions):	
FY 2013	$411.9
FY 2012	$431.5
FY 2011	$432.7
FY 2010	$421.1
FY 2009	$417.8
FY 2008	$427.8

Source: KDOT 2015 Budget

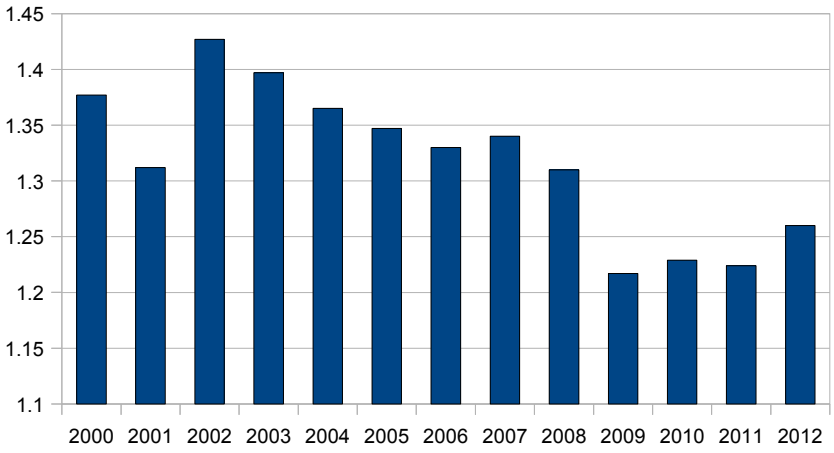
U.S. Total Gasoline Sales (in billions of gallons), by year



U.S. Gasoline Sales per Capita (in gallons), by year



Kansas Total Gasoline Sales (in billions of gallons), by year



Source for information in the bar charts: Monthly Motor Fuel Reported by States from the Office of Highway Policy Information, Federal Highway Administration, U.S. Department of Transportation, http://www.fhwa.dot.gov/ohim/mmfr/index.cfm; population information from the U.S. Census, www.census.gov.

Allocation under current law. State fuel tax revenues are allocated 66.37 percent to the State Highway Fund and 33.63 percent to the Special City and County Highway Fund (KSA 79-34,142).

Sales Tax

History of the allocation to the State Highway Fund. The 1983 highway bill enacted a transfer from the State General Fund (SGF) to the State Highway Fund (SHF) in increasing amounts over a period of years based roughly on the percentage of sales tax receipts attributable to new and used motor vehicles, then determined to be 9.19 percent of the sales tax base. The bill also required the Department of Revenue to annually determine the percentage of retail sales attributable to vehicle sales.

The 1989 Comprehensive Highway Program (CHP) bill increased the transfer percentage to 10 percent. It also increased the sales and compensating use tax rate from 4 percent to 4.25 percent, with the additional 0.25 percent deposited directly into the SHF.

Legislation enacted in 1992 that raised the sales and use tax rate from 4.25 percent to 4.90 percent also reduced the 10 percent transfer to 7.628 percent, an amendment designed to produce an equivalent amount of revenue for the SHF transfer under both different sales tax rates.

The 1999 Comprehensive Transportation Program (CTP) bill initially increased the transfer to 9.5 percent and would have phased in additional increases to 12 percent by July 1, 2004.

Legislation enacted in 2004 to help shore up the CTP abolished the transfer, which at that time was not being funded, and also repealed the requirement to annually determine the percentage of retail sales attributable to vehicle sales. The same bill also increased the amount of the daily sales and use tax receipts deposited in the SHF from 0.25 percent to 0.38 percent and then to 0.65 percent. From 2002 until July 2010, the state levied a sales and use tax rate of 5.30 percent. Of every $530 in collections, $465 was deposited in the SGF and $65 in the SHF.

Amounts of Sales and Compensating Use Taxes Deposited Directly in the SHF	
(in millions)	
FY 2013	$319.4
FY 2012	$312.4
FY 2011	$292.6
FY 2010	$259.4
FY 2009	$268.7
FY 2008	$273.3
Source: KDOT 2015 Budget	

In 2010, Senate Sub. for HB 2360 raised the state sales and compensating use tax rate from 5.3 percent to 6.3 percent, effective July 1, 2010, to be reduced to 5.7 percent on July 1, 2013. As of July 1, 2013, an amount roughly equal to the sales and compensating use tax revenues above what would have been raised at the 5.3 percent rate was to be directed to the SHF. The percentage of sales tax revenues going to the SHF was adjusted to provide an estimated $20.4 million of additional revenue in FY 2011 and $21 million in FY 2012 and again in FY 2013. The 2013 Legislature changed the state sales and compensating use tax rate to 6.15 percent, as of July 1, 2013. The 2013 Legislature also adjusted the disposition of the revenues to SHF, to roughly equal the amount the SHF would have gotten under the 2010 legislation.

Registration Fees

The Legislature first imposed registration fees on vehicles in 1913: $5 for a “motor vehicle” (car or truck) and $2 for a motorcycle. Registration fees for trucks have been based on their rated carrying capacities since 1921. Except for certain relatively small fees, registration fees are directed to the State Highway Fund (see KSA 8-145).

Rates in Kansas vary by type of vehicle and by vehicle weight. The 2010 T-Works Program does not increase registration rates for private passenger vehicles. The bill increased rates in 2013 for small farm trucks and other small commercial vehicles by $20, for trucks smaller than 54,000 pounds by

$100, and for larger trucks by $135. The increases in the bill are divided over two years. A sample of those rates with their increases is shown below.

Sample of Kansas Vehicle Registration Fees, 1989-Present

	1989	2002	2013	2014
Passenger vehicle, less than 4,500 pounds	$25	$30	no change	no change
Truck or truck-tractor, 12,000-16,000 pounds	$100	$102	$152	$202
Truck or truck-tractor, 80,000-85,500 pounds	$1,925	$1,935	$2,020	$2,070
Farm truck, 12,000-16,000 pounds	$35	$37	$47	$57
Farm truck, more than 66,000 pounds (largest category)	$600	$610	$695	$745
Trailer, 8,000 pounds or less	$15	$15	$25	$35
Trailer, 12,000-54,000 pounds	$35	$35	$45	$55

(1) Registration is optional for trailers weighing less than 2,000 pounds.

Source: KSA 8-143 as amended by 2010 Senate Sub. for Senate Sub. for HB 2650

SHF Revenues from Vehicle Registration Fees and Related Charges

(in millions)	
FY 2013	$198.5
FY 2012	$178.3
FY 2011	$178.9
FY 2010	$176.0
FY 2009	$171.2
FY 2008	$171.7

Source: KDOT 2015 Budget

At registration, Kansas vehicle owners also pay motor vehicle (property) taxes on those vehicles. Those taxes vary, depending on the county's mill levy. The proportion of the total amount paid depends upon the value of the vehicle and the applicable mill levy, as illustrated in a table on the next page.

Registration Fees and Motor Vehicle (Property) Taxes for a Sample of Vehicles

Vehicle description	2014 Value	2014 Motor Vehicle Property Tax[1]		Regisration[2]	Total[3]	Registration % of Total
2014 Acura RLX	$49,000	Smith County	$1,908	$30	$1,947	1.5%
(Krell Audio Pkg/Trim)		*State Average*	$1,090		$1,129	2.7%
		Coffey County	$657		$696	4.3%
2014 Nissan Altima 3.5 L SL	$27,000	Smith County	$1,051	$30	$1,090	2.8%
		State Average	$601		$640	4.7%
		Coffey County	$362		$401	7.5%
2014 Ford Focus 5-Door Hatchback (SE)	$17,000	Smith County	$662	$30	$701	4.3%
		State Average	$378		$417	7.2%
		Coffey County	$228		$267	11.2%
2012 Toyota Yaris 5-Door Liftback L	$9,031	Smith County	$352	$30	$391	7.7%
		State Average	$201		$240	12.5%
		Coffey County	$121		$160	18.7%
1999 Ford Escort (LX)	$830	Smith County	$32	$30	$71	42.1%
		State Average	$24		$63	47.6%
		Coffey County	$24		$63	47.6%
2012 Ford F250 (Lariat, 4 x 4, Crew Cab, Diesel)	$32,513	Smith County	$1,266	$232	$1,507	15.4%
		State Average	$723		$964	24.1%
		Coffey County	$436		$677	34.3%
2012 International Prostar Limited[4]	$89,868	Smith County	$5,788	$1,345	$7,142	18.8%
		State Average	$3,539		$4,893	27.5%
		Coffey County	$2,348		$3,702	36.3%

[1] Property tax equals value times mill levy times the assessment rate. The assessment rate is 20 percent for all the vehicles listed above except the 2012 International truck; its assessment rate is 30 percent. KSA 79-5105(a)(1) sets a minimum tax of $24 for vehicles ($12 for motorcycles) from model year 1981 and newer; for older vehicles the minimums are $12 and $6. The example 2014 motor vehicle property tax levies are as follows: Smith County (the highest in the state), 0.194696; the state average, 0.111260; and Coffey County (the lowest in the state), 0.067090. The reported tax is rounded to the nearest dollar.

[2] The T-Works bill of 2012 increased registration rates for trucks weighing 12,000 or more, starting 1/1/2013. It did not increase registration amounts for cars and other smaller vehicles.

[3] The total includes two fees: $4 modernization surcharge authorized by KSA 75-5160 and $5 service fee authorized by KSA 8-145d. The service fee would not apply to a truck used in interstate commerce or to a converter gear. Voluntary additional fees that could apply include $40 for personalized license plates (KSA 8-132(c)) and a satellite registration fee of not more than $5 per vehicle (KSA 8-145d)).

[4] This example assumes the truck is taxed as property. The 20 mill school general fund is included in this group, changing the tax levies to Smith County, 0.214696; state average, 0.131260; and Coffey County, 0.087090. The county average was used; however, depending on the situs of the truck, the levy may be higher or lower. However, starting January 1, 2014, an annual commercial vehicle fee replaces property tax for trucks used in commerce. The fee for this truck would be $404 (KSA 8-143m, KSA 8-145f).

Allocation. Except for relatively small fees (*e.g.*, portions of certificate of title fees, all registration fees are directed to the State Highway Fund (KSA 8-145(c)). Motor vehicle property taxes are distributed to taxing subdivisions in the same manner as general property taxes, except that school district general funds do not receive any of the receipts.

Bonding

To finance portions of the programs, both the 1989 Comprehensive Highway Program (CHP) and the 1999 Comprehensive Transportation Program (CTP) authorized KDOT to issue certain amounts of bonds (KSA 68-2320), which KDOT has issued. The 2010 T-Works bill added KDOT bonding authority, with this limit: "the maximum annual debt service on all outstanding bonds issued pursuant to [the CHP, the CTP, and T-Works] and [CHP Refunding bonds] . . . will not exceed 18 percent of projected state highway fund revenues for the current or any future fiscal year." (KSA 68-2320(c)) The bill specifies how projected rates for variable rate interest and projected SHF revenues will be calculated. The table below contains information on debt outstanding as of late September 2013 and anticipated debt outstanding for subsequent years. Transfers from the SHF are considered reductions to revenues and can reduce bonding capacity.

Outstanding State Highway Fund Debt, At End of FY (in millions) (Source: KDOT)

Fiscal Year	Total	CHP	CHP Refunding	CTP	T-Works	Estimated Bond Service Loads
2013	$1,737.6	$11.5	$43.0	$1,158.1	$ 525.0	16.25%
2014	$1,634.3	$ 0.0	$ 4.0	$1,105.3	$ 525.0	16.43%
2015	$1,520.9			$ 995.9	$ 525.0	15.99%
2016	$1,418.2			$ 900.2	$ 518.0	No projections for later years as of publication date
2017	$1,310.9			$ 800.1	$ 510.8	
2018	$1,202.6			$ 699.2	$ 503.4	
2019	$1,086.0			$ 590.2	$ 495.8	
2020	$ 971.9			$ 483.9	$ 488.0	
2021	$ 860.9			$ 422.9	$ 438.0	
2022	$ 735.3			$ 304.9	$ 430.4	
2023	$ 604.5			$ 181.7	$ 422.8	
2024	$ 512.0			$ 97.0	$ 415.0	
2025	$ 405.0				$ 405.0	
2026	$ 395.0				$ 395.0	
2027	$ 385.0				$ 385.0	
2028	$ 375.0				$ 375.0	
2029	$ 365.0				$ 365.0	
2030	$ 355.0				$ 355.0	
2031	$ 345.0				$ 345.0	
2032	$ 273.8				$ 273.8	
2033	$ 200.8				$ 200.8	
2034	$ 135.9				$ 135.9	
2035	$ 68.9				$ 68.9	
2036	$ 0.0				$ 0.0	

Transfers from the State Highway Fund

Since 1999, anticipated State General Fund (SGF) revenues to the SHF have been reduced by approximately $1.8 billion. The following table summarizes the categories of those reductions.

A detailed spreadsheet, "State Highway Fund Adjustments," shows year-by-year revenue adjustments, by category; it is available through the KLRD website homepage, "Capitol Issues," "Transportation."

Net Changes to SHF Revenues from SGF, Anticipated to Realized, 1999-October 2013 (in millions)	
Sales Tax Demand Transfer. As noted above, sales taxes were transferred from the SGF to the SHF under highway program bills starting in 1983. The CTP as enacted in 1999 included provisions to transfer certain percentages of sales tax (9.5 percent in 2001 – 14 percent in 2006 and later) from the SGF to the SHF. Appropriations reduced those amounts, and the transfers were removed from the law in 2004.	$(1,456.73)
Sales and Compensating Use Tax. As noted above, when sales tax transfers were eliminated, the sales tax was increased and the percentage going directly into the SHF was increased. The amount reflects the increases enacted in 2010 Senate Sub. for HB 2360, and as amended by 2013 House Sub. for SB 83.	$420.75
Loans to the SGF. A total of $125.2 million was "borrowed" from the SHF with arrangements to replace that money from FY07 through FY10. Only the first two payments were made.	$(61.79)
Bond Payments. The 2004 Legislature authorized the issuance of $210 million in bonds backed by the SGF. SGF payments were made on those bonds only in 2007 and 2008. (Subsequent payments have been made from the SHF.)	$26.58
Transfers to the SGF. Transfers include amounts for the Fair Fares program at the Department of Commerce, Highway Patrol operations, payments on SGF-backed bonds, allotments, and the 2011 direct transfer of $200 million.	$(754.63)
Total	$(1,825.82)

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State Funding for Transportation

W-2
Driver's License as Identification

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Informational and Traffic Control Signs

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Transportation and Motor Vehicles

W-2 Driver's License as Identification

This article summarizes approaches states have taken to address the concerns of those who do not want photographs of themselves on driver's licenses or ID cards, primarily for religious reasons, and to provide driver's licenses or ID cards to those who cannot prove lawful presence in the United States.

Federal Requirements

Federal law enacted in 2005, in response to recommendations from the official 9/11 Commission, requires state-issued motor vehicle operator's licenses (driver's licenses) and personal identification (ID) cards used for certain official purposes – accessing Federal facilities, boarding federally regulated commercial aircraft, and entering nuclear power plants – to meet various security standards.[8] Those standards include the verification of documents that prove the person applying for the driver's license or ID card is a U.S. citizen or is otherwise lawfully present in the United States. The "REAL ID" standards also require these features on each compliant driver's license and ID card issued by the states:

- the person's full legal name;
- the person's date of birth;
- the person's gender;
- a unique card number;
- a digital photograph of the person;
- the person's address;
- the person's signature;
- physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes; and
- a common machine-readable technology, with defined minimum data elements.

Federal law further allows a state that has met standards for driver's licenses and ID cards also to issue a driver's license or ID card that "clearly states on its face that it may not be accepted by any federal

8 The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note). Title II of that act, Improved Security for Drivers' Licenses and Personal Identification Cards, is known as the REAL ID Act. Regulations implementing that act may be found in 6 CFR Part 37. Department of Homeland Security Information on the Act and its implementation is available at http://www.dhs.gov/secure-drivers-licenses.

agency for federal identification or for any other official purpose" and "uses a unique design or color indicator to alert federal agency and other law enforcement personnel that it may not be accepted for any such purpose."

The Department of Homeland Security by rule required states to be in full compliance with the REAL ID Act by January 15, 2013, but granted extensions for states who had made significant progress toward meeting the standards. As of September 2013, the Department of Homeland Security determined the following states have met the federal requirements: Alabama, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Iowa, Indiana, Kansas, Maryland, Nebraska, Ohio, South Dakota, Tennessee, Utah, Vermont, Wisconsin, West Virginia, and Wyoming.[9]

The Department of Homeland Security will determine when federal agencies will begin to enforce the law. An official press release dated December 20, 2012, stated the Department expected to "publish a schedule by early fall 2013 and begin implementation at a suitable date thereafter. Until the schedule is implemented, Federal agencies may continue to accept for official purposes driver's licenses and identity cards issued by all states." Such a schedule had not been released by October 1, 2013. The press release further stated, "Secure driver's licenses and identification documents are a vital component of a holistic national security strategy. Law enforcement must be able to rely on government-issued identification documents and know that the bearer of such a document is who he or she claims to be."

9 "DHS Determines 13 States Meet REAL ID Standards," http://www.dhs.gov/news/2012/12/20/dhs-determines-13-states-meet-real-id-standards; "Countdown to REAL ID," http://www.ncsl.org/research/transportation/count-down-to-real-id.aspx; and "Hawaii Fully Compliant with REAL ID Standards for Driver's Licenses, Identification Cards," http://hidot.hawaii.gov/blog/2013/09/17/hawaii-fully-compliant-with-read-id-standards-for-drivers-licens-es-state-identification-cards/

Kansas law has, since 2000, specified that an applicant for a driver's license or state-issued ID card must provide proof of lawful presence in the United States. Those provisions were strengthened in 2007, with passage of SB 9 (L. 2007, Ch. 160), which added multiple provisions designed to protect against fraud in the issuance of driver's licenses, including a requirement for facial image capture and security features on the documents themselves. (See KSA 75-5156 and KSA 75-5157.) These features are being implemented by the Division of Vehicles at the Department of Revenue.

Driver's Licenses and ID Cards without Photographs

Some states issue driver's licenses (DL), ID cards, or both without photographs, generally for one or more of three general reasons: the applicant has religious objections to such a photograph, the person has a facial disfigurement, or the person is unavailable to be photographed, with the first being the most common. As noted above, federal law requires a driver's license or ID card that will be valid for official federal identification purposes to be compliant with provisions of the REAL ID Act, including the requirement that such an ID include a facial photograph to enhance security. The law also allows a state to issue a driver's license or an ID card that cannot be used for federal purposes if it offers a driver's license or ID card that does comply with REAL ID.[10]

10 REAL ID Act, Section 2002 (d)(11): "In any case in which the State issues a driver's license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card-- "(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and "(B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose." Federal regulations regarding this provision are at 6 CFR 37.71.

State statutory and regulatory exemptions are summarized below.[11]

State	DL, ID, or Both	Reason for Photo Exemption	Additional Information
Alaska	DL	No access to site where photo could be taken	Available only to those who have passed all required tests
Arkansas	DL	Religious objection	
	DL	Applicant is not available	
Illinois	Both	Religious objection	
	DL	Facial disfigurement	
	DL	Temporarily out of state	Must get license with photo within 45 days of returning to the state
Indiana*	DL	"Good cause for the omission"	If without a photo, will be labeled as "non-Secure ID"
Kentucky	DL	Applicant is not available, because military and stationed outside of Kentucky at renewal	
Minnesota	Both	Religious objection	Applicant must allow full-face image or provide another biometric identifier, such as fingerprints; photo exemption does not apply to an "enhanced" DL or ID card
Missouri	Both	Religious affiliation	State makes at least one location available where a photo may be taken by a staff member of the same gender as the applicant[a)]
Nebraska*	DL	Applicant is out of state	Court opinion in *Quaring v. Peterson* also provides religious objection as reason for no photo
Oregon	DL	Religious objection	
Pennsylvania	DL	Religious objection	
	DL	Absent from the state during entire renewal period	
	DL	"Public or private emergency"	
	ID	"Good cause"	
Wisconsin*	Both	Religious objection	If without photo, DL or ID card must be marked as not compliant with REAL ID standards
	Both	Out of state	Must get license with photo within 30 days of returning to the state
	Both	Temporary disfigurement	Must apply for a duplicate license when the reason for the exemption no longer exists

* REAL ID compliant as of September 2013

a) Georgia, which does not provide for exemption from photo requirements, also says in regulation that a photograph can be taken by an employee of the same gender as the applicant and in a private location.

11 These statutes and regulations are summarized: Alaska: AS § 28.15.111; Arkansas: A.C.A. §27-16-801; Illinois: Title 92, § 1030.90, 15 ILCS 335/4; Indiana: IC 9-24-11-5; Kentucky: KRS §186.412; Minnesota: M.S.A. §171.071, Minnesota Rules, part 7410.1810; Missouri: V.A.M.S. 302.181; Nebraska: Neb.Rev.St. §60-4,119; Oregon: O.R.S. §801.110, OAR 735-062-0120; Pennsylvania: 67 Pa. Code § 73.3, 67 Pa. Code §91.4; Wisconsin: W.S.A. 343.14, W.S.A. 343.50, Wis. Adm. Code Trans 102.03.

A Congressional Research Service analysis of religious exemptions to photo ID requirements[12] states, "The government must prove that the individual's religious exercise is not substantially burdened by the requirement or that the state's interest outweighs the burden under the standard imposed by the relevant law under which the photo requirement is challenged. Particularly after 9/11, courts appear more likely to apply the photo requirement strictly, without exemption, if the government's compelling interest is directly related to security concerns. . . . [C]ases are very fact-specific and the outcome may depend on nuanced details of the individual's religious beliefs or the government's specific purposes."

Requirements for photographs on driver's licenses for driving purposes may differ from those for voting purposes in the states that require photographic identification for voting or for concealed carry of handguns. Here are two examples:

- Pennsylvania's voter ID law specifically allows an elector who has a religious objection to being photographed to use a valid-without-photo driver's license or valid-without-photo ID card issued by the Pennsylvania Department of Transportation. Pennsylvania law also specifically allows a seller of firearms to accept certain valid-without-photo documents approved by the Pennsylvania State Police.
- An applicant for a Firearm Owner's Identification Card in Illinois who has a religious objection to being photographed must submit fingerprints to the Department of State Police.

Driving Privileges and ID Cards for Those Who Cannot Prove Lawful Presence

As of early October 2013, 11 states have enacted law to authorize driver's licenses, ID cards, or both to those who do not provide satisfactory documentary evidence that the applicant has lawful immigration status or a valid Social Security number. Three of those states had authorization in place before 2013:[13]

- In 1999, **Washington** State amended its driver's license and ID card proof of identity statute (RCW 46.20.035) to specify that only a driver's license or ID card issued to an applicant providing certain types of proof of identity is valid for identification purposes and, if the applicant is unable to prove his or her identity, must be labeled "not valid for identification purposes." Washington regulations list documents that can be used to prove identity, such as a federal or state agency identification card, a U.S. passport, a foreign passport accompanied by U.S. Citizenship and Immigration Services documentation, and a military identification card that contains the signature and a photograph of the applicant. Applicants who wish to provide other types of identification may request Department of Licensing review. A 2011 attempt to amend the law failed because, according to a report for another legislature, "legislators (1) believed that additional verification measures required to end licensing for undocumented immigrants would have cost as much as $1.5 million and (2) were worried about the state's ability to harvest apples if undocumented immigrants could not drive to the orchards."[14]
- The 2003 **New Mexico** Legislature added this sentence to its main statute regarding applications for driver's licenses (NMSA 66-5-9): "For foreign nationals applying for driver's licenses the secretary shall

12 Brougher, Cynthia. *Legal Analysis of Religious Exemptions for Photo Identification Requirements*. R45015, Congressional Research Service, 5 September 2012. www.fas.org/spg/crs/misc/R45015.pdf

13 According to a May 2013 report to Connecticut legislators, California, Hawaii, Maryland, Maine, Michigan, Oregon, and Tennessee are "states that previously permitted undocumented immigrants to drive" but "stopped doing so between 2003 and 2010 for various reasons; these reversals resulted from both legislative and executive actions." *Issuance of Driver's Licenses to Undocumented Immigrants*, Connecticut General Assembly Office of Legislative Research Report 2013-R-0194, May 29, 2013.

14 Id.

accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status." Earlier legislation had included, "The secretary is authorized to establish by regulation other documents that may be accepted as a substitute for a social security number." Various bills have been introduced to amend these and other provisions.

- In 2005, the **Utah** Legislature modified its Public Safety Code to prohibit issuing a driver's license to any person who is not a Utah resident and to offer a driving privilege card to those without Social Security numbers (Utah Statutes 53-3-204 *et seq.*). A driving privilege card is to be clearly distinguishable from a driver's license and include a notice to the effect that the card is not valid for identification; government entities may not accept the card as identification. A "driving privilege card" expires each year on the person's birthday. An applicant for a driving privilege card is required to provide fingerprints as well as a photograph; the state's Bureau of Criminal Identification must check the fingerprints against state and regional criminal databases and notify the federal Immigration and Customs Enforcement Agency if the person has a felony in the person's criminal history record.

Nine states authorized driving privileges for certain undocumented residents in 2013:

State	Bill; Session Law	Date Became Law	Implementation Date
California (CA)	AB 60; Ch. 524	Oct. 3, 2013	Jan. 1, 2015
Colorado (CO)	SB 13-251; Ch. 402	June 5, 2013	Aug. 1, 2014
Connecticut (CT)	HB 6495; P.A. 13-89	June 6, 2013	Jan. 1, 2015
Illinois (IL)	SB 957; P.A. 097-1157	Jan. 22, 2013	Nov. 28, 2013
Maine (ME)	H.P. 980; Ch. 163	May 29, 2013	Oct. 9, 2013
Maryland (MD)	SB 715; Ch. 309	May 2, 2013	Jan. 1, 2014
Nevada (NV)	SB 303; Ch. 282	May 31, 2013	Jan. 1, 2014
Oregon (OR)	SB 833; Ch. 48	May 1, 2013	Jan. 1, 2014
Vermont (VT)	S. 38; Act 074	June 5, 2013	Jan. 1, 2014

The provisions in the bills authorizing driver's licenses, ID cards, or both for those who cannot prove lawful presence vary in many ways. Maine's new law only adds phrases to existing law to exempt an applicant for renewal of a noncommercial driver's license or non-driver ID card from requirements to prove lawful presence if the applicant has continuously held the driver's license or ID card since December 31, 1989, or wa born before December 1, 1964. Several states differentiate between a driver's license, which can be used to prove identity, and the new document, calling it a "driving privilege card," "operator's privilege card," or similar term. (The term "driver's license" is used in this article and is used to refer to all types, including learner permits.) The cards will include identity features such as full name, birth date, signature, and photo, and all 2013 bills except Maine's included these provisions:

- An applicant must provide proof of identity;
- An applicant must provide proof of residency within the state; and
- An applicant for any driver's license must meet all additional requirements for driving, such as passing driving skills tests and maintaining vehicle insurance.

The following tables illustrate ways in which the new laws except Maine's are similar and dissimilar; they greatly simplify the bills' provisions and do not include all requirements. **The tables are based on the bills listed above only and not on the entirety of each state's laws.**

Comparisons of New Driver's License and ID Laws								
Authorization to issue driver's license or ID card								
Driver's license authorized; applicant must meet all additional requirements for a driver's license	CA	CO	CT	IL	MD	NV	OR	VT
Not applicable to a commercial driver's license	CA	CO			MD	NV	OR	
ID card authorized	CA	CO			MD			VT
License or ID card must be easily distinguishable	CA	CO	CT		MD	NV	OR	VT
Identity may be proven with these documents listed in the bills:								
Passport	CA	CO	CT			NV	OR	VT
Consular identification document	CA	CO	CT	IL		NV	OR	VT
Birth certificate	CA		CT			NV		VT
Marriage license	CA		CT					VT
Foreign voter registration or voter ID document	CA		CT					
Foreign driver's license	CA		CT					
U.S. application for asylum	CA							
Official school transcript	CA		CT					
Military identification		CO				NV		
Other[a)]	CA		CT				OR	VT
Residency may be proven with these documents listed in the bills:								
Home utility bill	CA		CT			NV		
Lease or rental document	CA		CT			NV	OR	
Deed or title to real property	CA						OR	
Property tax bill or statement	CA		CT					
Income tax return	CA	CO			MD		OR	
Bank or credit card statement			CT			NV		VT
Pay stub			CT			NV		
Insurance document			CT			NV		VT
Medical bill			CT			NV		VT
Other[b)]	CA	CO	CT	IL		NV	OR	VT
Additional eligibility provisions in the bills:								
Available to those who can and those who cannot prove lawful presence						NV		VT
Applicant must sign an affidavit stating the applicant is ineligible for a Social Security number	CA				MD		OR	
Applicant must sign an affidavit that the applicant is unable to submit satisfactory proof that the applicant's presence in the U.S. is authorized under federal law	CA		CT					
Applicant may not have been convicted of any felony in the state			CT					
Limitations on uses specified in the bills; the driver's license or ID card may <u>not</u> be used for:								
Official federal purposes	CA	CO	CT		MD			VT
Proof of identity				IL				
Evidence of citizenship or immigration status	CA							
Eligibility for public benefits	CA	CO				NV		

Comparisons of New Driver's License and ID Laws (Continued)								
Limitations on uses specified in the bills; the driver's license or ID card may <u>not</u> be used for:								
Voting		CO	CT					
Eligibility for any license						NV		
Purchasing a firearm					MD			
Enforcement of immigration laws	CA	CO				NV		
Other[c)]	CA						OR	
Card must include a statement about its acceptable uses	CA	CO	CT	IL	MD			VT

[a)] California's and Illinois' bills state additional acceptable documents for proving identity will be specified in regulations. Connecticut lists a passport, consular identification document, or consular report of birth as primary proof of identity and others, including a baptismal certificate, as secondary. Connecticut requires two forms of primary proof of identity or one form of primary proof and one form of secondary proof. Nevada requires an applicant provide two types of proof of identity. It also allows as proof a driver's license issued by another state. Nevada's Department of Motor Vehicles, Oregon's Department of Transportation, and Vermont's Department of Motor Vehicles Commissioner may define additional types of acceptable documentation.

[b)] California's bill states additional types of acceptable documents will be specified in regulation. Colorado specifies the income tax return must contain a federal taxpayer ID number, and it requires both an affidavit and a tax return. Colorado also specifies residency standards that meet REAL ID Act requirements and that the applicant must affirm the applicant has or will apply for lawful residency status when eligible. Connecticut's list of proof of residency documents also includes a Medicaid or Medicare statement, a Social Security benefits statement, postmarked mail, and an official school record showing enrollment. Illinois' bill states a list of acceptable residency documents is to be established in rules and regulations. Nevada requires an applicant provide two types of proof of residency; its Department of Motor Vehicles may approve additional types of documents. Oregon's Department of Transportation and Vermont's Department of Motor Vehicles Commissioner may define additional types of acceptable documentation. Vermont's list of other acceptable documentation includes mail, vehicle title or registration, W-2 or similar tax document, and a document from an educational institution.

[c)] California's bill states the card may not be used as proof of eligibility for employment or voter registration. The bill also makes it a violation of law to discriminate against an individual who holds this type of card. Oregon also allows its driver card to identify the person as an anatomical donor, emancipated minor, or veteran; to identify the person for purposes of civil action judgments, liens, and support payments; and to aid a law enforcement agency in identifying a missing person.

Also, the Governor of Puerto Rico signed a bill in August 2013 to allow undocumented immigrants and migrant workers living in Puerto Rico to apply for temporary driver's licenses that would be easily distinguishable from those issued to citizens, beginning in late 2014. An applicant will be required to provide proof of identity and pass standard driving and traffic-rules tests.[8]

Opponents and proponents of the new laws have made various points on their desirability:

Pros	***Cons***
• Roads would be safer because those driving would have to pass written and driving tests. • Databases containing information about everyone who drives could be important law enforcement tools. • Such documents would allow these drivers to get vehicle insurance. • Such licenses may be made available also to those who do not wish to share the information required to get a license that complies with federal standards.	• Driving is a privilege that should be extended only to those here legally. • Documents from other countries provided for proof of identity are difficult to verify. • Driving privileges may attract illegal immigrants to a state in which such a license is offered. • A distinguishable license for undocumented immigrants may encourage profiling and discrimination.

8 National Immigration Law Center; various new reports.

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Transportation and Motor Vehicles

W-3 Informational and Traffic Control Signs

Signs along highways fall into three general categories: outdoor advertising, tourism-related, and traffic control. This article provides summary information about major state and federal requirements and guidance for each type of signage.

Outdoor Advertising Signs

In the wake of the federal Highway Beautification Act of 1965 (Title 23, U.S. Code, Section 131), Kansas initially adopted its Highway Advertising Control Act in 1968 but replaced it in 1972 (KSA 68-2231 *et seq.*). The federal Highway Beautification Act requires states to regulate outdoor advertising, in ways that meet minimum federal standards, or risk loss of federal highway funding.[8] The Kansas Highway Advertising Control Act was significantly amended in 2006; those amendments added a permit process for signs and made additional changes. The Kansas Department of Transportation (KDOT) administers the law and provides guidance on its implementation.[9]

Signs are controlled in the area adjacent to the right-of-way and visible from the main traveled way (KSA 68-2232). The Secretary of Transportation entered into an agreement with the U.S. DOT to control outdoor advertising near interstate and federal-aid primary highways (as authorized by KSA 68-2235). Federal law (23 CFR 750.102(k)) defines "protected areas" "as all areas . . . which are adjacent to and within 660 feet of the edge of the right-of-way of all controlled portions of the Interstate System." Signs intended to be seen from the interstate but beyond that limit also are prohibited (KAR 36-17-7, 23 USC §131).

State law includes these provisions:

- No sign may be erected or maintained in the right of way or in an area adjacent to the right-of-way on any interstate or primary highway,[10] with these exceptions:

8 A history and overview of the federal program is available from the Federal Highway Administration website: http://www.fhwa.dot.gov/real_estate/practitioners/oac/oacprog.cfm#HBAAMND. The Highway Beautification Act is Pub. L. 89–285, 23 USC §136 and amending 23 USC §131 and 23 USC §319 (control of junkyards). The Kansas Highway Advertising Control Act includes many provisions mirroring those of 23 USC §131. Federal regulations on this topic may be found in 23 CFR Part 750.

9 That guidance includes the booklet "Outdoor Advertising in Kansas," available through http://www.ksdot.org/burrow/beaut/.

10 A "primary highway" is one part of the federal-aid primary system in existence on

  - Directional and official signs, including signs pertaining to scenic or historical attractions (which must conform to requirements including those in KDOT rules and regulations) (KSA 68-2233(a));
  - Signs advertising the sale or lease or property on which the sign is located (KSA 68-2233(b));
  - On-premise signs advertising activities conducted on the property on which they are located (KSA 68-2233(c));
  - Nonconforming signs lawfully in existence on March 31, 1972 (KSA 68-2233(d)); and
  - Signs that conform to all other requirements (KSA 68-2233(f));
- No sign may be erected adjacent to any roadway designated as a scenic highway or byway; within 1,000 feet of a park or wildlife refuge; within 400 feet of a public park, church, school, or recreation area; within 500 feet of any strip of land owned by the state for purposes of scenic beauty; or in any place that obstructs the driver's view of traffic or of any official traffic sign or signal (KSA 68-2233(g); KAR 36-17-8(C));
- No sign may be erected outside of an urban area beyond 660 feet from the nearest edge of the right-of-way, visible from the main traveled way and erected with the purpose of its message being read from the traveled way, except directional and other official signs (KAR 36-17-7; also see 23 USC §131(c));
- An area may not be zoned specifically ("spot zoned") to allow a sign (KSA 68-2232(w); KSA 68-2234(g) and (h));
- Signs are limited in size, configuration, spacing, and lighting (KSA 68-2234(a) – (e));
- A local zoning authority may control the erection, maintenance, size, spacing and lighting of signs in all areas under its jurisdiction, except along interstate highways (KSA 68-2234(f));
- A permit must be obtained before a new sign is erected and a sign license must be obtained and renewed; certain signs advertising nonprofit, religious, civic or educational organizations are exempt (KSA 68-2236);
- Illegal signs *(e.g.*, nonconforming signs on private property) may be removed following notice; removal may be appealed (KSA 68-2240(a) and (e)); and
- A sign that sustains damage exceeding 60 percent of its replacement costs, including signs damaged or destroyed by natural causes but not including those destroyed in criminal acts, may not be replaced (KSA 68-2240(b)).

Also prohibited is commercial advertising on any official traffic control device, except for business signs included as part of official motorist service panels or roadside area information panels approved by the secretary of transportation (KSA 8-1512).

KDOT policy has been to review individually any sign in the right of way that appears to be intended to be temporary. KDOT has stated in election-year press releases that "all political campaign signs or billboards are prohibited on the state right of way" and business and political signs in the right of way "will be removed immediately without notice" and taken to KDOT offices. KDOT officials have noted that fences should not be understood as marking right of way boundaries; anyone with a question about a right of way boundary should contact KDOT.

The Kansas Supreme Court has held, "The [Highway Advertising Control] Act does not attempt to regulate noncommercial speech or noncommercial signs, does not conflict with the First Amendment to the Constitution of the United States, and is a constitutional enactment." *Roberts Enterprises, Inc. v Secretary of Transportation*, 237 K. 276 (1985). No more recent cases have challenged that ruling.

June 1, 1991, and any highway on the national highway system. This includes most state highways. KDOT provides a map of the applicable highways on the website http://www.ksdot.org/burrow/beaut/.

Tourism Signage

The size, placement, and other specifics of "directional signs" and other "official signs and notices" along highways also are regulated. Federal guidance states tourist-oriented directional signs and specific service signs are not considered advertising; rather, they are classified as motorist service signs.[11] Tourism-oriented signs are coordinated by KDOT; the Department of Wildlife, Parks and Tourism, Division of Tourism; and a private company under contract to the state (for logo signs only). Brochures and guidelines are available from official websites and explain criteria (*e.g.*, attendance at an attraction noted on an official sign usually must be 2,000 or more) and the application process.[12]

- Other "official signs and notices" include signs and notices from public agencies erected within their jurisdiction, historical markers, public utility warning and information signs, and service club and religious notices (KAR 36-17-8). Cities may furnish their own tourism attraction signs along conventional highways (not freeways or expressways) within city limits.
- A "directional sign" is one "containing directional information about public places . . .; . . . natural phenomena, historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public" (KAR 36-17-8). Official brown "supplemental guide signs" (the term used in the current approval process) are installed at interchanges or intersections at KDOT expense. Only one such sign with two destinations per direction is allowed at an interchange.
- "Tourist-oriented directional signs" along the state highway system provide directional information to tourist-oriented businesses, seasonal agricultural products, services, and attractions that cannot be seen from the highway. An annual fee is charged for information on these blue signs.
- Eligible businesses may place information on "logo" signs at certain interchanges on the interstate highways. Attraction logo signs are coordinated by the Kansas sign contractor and are located at controlled access interchanges. If limited space is available, priority is given in this order: gas, food, lodging, camping, and attractions. The fee depends on the sign's placement and the highway's traffic count.

Traffic Control Signs

Since 1937, state law has required KDOT to "adopt a manual and specifications for a uniform system of traffic-control devices" (KSA 8-2003), and KDOT has adopted the Manual on Uniform Traffic Control Devices (2009 Edition, with revisions from May 2012) (MUTCD), a publication of the Federal Highway Administration.[13] State and local officials are to place and maintain traffic-control devices in ways conforming to the MUTCD (KSA 8-2004, KSA 8-2005).

The MUTCD states that, "To be effective, a traffic control device should meet five basic requirements: A. Fulfill a need; B. Command attention; C. Convey a clear, simple meaning; D. Command respect from road users; and E. Give adequate time for proper response. Design, placement, operation, maintenance, and uniformity are aspects that should be carefully considered in order to maximize the ability of a traffic control device to meet the five requirements . . . . Vehicle speed should be carefully considered as an element that governs the design, operation, placement, and location of various traffic control devices. . . . The proper use of traffic control devices should provide the reasonable and prudent road user with the information necessary to efficiently and lawfully

11 From the Manual of Uniform Traffic Control Devices, Section 1A.01

12 KDOT, "Outdoor Advertising in Kansas," available from http://www.ksdot.org/burrow/beaut/;"Signage Application and Guidelines," available at http://www.travelks.com/industry/signage/.

13 The MUTCD is available at http://mutcd.fhwa.dot.gov/. Federal law (23 CFR §655.603) requires states to adopt uniform sign requirements in substantial compliance with the MUTCD and encourages adoption of the MUTCD in its entirety.

use the streets, highways, pedestrian facilities, and bikeways."

The MUTCD includes standards for sign sizes, colors, reflectivity, height, borders, symbols used, and other features. Signs are illustrated.

The MUTCD states the placement of warning signs depends on the specific situation:

> This Manual describes the application of traffic control devices. . . . *Guidance: The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment.* Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of roads and streets that the devices complement. . . . 'Engineering judgment' [is defined as] the evaluation of available pertinent information, and the application of appropriate principles, provisions, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. . . . Warning signs should be placed so that they provide an adequate Perception-Response Time.[14]

KDOT has issued additional guidance based on the MUTCD and available to local road engineers.

Section 2M.10, Memorial or Dedication Signing, limits the legend on memorial or dedication signs to "the name of the person or entity being recognized and a simple message preceding or following the name, such as 'Dedicated to' or 'Memorial Parkway.' Additional legend, such as biographical information, shall not be displayed on memorial or dedication signs."

14 MUTCD, Sections 1A.09, 1A.13, 2C.05

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