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Federal and State Affairs

D-1 Amusement Parks

History of Amusement Parks

The modern amusement park can trace its roots back to early county fairs and carnivals. In Kansas, the first state fair was held in 1913 in Hutchinson. However, county fairs had been held at that location since 1873. The origin of traveling carnivals can be traced back to the 1893 Columbian Exposition in Chicago. The Columbian Exposition, also known as the World's Fair, introduced many new inventions, including the Ferris wheel.

Although the Ferris wheel was introduced in 1893, the first amusement rides are thought to have been built in the 1870s. As for roller coasters, the world's first coaster opened in 1884 at Coney Island, New York. It was there in 1895 where the first permanent amusement park was constructed. Previously, rides were operated individually. Ten years later, in 1905, the first amusement park in Kansas was constructed in Wichita when Wonderland Amusement Park was built on a sandbar in the Arkansas River. The park was in operation until 1918.

Other amusement parks were eventually developed in the state, including Joyland Amusement Park in Wichita, which operated from 1949 until 2004. Today, traveling carnivals continue to operate in the state, in addition to the Kansas State Fair, which is held each September. In addition, water parks and municipal pools are regulated by state law, provided their attractions fall within established definitions.

Regulation in Kansas

Since 1977, 21 bills, outlined in the following table, have been introduced to either establish new regulations or amend current laws concerning amusement parks. Four of those bills have been enacted.

Bill Number	General Subject	Outcome
1976 SB 842	Amusement Park Insurance	Died on Senate Calendar
1976 HB 2933	Amusement Safety Act	Died in Committee
1983 SB 198	Automatic Amusement Devices	Died in Committee
1983 HB 2547	Automatic Amusement Devices	Died in Committee
1986 SB 597	Amusement Park Regulation	Died in Committee
1993 HB 2401	Amusement Park Insurance	Be Not Passed Committee
1997 HB 2024	Amusement Park Permits, Inspections	Died in Committee
1998 HB 2722	Amusement Park Licensing	Died in Committee
1999 HB 2040	Amusement Park Regulation	Died in Conference Committee
1999 HB 2005	Amusement Park Insurance	Enacted
2001 HB 2120	Amusement Park Regulation	Died in Committee
2005 HB 2510	Coin Operated Machines	Died in Committee
2005 HB 2524	Coin Operated Machines	Died in Committee
2007 SB 193	Amusement Park Regulation	Added to HB 2504
2008 Senate Sub. for HB 2504	Amusement Park Regulation	Enacted
2008 HB 2616	Amusement Park Regulation	Added to HB 2504
2017 HB 2389	Amusement Park Regulation	Died in Committee (Contents inserted into 2017 House Sub. for SB 70)
2017 House Sub. for SB 70	Amusement Park Regulation	Enacted
2017 House Sub. for SB 86	Amusement Park Regulation	Enacted (Repealed House Sub. for SB 70)
2018 House Sub. for SB 307	Amusement Park Regulation	Enacted
2018 SB 310	Amusement Park Regulation	Enacted (Repealed SB 307)

Many of the bills in the table concerned establishing baseline regulations and insurance requirements. However, no insurance requirements were created in statute until 2000. Furthermore, no statutes regarding regulation of amusement rides were enacted until 2008 with the passage of the Kansas Amusement Ride Act (Act). During the 2017 Session, the Act was further amended and expanded.

2000 HB 2005—Kansas Amusement Ride Insurance Act

This bill established that amusement rides shall not be operated in the state unless the owner has a liability insurance policy that provides for coverage of up to $1.0 million in the aggregate. If the owner of the ride was a subdivision of the State, or a nonprofit organization, that individual would not be required to carry such insurance. In addition, city or county governments could establish and enforce safety standards for amusement rides and could establish higher amounts of required insurance.

During the 1999 Legislative Session, HB 2040 was introduced, which would have established statutory regulations over amusement rides and established permit and inspection provisions. However, the bill died in Conference Committee.

2008 Senate Sub. for HB 2504—Kansas Amusement Ride Act

The contents of 2008 Senate Sub. for HB 2504 (previously 2008 HB 2616) were drafted after a 2007 Interim study by the Special Committee on Federal and State Affairs. After enactment, the provisions became the first oversight of amusement rides in Kansas law. Under the new law, amusement ride owners would be required to inspect rides set up at a permanent location yearly and to conduct nondestructive testing. Inspections could be conducted by park employees, provided they held a National Association of Amusement Ride Safety Officials (NAARSO) Level I certification. Additionally, rides at a temporary location would be required to be inspected every 30 days.

The bill also provided that injuries of patrons must be reported to the park. If a serious injury occurred, operation of the ride would cease until the ride was re-inspected. Further, criminal penalties were established for knowing operation in violation of the statute. The bill also provided rule and regulation authority to the Secretary of Labor (Secretary) and also directed the Secretary to develop an inspection checklist and to conduct random inspections of rides.

2017 House Sub. for SB 70

The bill, prior to repeal and replacement by passage of 2017 House Sub. for SB 86, addressed regulation of amusement rides through many different categories, including the following:

- Permits;
- Registration;
- Amusement Ride Safety Fund;
- Injury reporting;
- Liability insurance;
- Definitions;
- Qualified inspectors;
- Inspections;
- Records;
- Standards for ride construction;
- Nondestructive testing;
- Criminal penalties; and
- Rule and regulation authority.

2017 House Sub. for SB 86

The bill, as enacted, repealed the provisions of 2017 House Sub. for SB 70. The bill included the same provisions of House Sub. for SB 70, as described above, and made further amendments. The amendments included:

- Directing the Secretary to promulgate rules and regulations before January 1, 2018;
- Requiring the Secretary to give owners a reasonable amount of time to comply with the Act;

- Removing language regarding liability insurance requirements for home-owned amusement rides;
- Requiring a certificate of inspection for permit issuance;
- Adding commercial zip lines to the definition of "amusement ride";
- Amending the definition of "serious injury" to include other injuries that require immediate medical treatment; and
- Requiring the Secretary to conduct compliance audits in place of random inspections.

2018 House Sub. for SB 307

The bill, prior to repeal and replacement by passage of 2018 SB 310, addressed regulation of amusement rides through many different categories, including the following:

- Permits;
- Permit applications;
- Registration;
- Insurance requirements;
- Inflatables; and
- Slide attendants.

2018 SB 310

The bill, as enacted, repealed the provisions of 2018 House Sub. for SB 307. The bill included the same provisions of House Sub. for SB 307, as described prior, and made further amendments. The amendments included a change of effective date and an additional reference to "antique amusement rides."

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Federal and State Affairs

D-2 Carrying of Firearms

Background

Kansas generally has not restricted gun laws at the state level since statehood. Prior to 2006, open carry of firearms was legal in the state except where prohibited by local ordinance. The state also had no provisions for concealed carry of firearms until 2006 when the Personal and Family Protection Act was enacted.

Personal and Family Protection Act (2006 SB 418)

Enactment made Kansas the 47th state to allow concealed carry and made it the 36th state that "shall issue" concealed carry permits. In other words, under the new law, Kansas would be required to issue a concealed carry permit to any person who met the education requirements, could lawfully possess a firearm, and who paid the licensing fee. Permits were issued beginning on January 1, 2007.

2013 Legislative Changes (2013 Senate Sub. for HB 2052 and 2013 SB 21)

The 2013 Legislature passed Senate Sub. for HB 2052, which added new sections to the Personal and Family Protection Act (PFPA), 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.

2015 Legislative Changes (2015 SB 45)

SB 45 (2015) allowed the concealed carry of a firearm without a concealed carry license issued by the State as long as the individual carrying the firearm is not prohibited from possessing a firearm under either federal or state law.

2017 Legislative Changes (2017 Senate Sub. for HB 2278)

Senate Sub. for HB 2278 (2017) exempted the following institutions from a general requirement in law that public buildings have

adequate security measures in place before the concealed carry of handguns can be prohibited:

- State- or municipal-owned medical care facilities and adult care homes;
- Community mental health centers;
- Indigent health care clinics; and
- Any buildings located in the health care district associated with the University of Kansas Medical Center.

2018 Legislative Changes (2018 HB 2145)

HB 2145 (2018) amended the definition of "criminal use of weapons" by adding possession of a firearm by any of the following: fugitives from justice; aliens illegally or unlawfully in the United States; persons convicted of a misdemeanor for a domestic violence offense within the past five years; and persons subject to court orders restraining them from harassing, stalking, or threatening an intimate partner, child, or child of an intimate partner.

The bill also specified possession of a device or attachment designed, used, or intended for use in suppressing the report of any firearm shall be exempt from the definition of "criminal use of weapons" if the device or attachment satisfies the description of a Kansas-made firearm accessory in current law. The exemption applies to any "criminal use of weapons" violation that occurred on or after April 25, 2013.

Carrying of Concealed Weapons

Prior to the enactment of 2015 SB 45, Kansas citizens who wished to carry a concealed firearm in the state were required to possess a permit issued by the Kansas Attorney General. However, after January 1, 2014, any person who could lawfully possess a handgun in the state could carry it concealed without a permit. This makes Kansas a "constitutional carry" state. If a Kansas resident desires to carry a concealed handgun in a different state, they would need a Kansas concealed carry permit, provided the state recognizes Kansas-issued permits.

Permit Qualifications

The applicant must:

- Be 21 years of age or older;
- Live in the county in which the license is applied for;
- Be able to lawfully possess a firearm;
- Successfully complete the required training course; and
- Pay application and background check fees ($112).

Unlicensed Concealed Carry

Since the enactment of 2015 SB 45, citizens have been able to carry concealed firearms in the state without a permit. However, the law provides some exceptions. Private property owners can exclude weapons from their premises. Additionally, state or municipal buildings must allow citizens to carry concealed firearms, unless adequate security is present. "Adequate security," as defined by law, includes armed guards and metal detectors at every public access entrance to a building. Furthermore, state or municipal employers may not restrict the carry of concealed firearms by their employees, unless adequate security is present at each public access entrance to the building. Correctional facilities, jails, and law enforcement agencies may exclude concealed weapons in all secured areas, and courtrooms may be excluded, provided that adequate security is present at each public access entrance.

Public Buildings Exceptions

Under the PFPA, several types of public buildings are excluded and are allowed to ban concealed firearms for a period of four years.

State- or Municipal-Owned Hospitals, Mental Health Centers, and Community Mental Health Centers

Senate Sub. for HB 2278 (2017) exempted the following institutions from a general requirement in law that public buildings have adequate

security measures in place before the concealed carry of handguns can be prohibited: state- or municipal-owned medical care facilities and adult care homes; community mental health centers; indigent health care clinics; and any buildings located in the health care district associated with the University of Kansas Medical Center.

Public College Campuses

Under the PFPA, Board of Regents institutions were able to exclude concealed firearms from their campuses until July 1, 2017. Now, Board of Regents institutions must allow concealed firearms in buildings in which adequate security is not provided. The Board of Regents adopted a policy that stated those who carry on campus must be 21 years of age. Further, they must completely conceal their weapon, and the safety must be engaged. Each university has adopted its own concealed weapons policy in accordance with the law. Kansas is 1 of 21 states whose laws state that public universities must allow concealed weapons on their campuses.

State Capitol Building

Under the PFPA, the State Capitol building is excluded from the definition of state and municipal building. Furthermore, the law states that citizens may carry a concealed firearm within the State Capitol, provided they are lawfully able to possess a firearm.

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Federal and State Affairs

D-3 Legalization of Medical and Recreational Marijuana

Although the use of medical or recreational marijuana is not legal in Kansas, several bills have been introduced to change the law. Medical marijuana use is legal in 33 states and the District of Columbia, and recreational use of marijuana is legal in 10 states and the District of Columbia. This article summarizes the bills that have been introduced in Kansas and provides an overview on the legalization and decriminalization that has occurred in other states.

Medical Use of Marijuana

History of Legislation in Kansas

In the last 14 years, 15 bills were introduced in the Kansas Legislature addressing the topic of medical marijuana or cannabidiol. The only bill to be enacted was 2018 SB 282, which amended the definition of marijuana to exempt cannabidiol.

Sub. for SB 155 (2017) would have amended law concerning nonintoxicating cannabinoid medicine (NICM). Under the bill, no person could have been arrested, prosecuted, or penalized in any manner for possessing, utilizing, dispensing, or distributing any NICM or any apparatus or paraphernalia used to administer the medicine. The bill would have specified the physicians issuing recommendation orders for NICM and pharmacists dispensing or distributing NICM could not have been subject to arrest, prosecution, or any penalty, including professional discipline. The bill was recommended for passage by the Senate Committee on Federal and State Affairs. At the beginning of the 2018 Session, the bill was rereferred to the Senate Committee and died in Committee.

During the 2015 Legislative Session, HB 2282 advanced out of its original committee and its contents passed the House Committee of the Whole as an amendment to HB 2049. HB 2282, as amended, would have allowed use of medical hemp preparations to treat or alleviate a patient's condition causing seizures, including those characteristic of epilepsy. The bill was withdrawn from General Orders in the House of Representatives and referred to the House Committee on Appropriations, where it died. (*Note:* See additional information about HB 2049 under the heading "Penalties and Decriminalization" on the following page.)

In 2010, HB 2610 would have allowed for the creation of not-for-profit Compassionate Care Centers and for these facilities to issue registration certificates, registry identification cards, and marijuana to patients. The bill would have allowed patients and caregivers to possess certain amounts of marijuana plants, usable marijuana, and seedlings of unusable marijuana. Also, the bill would have provided patients and caregivers with certain levels of immunity from arrest, prosecution, or other civil penalties. Finally, the bill would have prohibited discrimination against patients from schools, landlords, employers, and other entities.

Slight variations of 2010 HB 2610 were introduced in 2011 (HB 2330), 2012 (SB 354), 2013 (HB 2198 and SB 9), 2015 (HB 2011 and SB 9), and 2017 (SB 155, SB 187, and HB 2348).

Other States

The District of Columbia and 33 states have laws legalizing medical marijuana and cannabis programs. The laws in these states meet the following criteria: protection from criminal penalties for using marijuana for a medical purpose; access to marijuana through home cultivation, dispensaries, or some other system that is likely to be implemented; allowance for a variety of strains; and allowance of either smoking or vaporization of marijuana products, plant material, or extract.

Another 19 states allow use of low THC, high cannabidiol products for specific medical conditions or as a legal defense. Both Missouri and Iowa enacted laws in 2014 to allow cannabidiol oil to be prescribed to individuals who suffer from intractable epilepsy, a seizure disorder in which a patient's seizures fail to come under control with treatment.

Recreational Use of Marijuana

Other States

The District of Columbia and ten states (Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, and Washington) have legalized the recreational use of marijuana as of November 2018.

In 2018, Vermont became the first state to legalize recreational marijuana through the legislative process. The other nine states used a ballot initiative. Twenty-one states had bills before legislatures in 2017 to advance or allow the use of recreational marijuana for adults.

Penalties and Decriminalization

Kansas

SB 112 (2017) reduced the severity level for unlawful possession of drug paraphernalia from a class A to a class B nonperson misdemeanor when the drug paraphernalia was used to cultivate fewer than five marijuana plants or used to store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body. This provision became effective July 1, 2017.

HB 2049 was introduced during the 2015 Legislative Session. As introduced, the bill would have decreased the penalty for possession of marijuana in certain circumstances. The bill, as amended by the House Committee of the Whole, would have allowed use of medical hemp preparations to treat or alleviate a patient's condition causing seizures and would have created the Alternative Crop Research Act that would have allowed the Kansas Department of Agriculture (KDA) to cultivate and promote the research and development of industrial hemp. In 2016, the contents of the bill decreasing the criminal penalty in certain circumstances were inserted into HB 2462, which was approved by the Governor on May 13, 2016. The remainder of the contents from HB 2049, as amended by the House Committee of the Whole, were not included and did not become law.

In 2018, SB 263 enacted the Alternative Crop Research Act (Act), which allows the KDA, either alone or in coordination with a state institution of higher education, to grow and cultivate industrial hemp and promote the research and

development of industrial hemp, in accordance with federal law. The bill allows individuals to participate in the research program under the authority of the KDA. The bill amends KSA 2018 Supp. 21-5701, dealing with criminal law, and KSA 65-4101, dealing with controlled substances, excluding "industrial hemp" from the definition of "marijuana," when cultivated, possessed, or used for activities authorized by the Act.

Wichita City Ordinance

In April 2015, Wichita passed an ordinance during the general election that lessened the penalty for first-time marijuana possession. The new ordinance would impose up to a $50 fine for first-time possession of a small amount of marijuana. After the election, the Kansas Attorney General filed a lawsuit against the City of Wichita seeking to have the ordinance declared null and void.

On May 13, 2015, the Kansas Supreme Court ordered the City of Wichita not to enforce the marijuana ordinance until the Court could issue a ruling on its validity. The ordinance conflicts with state law, where marijuana possession is a misdemeanor punishable by up to a year in jail and a $2,500 fine.

The Kansas Supreme Court heard oral arguments on September 17, 2015. In its January 2016 ruling, the Court struck down the ordinance, citing the proponents' failure to comply with statutory procedures in filing its proposal with the city clerk. Therefore, the Court declined to rule on the merits of the case.

On June 6, 2017, the Wichita City Council voted to preliminarily approve the reduction of the penalty for first-time marijuana offenses. The Council will take another vote at a later date to finalize the reduction.

Other States

The District of Columbia and 22 states have decriminalized the use of small amounts of marijuana. Additional decriminalization efforts were introduced in 16 states in 2018.

In addition to legalization and decriminalization, efforts to reduce penalties related to marijuana were before 14 state legislatures in 2018.

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Federal and State Affairs

D-4 Liquor Laws

Kansas laws concerning intoxicating 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, farm winery statutes, microbrewery statutes, and microdistillery statutes.

State and Local Regulatory Authority

The Division of Alcoholic Beverage Control (ABC) and the Director of ABC within the Kansas Department of Revenue (KDOR) have the primary responsibility for overseeing and enforcing Kansas intoxicating 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 the sale of intoxicating and alcoholic liquors and cereal malt beverages in the State of Kansas. Article 15 §10 of the *Kansas Constitution* allows the Legislature to regulate intoxicating liquor. Cities and counties have the option to remain "dry" and 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.

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.

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 may 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 requires such action by local governments in specific situations.

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 may submit a proposition to voters to (1) prohibit the sale of individual alcoholic drinks in the county, (2) permit the sale of individual alcoholic drinks only if an establishment receives 30.0 percent of its gross receipts from food sales, or (3) 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 at least 10.0 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 language required in KSA 41-2646(3)(b), and the petition must be filed with the county election officer.

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.

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 FMB regulation and penalties associated with FMBs in the state. Because FMBs are cereal malt beverages, they are regulated under the Cereal Malt Beverage Act.

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 void.

Liquor Taxes

Currently, Kansas imposes three levels of liquor taxes. For more information, see article *K-3 Liquor Taxes*.

2018 Changes to Liquor Laws—HB 2362

Microbreweries production and packaging. The bill allows microbreweries in Kansas to contract with other microbreweries for production and packaging of beer and hard cider. The contracting Kansas microbrewery will be held to all applicable state and federal laws concerning manufacturing, packaging, and labeling and will be responsible for payment of all state and federal taxes on the beer or hard cider. Production of beer or hard cider will count toward production limits in current law for both the microbreweries involved in such a contract. The bill allows the beer or hard cider to be transferred to the microbrewery on whose behalf the beer or hard cider was produced, after production and packaging.

Sale of alcoholic candy. The bill defines "alcoholic candy" and includes the term in the existing definition of "alcoholic liquor." Alcoholic candy is subject to regulation by the ABC and a retailer is required to have a liquor license to sell such products.

Sale of domestic beer in refillable containers. The bill allows a microbrewery licensee to sell beer manufactured by the licensee in refillable and sealable containers to consumers for off-premises consumption. Such containers may not contain less than 32 fluid ounces or more than 64 fluid ounces of beer. Licensees are required to affix labels to all containers sold, which includes the licensee's name and the name and type of beer in the container.

Hours of sale and service for alcohol. The bill increases the length of time that certain businesses may serve or sell alcohol:

- Establishments licensed to serve alcohol may begin serving alcohol at 6:00 a.m.; and
- Farm wineries, microbreweries, and microdistilleries are allowed to sell their respective alcoholic products in their original containers between 6:00 a.m. and 12:00 a.m. on any day.

Self-service beer from automated devices. The bill allows licensed public venues, clubs, and drinking establishments to provide self-service beer to customers from automated devices in the same manner as is permitted for wine under continuing law, so long as the licensee monitors the dispensing of beer and can control such dispensing. The bill requires any licensee offering self-service beer or wine from any automated device to provide constant video monitoring of the automated devices at all times the licensee is open to the public and maintain the footage for at least 60 days. The bill also sets out requirements for prepaid access cards that contain a fixed monetary amount that can be directly exchanged for beer or wine from an automated device.

2017 Changes to Liquor Laws—House Sub. for SB 13; Sub. for HB 2277

House Sub. for SB 13

Expanded sale of strong beer. The bill allows convenience, grocery, and drug stores licensed to sell cereal malt beverages (CMB), defined as any fermented but undistilled beverage with an alcohol weight of 3.2 percent or less, to sell beer containing not more than 6.0 percent alcohol by volume on and after April 1, 2019. Also effective April 1, 2019, any person with a retailer's license to sell alcoholic liquor (beer, wine, and distilled spirits) may sell CMB. Liquor retailers may sell other goods or services, provided the amount of nonalcoholic sales—excluding the sales of lottery tickets, cigarettes, and other tobacco products—does not exceed 20.0 percent of the retailer's total gross sales. Liquor retailers may continue to provide product for resale by bars, restaurants, clubs, and caterers. Distributors may establish minimum quantities and dollar amounts for orders of CMB and alcoholic liquor. Ten years after the bill's effective date, the Director of ABC must conduct a market impact study on the sale

of beer by persons holding CMB licenses, which must be reported in the 2029 Legislative Session.

Sub. for HB 2277

Common consumption areas. The bill allows a city or county to establish one or more common consumption areas by ordinance or resolution and designate the boundaries of these areas. Common consumption area permits can be issued to cities, counties, Kansas residents, or organizations with a principal place of business in Kansas and approved by the respective city or county. Common consumption area permit holders are liable for liquor violations occurring within the common consumption area the permit identifies. Licensees are liable for violations on their individual premises.

Class B clubs. The bill also removes from current law a ten-day waiting period for an applicant to become a member of a class B club.

2016 Changes to Liquor Laws—SB 326

Microbrewery production limits. The legislation increased the allowable amount of beer manufactured with a microbrewery license to 60,000 barrels of domestic beer in a calendar year for each microbrewery license issued in the state. If a licensee has a 10.0 percent or greater ownership interest in one or more entities that also hold a microbrewery license, the aggregate amount of beer manufactured by all licenses under such common ownership cannot exceed 60,000 barrels.

The legislation allowed microbrewery licensees also licensed as a club or drinking establishment to sell and transfer domestic beer to that club or drinking establishment. Microbrewery licensees also are able to remove hard cider produced by the licensee from the licensed premises for delivery to licensed wine distributors.

Hard cider. The legislation allowed a microbrewery to manufacture and distribute not more than 100,000 gallons of hard cider, as defined by the bill. Under prior law, microbreweries could manufacture only beer.

Residency requirements. The legislation amends the Liquor Control Act to remove the one-year residency requirement for microbrewery, microdistillery, and farm winery licensees. Microbrewery, microdistillery, and farm winery licensees still are required to be Kansas residents.

2015 Changes to Liquor Laws—HB 2223

Infusion. The legislation allowed drinking establishments to sell and serve alcoholic liquor infused with spices, herbs, fruits, vegetables, candy, or other substances intended for human consumption if no additional fermentation occurs during the process.

Citations. In addition to making changes to the required contents of citations, the legislation specified when issuing a citation for a violation of the liquor laws, agents of the ABC must deliver the citation issued to a person in charge of the licensed premises at the time of the alleged violation.

Previously, the law required delivery of the citation to the person allegedly committing the violation.

Powdered alcohol. The legislation banned clubs, drinking establishments, caterers, holders of temporary permits, and public venues from selling, offering to sell, or serving free of charge any form of powdered alcohol.

Automated wine devices. The legislation allowed public venues, clubs, and drinking establishments to offer customer self-service of wine from automated devices on licensed premises. Licensees are required to monitor and have the ability to control the dispensing of wine from the automated devices.

Eligibility for licensure. The legislation added to the list of persons who cannot receive liquor licenses any person who, after a hearing before the Director of ABC, is found to have held an undisclosed beneficial interest in a liquor license obtained through fraud or a false statement on the application for the license. The legislation also established requirements for limited liability companies applying for a liquor license.

Alcohol consumption on Capitol premises. The legislation allowed consumption of alcoholic liquor on the premises of the Capitol for official state functions that are nonpartisan in nature. Any such function must be approved by the Legislative Coordinating Council before the consumption of alcoholic liquor may begin.

Alcohol consumption on unlicensed premises. The legislation provided that patrons and guests of unlicensed businesses will be allowed to consume alcoholic liquor and CMB on the premises of unlicensed business property if the following conditions are met:

- The business, or any owner of the business, has not had a license issued under the Kansas Liquor Control Act or the Club and Drinking Establishment Act revoked for any reason;
- No charge is made by the business for the privilege of possession or consumption of alcohol on the premises or for mere entry onto the premises; and
- Any alcoholic liquor remains in the personal possession of the patron, it is not sold, offered for sale, or given away by the owner or employees of such business, and no possession or consumption takes place between 12 a.m. and 9 a.m.

Alcohol consumption for catered events. The legislation allowed the consumption of alcoholic liquor at catered events held on public property where the caterer has provided 48-hour notice to ABC.

Notification requirements. The legislation changed the required notification caterers must give to ABC by requiring electronic notice 48 hours before an event. Previously, the law required a caterer to provide notice to ABC 10 days before any event and provide notice to the Chief of Police or Sheriff where the event was to occur.

Distributor sampling. The legislation allowed alcoholic beverage distributors to provide samples of spirits, wine, and beer or cereal malt beverages to alcoholic beverage retailers and their employees and other alcoholic beverage distributors and their employees in the course of business or at industry seminars.

Vineyard permits. The legislation allowed any person engaged in business as a Kansas vineyard with more than 100 vines to apply for an annual permit. The permit authorizes the following on the premises specified in the permit:

- The sale of wine in the original, unopened container;
- The serving of wine by the drink; and
- Conducting wine tastings in accordance with current law.

Location of certain licensees. The legislation allowed cities to pass ordinances allowing liquor retailers, microbreweries, microdistilleries, and farm wineries to locate within 200 feet of any public or parochial school, college, or church in a core commercial district.

Temporary permits: State Fair. The legislation allowed the Director of ABC, on or after July 1, 2016, to issue a sufficient number of temporary permits for the sale of wine in unopened containers and the sale of beer, wine, or both by the glass on the State Fairgrounds. The number of permits issued must be consistent with the requirements of the State Fair Board.

Farmers' market permits. The legislation allowed farm wineries to sell wine at farmers' markets. Applications for these permits must include the location(s) of the farmers' markets at which wine will be sold.

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Federal and State Affairs

D-5 Lottery, State-owned Casinos, Parimutuel Wagering, and Tribal Casinos

Article 15, Section 3 of the *Kansas Constitution* prohibits lotteries and the sale of lottery tickets forever. The prohibition was adopted by convention, approved by voters in 1859, and approved by the Legislature in 1861. Exceptions to the prohibitions were added in 1974 to allow for bingo and bingo games and in 1986 to allow for the Kansas Lottery (including State-owned casinos, since 2007) and parimutuel wagering on dog and horse races.

Revenue. Kansas laws provide for the allocation of Lottery revenues to the State Gaming Revenues Fund (SGRF), State General Fund (SGF), Expanded Lottery Act Revenues Fund (ELARF), and Problem Gambling and Addictions Grant Fund. In FY 2018, these funds received a total of $163.7 million.

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 and required 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 at least 45.0 percent of the money collected from ticket sales to be awarded as prizes and at least 30.0 percent of the money collected to be transferred to the SGRF;
- Exempted lottery tickets from sales tax; and

- Allowed liquor stores, along with other licensed entities, to sell lottery tickets.

Lottery games receipts from the sale of tickets and online games are deposited by the Executive Director of the Kansas Lottery into the Lottery Operating Fund in the State Treasury. Moneys in that fund are used to:

- Support the operation of the Lottery;
- Pay prizes to lottery winners by transfers to the Lottery Prize Payment Fund;
- Provide funding for veterans and individuals suffering from problem gambling, alcoholism, drug abuse, and other addictive behaviors *via* transfers to the SGRF; and
- Provide funding for correctional facilities, juvenile facilities, economic development, and the SGF *via* transfers to the SGRF.

Vending machines. The 2018 Legislature passed Sub. for HB 2194, which authorizes the Kansas Lottery to use lottery ticket vending machines to sell lottery tickets and instant bingo vending machines to sell instant bingo tickets.

Veterans Benefit Lottery Game. The 2003 Legislature passed HB 2400 authorizing the Kansas Lottery to sell an instant ticket game, year-round, benefiting veterans' programs. Pursuant to KSA 74-8724, net profits are distributed accordingly:

- 40.0 percent for Kansas National Guard educational scholarships and for other purposes directly benefiting members of the Kansas Army and Air National Guard and their families;
- 30.0 percent for the use and benefit of the Kansas Veterans' Home, Kansas Soldiers' Home, and Veterans Cemetery System; and
- 30.0 percent for the Veterans Enhanced Service Delivery Program.

State-owned Casinos

The 2007 Legislature passed SB 66, commonly referred to as the Kansas Expanded Lottery Act (KELA), authorizing a State-owned and operated lottery involving electronic gaming and racetrack gaming facilities. A proviso in KELA stated that any action challenging the constitutionality of KELA shall be brought in Shawnee County District Court.

In *State ex rel. Morrison v. Kansas Lottery* 07C-001312, the Shawnee County District Court ruled KELA was constitutional because of the State's selection of casino managers and electronic games, monitoring of managers' daily activities, ownership of gaming software, and control over revenue distribution demonstrate ownership and operation of a lottery involving electronic gaming. In *State ex rel. Six v. Kansas Lottery*, 186 P. 3d 183 (Kan. 2008), the Kansas Supreme Court upheld the district court's ruling on the constitutionality of KELA.

Revenue. In FY 2018, revenue from the Kansas Regular Lottery was transferred from the SGRF in the following manner:

Veterans' Programs	$	1,028,373
Economic Development Initiatives Fund		42,364,000
Juvenile Detention Fund		2,496,000
Correctional Institutions Building Fund		4,932,000
Problem Gambling Grant Fund		80,000
State General Fund		23,826,170[1]
Total	**$**	**74,726,543**

1 Pursuant to statute, no more than $50.0 million from online games, ticket sales, and parimutuel wagering revenues can be transferred to the SGRF in any fiscal year. Amounts in excess of $50.0 million are credited to the SGF, except when otherwise provided by law.

Where Can State Casinos Be Located in Kansas?

KELA created gaming zones for expanded gaming.

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 has ownership and operational control. In addition, the Lottery is authorized to enter into contracts with the gaming managers for gaming at the exclusive and nonexclusive (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?

KSA 74-8734 details the requirements of gaming facility contracts. Among other things, the contracts must include an endorsement from local governments in the area of the proposed facility and provisos that place ownership and operational control of the gaming facility with the Kansas Lottery, allow the KRGC complete oversight of operations, and distribute revenues pursuant to statute. The contracts also must include provisions for the payment of a privilege fee and investment in infrastructure. The 2014 Legislature passed HB 2272, which lowered the privilege fee in the Southeast Gaming Zone from $25.0 million to $5.5 million and lowered the investment in infrastructure in the Southeast Gaming Zone from $225.0 million to $50.0 million.

The Lottery solicits proposals, approves gaming zone contracts, and submits the contracts to the Lottery Gaming Facility Review Board for consideration and determination of the contract for each zone. 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 KRGC provides administrative support to the Board.

Revenue. Pursuant to KSA 74-8768, expanded gaming revenues deposited into the ELARF may only be used for state infrastructure improvements, the University Engineering Initiative Act, and reductions of state debt, the local *ad valorem* tax, and the unfunded actuarial liability of the Kansas Public Employees Retirement System (KPERS). In FY 2018, expenditures and transfers from the ELARF included:

KPERS Bonds Debt Service	$	35,698,913
Public Broadcasting Council Bonds		440,057
Kan-Grow Engineering Funds		10,500,000
KPERS Actuarial Liability		39,883,000
State General Fund		2,469,790
Total	**$**	**88,991,760**

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 following year, the Kansas Parimutuel Racing Act was passed:

- Creating the Kansas Racing Commission, later renamed the KRGC, which is authorized to license and

regulate all aspects of racing and parimutuel wagering;

- Permitting only non-profit organizations to be licensed and allowing the licenses to be for an exclusive geographic area;
- Creating a formula for taxing the wagering;
- Providing for simulcasting of both interstate and intrastate horse and greyhound races in Kansas and allowing parimutuel wagering on simulcast races in 1992; and
- Providing for the transfer from the State Racing Fund to the SGRF of any moneys in excess of amounts required for operating expenditures.

There are currently no year-round parimutuel racetracks operating in Kansas; therefore, there was no revenue transfer to the SGRF from parimutuel racing.

Racetrack Gaming Facilities

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?

A person who is the manager of a lottery gaming facility is ineligible to be a manager of a racetrack facility in the same gaming zone. KSA 74-8741 details the requirements of racetrack gaming facility contracts. Among other things, the contract must include language that allows the KRGC complete oversight of operations and the distribution of revenue pursuant to statute.

What Racetrack Facilities Are Permitted to Have Slot Machines?

The passage of 2007 SB 66 created gaming zones for casinos and parimutuel racetracks housing electronic gaming machines. Currently, there are no racetrack facilities operating in Kansas. In the future, the Kansas Lottery can negotiate a racetrack gaming facility management contract to place electronic gaming machines at one parimutuel license location in each of the gaming zones, except for the Southwest Gaming Zone and Sedgwick County in the South Central Gaming Zone (voters in these gaming zones did not approve the placement of electronic gaming machines at parimutuel locations).

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 allow 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 casino gaming facilities:

- Kickapoo Tribe opened 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 opened the Sac and Fox Casino in February 1997; and
- 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.

State Gaming Agency. The State Gaming Agency (SGA) was created by executive order in August 1995, as required by the tribal-state gaming compacts. Passage of the Tribal Gaming Oversight Act during the 1996 Legislative Session attached the SGA to the KRGC for budget purposes. All management functions of the SGA are administered by the Executive Director of SGA.

The gaming compacts define the relationship between the SGA and the tribes: regulation of the gaming facilities is performed by the tribal gaming commission, but enforcement agents of the SGA also work 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.

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Federal and State Affairs

D-6 Red Flag Laws

What Are Red Flag Laws?

Red flag laws, sometimes called extreme risk protection order laws or gun violence restraining order laws, allow a judge to issue an order that enables law enforcement to confiscate firearms from individuals deemed a risk to themselves or others. Prior to the enactment of red flag laws, in most states, law enforcement had no authority to remove firearms from individuals unless they had been convicted of specific crimes, even if their behavior was deemed unsafe.

Depending on state laws, family members, household members, law enforcement, or a mixture of these groups, can ask the court for an order that would allow police to remove the firearm or firearms from the individual's home and restrict their ability to purchase firearms. Typically, the person seeking the order must provide evidence of behavior that presents a danger to others or themselves; then the court holds an expedited hearing. If a judge agrees the individual is a threat, the individual's firearms will be removed for a temporary period that can last from a few weeks to a year. However, the firearm owner is usually entitled to a hearing so that they may respond.

What Actions Constitute a 'Red Flag'?

While each state defines what constitutes a "red flag" differently, the following are some examples:

- Recent threats or acts of violence by such person directed toward themselves or other persons;
- The reckless use, display, or brandishing of a firearm by such person;
- History of documented evidence that would give rise to a reasonable belief the individual has a propensity for violent or emotionally unstable conduct;
- History of the use, attempted use, or threatened use of physical force by such person against other persons;
- History of mental illness or prior involuntary confinement of such person in a hospital for persons with psychiatric disabilities; and
- The illegal use of controlled substances or abuse of alcohol by such person.

State Actions

Enacted

Before 2018, only five states had enacted red flag laws: Connecticut, Indiana, California, Washington, and Oregon.

In 1999, Connecticut became the first state to enact a law permitting law enforcement the legal authority to temporarily remove firearms from individuals when there is probable cause to believe they are a risk to themselves or others (C.G.S.A. §29-38c).

Indiana enacted the state's red flag law in 2005 (IC 35-47-14 *et seq.*).

California became the first state to allow family members to file a petition for firearms to be removed from an individual's possession when the state enacted their red flag law in 2014. The California Legislature passed a measure in 2016 to allow high school and college employees, co-workers, and mental health professionals to file such petitions, but this legislation was vetoed by Governor Brown (CA Penal Code §18100 *et seq.*).

Washington also enacted a similar red flag law in 2016. Washington, like California, allows family members to petition for the removal of firearms (Chapter 7.94 RCW, Extreme Risk Protection Order Act).

In 2017, Oregon enacted its red flag law (O.R.S. §166.525 *et seq.*).

As of September 2018, an additional eight states have enacted red flag laws. These states are Delaware, Florida, Illinois, Maryland, Massachusetts, New Jersey, Rhode Island, and Vermont.

Considered

During the 2017 and 2018 Legislative Sessions, 23 states and the District of Columbia considered red flag legislation. These states are Alabama, Alaska, Arizona, Colorado, Hawaii, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Nevada, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia, and Wisconsin.

Did Not Consider

During the 2017 and 2018 Legislative Sessions, 14 states did not consider red flag legislation. These states are Arkansas, Georgia, Idaho, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, West Virginia, and Wyoming.

However, Arkansas and New Mexico have red flag bills drafted for the 2019 Legislative Session.

Federal Legislation

Four bills have been introduced at the federal level concerning red flag laws. All but one bill, the Gun Violence Prevention Order Act of 2017, have received bipartisan support.

2017 Legislation

The Gun Violence Restraining Order Act of 2017, H.R. 2598, introduced in May 2017, would define a gun violence prevention order as a written order, issued by a state court or signed by a magistrate, prohibiting a named individual from having custody, controlling, purchasing, possessing, or receiving any firearms, or would require the removal of firearms from that individual's possession. As of May 2017, the bill is in the House Committee on the Judiciary.

The Gun Violence Prevention Order Act of 2017, S. 1212, introduced in May 2017, would define a gun violence prevention order as a written order, issued by a state court or signed by a magistrate, prohibiting a named individual from having custody, owning, purchasing, possessing, or receiving any firearms, or would require the removal of firearms from that individual's possession. As of March 2018, the bill is in the Senate Committee on the Judiciary.

Both of the bills described would provide federal grants to states that implement red flag laws.

2018 Legislation

The Federal Extreme Risk Protection Order Act of 2018, S. 2521, was introduced in the Senate in March 2018. The bill would amend Chapter 44 of Title 18 of the U.S. Code by including extreme risk protection orders in federal law. Under the bill, an extreme risk protection order would be issued by a federal court and would enjoin an individual from purchasing, possessing, or receiving, in or affecting interstate and foreign commerce, a firearm or ammunition. As of March 2018, the bill is in the Senate Committee on the Judiciary.

The Extreme Risk Protection Order and Violence Prevention Act of 2018, S. 2607, also introduced in March 2018, would add a new section to Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 *et seq.*). The bill would define an extreme risk protection order as a written order for a period not to exceed 12 months, issued by a state or tribal court or signed by a magistrate that would prohibit the individual named in the order from having custody, controlling, purchasing, possessing, or receiving any firearms, or would require a firearm be removed from that individual's possession.

Under these bills, with the exception of the Gun Violence Restraining Order Act of 2017, a family or household member of the applicable individual, or a law enforcement officer, may submit a petition requesting that a court issue a gun violence prevention or an extreme risk protection order. Under the Gun Violence Restraining Order Act of 2017, only a family member or a law enforcement officer may submit a petition.

Kansas Legislation

SB 390 was introduced during the 2018 Legislative Session. The bill would have created the Extreme Risk Protective Order Act, which would allow courts to grant an order prohibiting defendants from owning, controlling, or purchasing a firearm or ammunition for up to one year. A law enforcement officer or family member would have been allowed to file a petition for an Extreme Risk Protective Order (ERPO). After an ERPO was issued, the defendant would have been required to relinquish all firearms and ammunition to law enforcement. The bill died in the Senate Committee on Judiciary.

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Federal and State Affairs

D-7 Regulation of Robocalls

Unsolicited calls are among the most frequent consumer complaints received by the Federal Communications Commission (FCC) and Federal Trade Commission (FTC). The use of automatic dialing-announcing devices (referred to as robocalls) to make these calls is on the rise, with estimates indicating 4.1 billion such calls were received across the United States in July 2018 alone. Utilities, pharmacies and health care providers, schools, and other entities use robocalls to provide billing, scheduling, and other information to the public. However, an increasing number of robocalls made to consumers are unsolicited, illegitimate, and unwanted. As the frequency of these calls increases, states have been taking action to minimize robocalls. This article discusses the current state of the law concerning robocalls in Kansas and other states, as well as recent legislation and court cases at both the state and federal levels.

Current Kansas Law

KSA 2018 Supp. 50-670 prohibits calls to consumers from automatic dialing-announcing devices in certain instances. The statute defines "automatic dialing-announcing device" to mean any user terminal equipment that when connected to a telephone line, can dial, with or without manual assistance, telephone numbers that have been stored or programmed in the device or are produced or selected by a random or sequential number generator, or when connected to a telephone line can disseminate a recorded message to the telephone number called, either with or without manual assistance. The statute requires any telephone solicitor making calls, including robocalls, to:

- Identify themselves;
- Identify the business on whose behalf such person is soliciting;
- Identify the purpose of the call immediately upon making contact by telephone with the person who is the object of the telephone solicitation;
- Promptly discontinue the solicitation if the person being solicited gives a negative response at any time during the consumer telephone call;
- Hang up the telephone, or in the case of an automatic dialing-announcing device operator, disconnect the

automatic dialing-announcing device from the telephone line within 25 seconds of the termination of the call by the person being called; and

- Answer the line within 5 seconds of the beginning of the call by a live operator or an automated dialing-announcing device. If answered by automated dialing-announcing device, the message provided shall include only caller identification information, but shall not contain any unsolicited advertisement.

The statute states a telephone solicitor shall not be allowed to do the following:

- Withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes;
- Transmit any written information by facsimile machine or computer to a consumer after the consumer requests orally or in writing that such transmissions cease; and
- Obtain by use of any professional delivery, courier, or other pickup service receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected.

The statute is supplemental to the Kansas Consumer Protection Act (KCPA) and provides local exchange carriers and telecommunications carriers shall not be responsible for the enforcement of the provisions of this section and any violation of this section is an unconscionable act or practice under the KCPA.

State Action[1]

Currently, 44 states limit commercial robocalls in some way. Several states also limit robocalls to mobile devices. Laws in Arizona, California, Colorado, Connecticut, Florida, Indiana, Louisiana, Michigan, Missouri, North Dakota, Ohio, Oklahoma, Rhode Island, Utah, and Washington specifically limit the use of automated text messages. Some states also specifically prohibit robocalls from being made to emergency rooms, hospitals, hotel rooms, vacation rentals, paging devices, unlisted or unpublished numbers, and other numbers.

Most states generally prohibit robocalls and automatic text messages, but have specific exceptions in their statutes. Examples of instances where automated calling or messaging may be allowed despite a general prohibition on the practice include delivery, delay, or other information about a purchase; prior relationship between the parties; charitable or nonprofit organization, public opinion polls, research surveys, or radio or television broadcast rating organization; collection of lawful debts; public school programs; and employee work schedules.

Additionally, some states have requirements for the time, day, duration, time of disconnection after call ended, and purpose for which robocalls may be used. Other requirements that states place on robocalls include providing the caller's contact information or not blocking the caller identification; stating the name of the person for whom the call is intended; a live operator obtaining permission before playing a recorded message; requiring automated systems to be attended while in use; and, for political calls, identifying who paid for the call, whether a candidate authorized the call, and other identifying information.

Kansas HB 2273 (2017)

The bill would have increased restrictions on robocalls. Under the provisions of the bill, robocalls would have been prohibited unless the person who is receiving the call has consented to or has authorized receipt of the message or the message is immediately preceded by a live operator who obtains the person's consent. Additionally, the bill would have prohibited robocalls before 9:00 a.m. or after 8:00 p.m. The bill also would have prohibited calls from being made to hospitals, ambulatory surgical centers, recuperation centers, ambulance services, emergency medical service facilities, mental health centers, psychiatric hospitals, state institutions for people with intellectual disabilities,

law enforcement agencies, or fire departments. The bill died in the House Committee on Utilities at the end of the 2018 Legislative Session.

Connecticut HB 5563 (2018)

This bill adds criminal penalties for a person making unsolicited recorded calls while using a blocking device or service to circumvent a caller identification service or device. Current state law already prohibits unsolicited robocalls. The bill was passed and signed into law during the 2018 Session of the Connecticut Legislature.

Kentucky HB 59 (2018)

The bill would create a new section of law prohibiting the marketing, sharing, or selling of wireless telephone numbers of subscribers without express written consent of the subscriber and create a penalty between $1,000 and $10,000 for each violation. The bill died in the House Committee on Small Business and Information Technology at the end of the 2018 Session of the Kentucky Legislature.

Massachusetts HB 154, HB 201, and HB 2828 (2017)

These proposals would prohibit all robocalls to hands-free mobile telephones, mobile electronic devices, and mobile telephones. Each of the bills contains a combination of the following exceptions: school districts, employers, correctional facilities, municipalities, utilities, health care services, or informational calls. HB 154 accompanied HB 138, which was referred to the House Committee on Ways and Means in March 2018. HB 201 is currently in the House Committee of the Whole. HB 2828 also accompanied HB 138. As of October 2018, none of the bills had been signed into law.

Massachusetts HB 138 (2017)

This bill would amend current telephone solicitation laws to require the telephone number listed in the identification service or device to be a valid telephone number in which the consumer can directly communicate with the solicitor. The bill, accompanied by HB 154 and HB 2828, was referred to the House Committee on Ways and Means in March 2018.

New Jersey SR 24 (2018)

This resolution would urge the FCC to require landline and wireless telephone service providers to implement necessary technology to block robocalls to customers, free of charge, and to enact regulations to prevent robocalls from reaching customers. The resolution was passed during the 2018 Session of the New Jersey Legislature.

New York S 8674 and A 10739 (2018)

These bills would limit autodialed telephone calls to state residents and require telephone service providers to offer free call mitigation technologies to telephone customers. Both bills died during the 2018 Session of the New York Assembly.

Pennsylvania HB 105 (2017)

This bill would give consumers the ability to sign up for the national “do-not-call” list for as long as they hold the number they register, without requiring them to re-register every five years. The bill would also prohibit telemarketing on legal holidays and robocalls. The bill was laid on the table on July 27, 2017.

Vermont JRH 15 (2018)

The resolution requests the FTC, the FCC, and Congress to adopt more effective measures to enforce the National Do Not Call Registry and to police illegal robocalls. The resolution was adopted by the Vermont House of Representatives on April 4, 2018, and the Vermont Senate on April 19, 2018.

Federal Legislation

S 3078 and HR 6026 (2018)

These pieces of legislation would give the FCC more authority to crack down on robocallers,

allow telephone customers to revoke permission they previously gave to receive calls, ban calls to numbers that have transferred from one customer to another, and extend the statute of limitations from one year to four years for prosecuting violators. S 3078 was referred to the Senate Committee on Commerce, Science, and Transportation in June 2018. HR 6026 was referred to the House Committee on Energy and Commerce in June 2018.

Difficulties of Regulation

The Pew Charitable Trusts note regulation of these types of calls is difficult because of the impracticality of enforcement. Many companies simply do not follow the laws concerning robocalls and increasingly these companies are operating overseas, away from the investigative jurisdiction of the states. The National Do Not Call Registry only blocks legally operating businesses. Telephone companies have stated they are blocking known offensive numbers and are working to help law enforcement agents trace illegal robocalls to identify their origin. The FTC is also working on identifying "spoofed" numbers, which are fake phone numbers beginning with a local or familiar looking area code. Many advocates urge federal and state partnerships for maximum impact in preventing these calls. Ultimately, most concerned parties agree technology and apps will likely be the answer to avoiding and ending illegal robocalls.

1 Delaware, Iowa, Ohio, Pennsylvania, Vermont, and West Virginia do not currently have statutory limits on commercial robocalls. Information provided by NCSL August 1, 2017. Updated by KLRD staff 2018.

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Federal and State Affairs

D-8 Sanctuary Jurisdictions

In the wake of the federal repeal of the Deferred Action for Childhood Arrivals (DACA) policy, sanctuary jurisdictions have received more attention. The term has been defined in a U.S. Department of Justice (DOJ) memorandum to include jurisdictions who "willingly refuse to comply with 8 USC 1373" and are not eligible to receive federal grants administered by the DOJ or the Department of Homeland Security (DHS). The same federal law prohibits state and local jurisdictions from restricting communication to federal officials regarding citizenship or immigration status.

Additionally, the term "sanctuary jurisdiction" has been used to refer to jurisdictions with particular policies regarding immigration. Specifically, the term is used to refer to jurisdictions with policies that limit local or state involvement in federal immigration enforcement.

The policies of most sanctuary jurisdictions fall into one of three categories: limiting arrests for federal immigration violations; limiting police inquiries into persons' immigration status; and limiting information sharing with federal immigration authorities.

Limiting Arrests for Federal Immigration Violations

Jurisdictions that limit arrests for federal immigration violations can be described as "Don't Enforce" jurisdictions. Violations of federal immigration law can be classified as either civil or criminal offenses. For example, overstaying a visa is a civil offense, and removal may only be accomplished through a civil proceeding. In contrast, unlawful entry is a criminal offense.

Some jurisdictions prohibit police from detaining or arresting aliens for civil violations of federal immigration law. Others prohibit police from making arrests for criminal violations of federal immigration law. There are also jurisdictions that prohibit detention or arrests for either type of violation. It should be noted, although federal immigration law allows states and localities to engage in enforcement of federal immigration laws, nothing compels participation.

Pursuant to 8 USC 1357 (a), local and state jurisdictions may only enforce immigration laws under an agreement between the U.S. Attorney General and the state or local jurisdiction. These agreements include enforcement activities, such as interrogation

for purposes of determining lawful presence, arrest for certain violations, and searches within reasonable distance of the U.S. border.

Limiting Police Inquiries into Persons' Immigration Status

Jurisdictions that limit police inquiries into a person's immigration status can be described as "Don't Ask" jurisdictions. Examples of restrictions include the following: police may not question persons about their immigration status, except as part of a criminal investigation; police may not initiate police activities for the purpose of determining a person's immigration status; police may not question crime victims and witnesses about their immigration status; and police may not gather information regarding a person's immigration status except as required by law.

Limiting Information Sharing with Federal Immigration Authorities

Jurisdictions that limit information sharing with federal immigration authorities can be described as "Don't Tell" jurisdictions. Examples of restrictions include the following: police may not notify federal immigration authorities about release of aliens unless convicted of certain felonies; police may not disclose information about the immigration status of a person unless that individual is suspected of engaging in criminal activity other than unlawful presence; and police may not disclose information unless required by law.

Role of the Federal Government

Immigration laws are strictly under the jurisdiction of the federal government, as such powers have been found to be within the scope of federal authority by the U.S. Supreme Court. Since that ruling, Congress has expanded federal immigration law and the enforcement of that law. Immigration and Customs Enforcement (ICE) agents handle enforcement under DHS. ICE agents may arrest and interrogate those suspected of unlawful presence. [8 U.S.C. 1357.] In addition, DHS may issue a detainer to a local jurisdiction. A detainer is a request by ICE to hold an arrested individual or convicted criminal being released from state or local jails until ICE can pick them up for deportation. Individuals may not be held for more than 48 hours.

Stakeholders argue that detainers violate the Fourth Amendment of the *U.S. Constitution* because ICE does not have probable cause before issuance of a detainer. Additionally, stakeholders argue that detainers violate the Fifth Amendment because ICE does not provide notice when a detainer is issued. While federal courts have upheld this position, there has been no decision issued by the U.S. Supreme Court.

Recent Federal Legislation

2017 HR 3003—No Sanctuary for Criminals Act

The No Sanctuary for Criminals Act would expand what is required of cities regarding federal immigrant enforcement and allow the government to deny jurisdictions' federal law enforcement funds if they do not comply. The bill has passed the House of Representatives and is awaiting introduction in the Senate as of September 14, 2018.

2015 HR 3009—Enforce the Law for Sanctuary Cities Act

The Enforce the Law for Sanctuary Cities Act would have withheld federal law enforcement funding for those jurisdictions that chose not to enforce federal immigration laws. The bill passed in the House of Representatives and died at the end of the term.

Department of Justice Grant Conditions

Proposed federal legislation, such as 2017 HR 3003, would condition the receipt of federal grant moneys on cooperation with federal law enforcement in immigration matters. One such grant program is the Edward Byrne Memorial Justice Assistance Grants, administered by the

DOJ. The Byrne Grants provide funds to cities for law enforcement purposes.

On June 25, 2017, U.S. Attorney General Sessions announced new conditions would be imposed on grant recipients of Byrne funds. Namely, grant recipients must:

- Prove compliance with federal law that bars cities or states from restricting communications between DHS and ICE about the immigration or citizenship status of a person in custody;
- Allow DHS officials access into any detention facility to determine the immigration status of any aliens being held; and
- Give DHS 48 hours notice before a jail or prison releases a person when DHS has sent over a detention request so federal agents can arrange to take custody of the alien after he or she is released.

The City of Chicago filed a case in federal court asking for the directive to be struck down as unconstitutional. [*City of Chicago v. Sessions*, No. 1:17-cv-5720 (N.D. Ill. 2017).] On September 15, 2017, a judge issued a preliminary injunction against the directive, striking the latter two conditions as being unconstitutional because only Congress can impose grant conditions. The ruling was later affirmed by a panel of the 7th Circuit (Ct.) Court of Appeals. Attorney General Sessions requested an *en banc* hearing on the limited issue of whether the injunction should extend beyond the City of Chicago. The court stayed the injunction so that it only applied to the City pending a decision on the issue by the *en banc* court.

Additional lawsuits have been filed regarding an executive order issued by President Trump on January 25, 2017, which sought to withhold federal grant moneys from jurisdictions that did not comply with 8 USC 1373. The State of California and the City of San Francisco filed a lawsuit seeking an injunction of the executive order on January 31, 2017. In response to the filing, a federal judge issued an order that directed federal agencies not to follow the executive order. The DOJ has since filed an appeal.

On August 1, 2018, the U.S. 9th Ct. Court of Appeals ruled the federal government could not withhold federal funds from California sanctuary jurisdictions. However, on March 13, 2018, the U.S. 5th Ct. Court of Appeals allowed a Texas law requiring police chiefs and sheriffs to cooperate with federal immigration officials to go into effect.

Role of State Governments

The role of states in immigration enforcement is limited by express or implied preemption due to federal law in the area. In other words, states cannot establish policies related to immigration where federal law has expressly limited such policies or where federal law is so comprehensive that Congress has signaled its intent to wholly occupy the regulatory field. The concept of preemption is what led the U.S. Supreme Court to invalidate several state immigration measures. [*Arizona v. United States*, 132 S. Ct. 2492 (2012).]

On the other hand, the federal government cannot "commandeer" state or local governments into assisting with federal law enforcement. [*Printz v. United States*, 521 U.S. 898 (1997).] However, reporting requirements and other federal measures requiring state or local cooperation may be acceptable in certain circumstances.

Overview of Recent State Actions

According to a Pew Charitable Trusts article, Connecticut, Illinois, Rhode Island, Vermont, and Washington enacted statewide measures to limit law enforcement cooperation with immigration authorities. Iowa, North Carolina, and Tennessee enacted anti-sanctuary laws requiring cities to cooperate with immigration authorities. Sixteen other states proposed but did not pass similar legislation. Oregon placed a measure on the November ballot that would reverse the state's 1987 sanctuary law. This measure did not pass.

Recent Kansas Legislation

2017 SB 158—Prohibiting Adoption of Sanctuary Policies

The bill would have prohibited municipalities and state agencies from adopting a "sanctuary policy." Any municipality that enacted or adopted a sanctuary policy would have been deemed ineligible to receive any moneys from a state agency it was otherwise entitled to and would have remained ineligible until the sanctuary policy was repealed or no longer in effect. The Senate Committee on Federal and State Affairs passed SB 158 out of Committee on March 27, 2017. No further action was taken and the bill died on General Orders on May 4, 2018.

2017 HB 2275—Prohibiting Adoption of Sanctuary Policies

The bill would have prohibited state agencies and municipalities from adopting a "sanctuary policy." Any municipality that enacted or adopted a sanctuary policy would have been deemed ineligible to receive any state funding. The bill was introduced during the 2017 Legislative Session, but died on General Orders on May 4, 2018.

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Federal and State Affairs

D-9 Sports Wagering

Background and Overview: Recent U.S. Supreme Court Decision

In *Murphy v. NCAA* 584 US ___ (2018), the U.S. Supreme Court struck down a 1992 law prohibiting states from allowing betting on sporting events. The Professional and Amateur Sports Protection Act (PASPA) (28 USC §§ 3701-3704) had prohibited all sports lotteries except those allowed under state law at the time PASPA was passed. Delaware, Montana, Nevada, and Oregon all had state laws providing for sports wagering in 1992; however, Nevada was the only one of those states conducting sports wagering in a meaningful way between 1992 and 2018.

In 2011, New Jersey passed a law authorizing sports betting. This law was struck down by the courts as a violation of PASPA as part of a challenge brought by five professional sports leagues. New Jersey later repealed the state law expressly authorizing sports wagering, but did not replace it with language expressly prohibiting sports betting. Again, the sports leagues sued New Jersey, claiming that by not expressly prohibiting sports wagering, the state law effectively authorized sports gambling by implication. In 2018, the U.S. Supreme Court issued a ruling striking down PASPA on the grounds that the federal law prohibited the modification or repeal of state law prohibitions and unlawfully regulated the actions of state legislatures.

State Action Since *Murphy v. NCAA*

As a result of the U.S. Supreme Court's declaring PASPA to be unconstitutional, states can legally regulate gambling on sporting events. Several states have legalized sports wagering or considered legislation related to legalizing the practice since the Supreme Court's decision was released in May 2018.

According to the Pew Research Center, as of September 2018, sports gambling is legal in nine states, currently being studied by three states, and an additional nine states considered legislation related to the legalization of sports wagering during the 2018 session.

Of the states that have laws authorizing sports betting, Delaware, Mississippi, Nevada, New Jersey, and West Virginia have passed

both laws and regulations and are currently accepting such wagers. Montana, New York, Pennsylvania, and Rhode Island have statutes authorizing sports gambling but have not yet fully implemented those statutes.

Illinois, Michigan, and Ohio are conducting informational hearings, participating in negotiations, or otherwise studying the topic of sports wagering ahead of the 2019 Session.

Legislation failed during the 2018 Legislative Sessions of California, Indiana, Kansas, Kentucky, Louisiana, Maryland, Missouri, Oklahoma, and South Carolina.

Kansas Legislation

The Kansas Legislature considered a number of measures related to the legalization of sports wagering during the 2018 Legislative Session: SB 455, HB 2533, HB 2792, and HB 2793.

SB 455 and HB 2792 would have created the Kansas Sports Wagering Act (Act). Among other things, the Act would have authorized the Kansas Lottery to offer sports wagering:

- In-person at a facility operated by the Kansas Lottery;
- Through lottery retailers contracting with the Lottery;
- Over the Internet, including websites and mobile device applications; and
- Through a licensed interactive sports wagering platform.

All sports wagering would have been under the ultimate control of the Kansas Lottery. Counties would not have been allowed to be exempt from or effect changes in the Act.

The bill would have created two new crimes (severity level 5 nonperson felonies): misuse of nonpublic sports information and sports bribery.

The Act would have prohibited sports wagering for:

- Persons under 21 years old;
- Operators, as well as their directors, officers, owners, employees, or relatives of those individuals living in the same household;
- Athletes, coaches, referees, team owners, employees of a sports governing body or its member teams, and player and referee union personnel, who could not place wagers on any sporting event overseen by that governing body; and
- Any person with access to nonpublic confidential information held by the operator from placing wagers with the operator.

A sports governing body would have been allowed to:

- Notify the Kansas Racing and Gaming Commission (KRGC) that it desires to restrict, limit, or exclude wagering on its sporting event; and
- Bring a civil case to recover damages or other equitable relief against any person who knowingly engages in, facilitates, or conceals conduct related to sports bribery.

Sports wagering operators would have been required to:

- Cooperate with investigations by the KRGC, sports governing bodies, or law enforcement agencies, including:
- Immediately report to the KRGC any criminal or disciplinary proceedings;
    - Abnormal wagering activity;
    - Potential breaches of the sports governing body's rules and codes of conduct; or
    - Any other conduct that corrupts a betting outcome of a sporting event and suspicious or illegal wagering activities; and
- Remit a sports betting right and integrity fee to each sports governing body overseeing events wagers that were placed during the preceding quarter.

Under the Act, no less than 6.75 percent of the sports wagering revenues would have been distributed to the Expanded Lottery Act Revenues Fund (ELARF).

HB 2793 contained many of the same provisions as SB 455 and HB 2792, but amended the existing Kansas Expanded Lottery Act, rather than creating a separate sports wagering act. This bill did not include a sports betting right and integrity fee.

HB 2533 would have required any sports betting in Kansas to be conducted solely on the premises of a racetrack gaming facility and be managed and operated by one or more racetrack gaming facility managers.

All four of these bills died in Committee at the end of the 2018 Session. Two of the bills (SB 455 and HB 2792) had hearings held on them and one bill (HB 2792) received an informational hearing.

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