
Kansas Legislator Briefing Book

Prepared for the
2021 Kansas Legislature

KLRD

*Providing objective research and fiscal
analysis for the Kansas Legislature*

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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.

Additionally, a special section on the COVID-19 pandemic features an overview of select State of Kansas responses to the public health emergency. It includes a list of articles containing further information related to COVID-19, which are marked throughout the publication with .

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This article summarizes liquor laws in Kansas, including changes made to liquor laws during the last three legislative sessions.

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Kansas voters approved a constitutional amendment in 1986 for the establishment of a State-owned lottery and the operation of parimutuel racing. In 2007, SB 66, commonly known as the Kansas Expanded Lottery Act (KELA), authorized a lottery involving electronic gaming and racetrack gaming facilities. Included in this article is an explanation of the constitutionality of lottery operations and an overview of the distribution of revenues from traditional lottery sales, expanded gaming, and parimutuel racing. Provisions of KELA, such as the requirements, approval, and regulation of gaming facility contracts, is also detailed. Lastly, this article provides a summary of tribal-state gaming regarding the four resident tribes of Kansas.

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This article discusses consumer credit reports and security freezes in light of the recent increase in fraud and scams seen during the present pandemic and highlights recent state and federal actions to secure and protect consumer data.

Kansas Health Insurance Mandates F-2

Since 1973, the Kansas Legislature has added new insurance statutes mandating certain health care providers be paid for services rendered and paying for certain prescribed types of coverages. This article 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 impact of the federal Patient Protection and Affordable Care Act on health benefit coverages in Kansas.

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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 in 1991. This article provides a historical review of the creation of and amendments to payday lending laws in Kansas. The article also discusses recent data trends in small dollar lending. Finally, a brief summary of recent Consumer Financial Protection Bureau activities is provided.

Health and Social Services

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The 2020 Special Committee on Foster Care Oversight identified the need to examine the child welfare workforce. Child welfare professionals in Kansas face burnout, and there are best practices that can be implemented by the Kansas Legislature and employers to improve the workforce system. Some of these best practices include addressing caseload size, providing educational opportunities, and implementing incentives that can help decrease turnover.

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Considerations for incarcerated and detained persons with mental health issues have become increasingly common in the criminal justice system in Kansas. Several bills have been enacted in recent years to increase awareness of mental health needs in the criminal justice system and to aid law enforcement in the custody and treatment of persons with mental illness or substance abuse issues, while the Kansas Department of Corrections provides comprehensive mental health services in its facilities based on psychiatric assessments. Alternative sentencing courts, which treat, counsel, and offer support for those convicted of misdemeanors and suffer from mental illness or substance abuse issues, have also gained popularity in certain jurisdictions.

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This article examines the evolution of Kansas emergency management law and discusses application of the law to the COVID-19 pandemic. The article also discusses legislative changes made to address the pandemic as well as the proceedings of the 2020 Special Committee on the Kansas Emergency Management Act.

Redistricting

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This article provides a brief overview of the laws and process that govern the redrawing of Kansas congressional, state legislative and State Board of Education District lines every ten years.

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This article discusses state and federal redistricting legislation that is either currently pending or recently enacted. It also discusses ballot questions posed during the November 3, 2020 general election.

State and Local Government

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This article provides an overview of the rules and regulations process in Kansas. It also summarizes the legal history of legislative review of administrative rules and regulations, the legislative history of the Rules and Regulations Filing Act, and the role of the Joint Committee on Administrative Rules and Regulations.

Board of Indigents' Defense Services J-2

Background information is provided regarding the provision of constitutionally mandated legal services for indigent criminal defendants. How the Board of Indigents' Defense Services (BIDS) fulfills these legal obligations across the state with a combination of offices staffed by full-time public defenders and private attorneys serving as assigned counsel is explained. Further explanation of how BIDS handles appeals of criminal convictions, conflicts of interest, and capital cases is included. Particular emphasis is placed on costs across the agency with detailed data on capital cases and compensation for assigned counsel.

Home Rule J-3

This article reviews the constitutional home rule powers of cities and the statutory home rule powers for counties and unified governments. Home rule power is exercised by cities through ordinances and by counties through resolutions. Charter ordinances and resolutions used to exclude cities and counties from nonuniform state laws are described.

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Senate Confirmation Process J-5

State law in Kansas requires 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 article summarizes the confirmation process.

State Employee Issues J-6

An explanation of classified and unclassified state employees, benefits provided to state employees, recent salary and wage adjustments authorized by the Kansas Legislature, general information on the number of state employees, and the characteristics of the classified workforce is provided.

State Budget

District Court Docket Fees K-1

This article includes a short background about docket fees and explains how docket fees are distributed to various state funds. Additionally, a table shows the amount of each docket fee, how the fee is authorized, and how it is distributed.

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This article promotes understanding the state budget, State General Fund, expenditures and revenues, and terminology used when discussing budgets.

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This article summarizes the laws and statutes designed to provide certain safeguards with respect to state budgeting and the managing of expenditures and to prevent deficit financing.

Taxation

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This article outlines the history and structure of the Homestead Property Tax Refund Act, a “circuit-breaker” style property tax relief program Kansas has utilized since 1970. More than \$37.5 million in refunds were paid out in FY 2013, but changes in the program enacted in 2013, including the exclusion of renters, reduced the size of the program to about \$20.9 million in FY 2020.

Selected Tax Rate Comparisons L-2

This article compares information used to calculate the tax base and tax rates between Kansas and selected states for various taxes. States compared include Kansas, Missouri, Nebraska, Oklahoma, Colorado, Iowa, Arkansas, and Texas. Taxes compared include sales tax, motor fuel tax, cigarette tax, corporate income tax, and individual income tax.

Kansas Property Tax Cycle L-3

The *ad valorem* property tax is the single largest revenue source for Kansas state and local governments, with total revenues exceeding \$5 billion in recent years. This article summarizes the process by which property value is determined, tax rates are set, and property tax is paid and distributed.

Transportation

[The Relationship Between KTA and KDOT](#) M-1

This article outlines historical and statutory relationships between KTA and KDOT. It also briefly summarizes court decisions across the country related to turnpike tolls.

[State Highway Fund Receipts and Transfers](#) M-2

Projected revenues to the State Highway Fund (SHF) for use by the Kansas Department of Transportation can be described in five categories: state sales tax, state motor fuels tax, federal funding, vehicle registration fees, and “other.” This article discusses the parts of those categories, and it summarizes anticipated revenues the SHF has not realized and transfers from the SHF in recent years.

[State Motor Fuels Taxes and Fuel Use](#) M-3

Kansas’ motor fuels taxes are 24¢ per gallon on gasoline and 26¢ per gallon on diesel fuel, unchanged since 2003. This article reviews the history of those taxes and illustrates how Kansas fuel tax revenues and gasoline usage fluctuate over time. The article also includes information on the state gasoline tax portion of an individual’s overall fuel costs.

Utilities and Energy

[Broadband Expansion](#) N-1

Due to the COVID-19 pandemic, the federal government and the state of Kansas initiated grant projects and funding mechanisms for broadband expansion to help assist those in underserved and unserved areas. This article summarizes the federal and state actions regarding broadband expansion.

[Electric Utility Rates](#) N-2

This article examines the recent response to the issue of rising electric costs in Kansas, including measures taken by the Kansas Legislature, Kansas Corporation Commission, and investor-owned utilities.

Veterans, Military, and Security

[Cybersecurity](#) O-1

This article outlines recent cybersecurity legislation enacted and considered in Kansas and other states.

Veterans and Military Personnel Benefits..... O-2

This article summarizes recently enacted Kansas legislation affecting veterans, in addition to providing an overview of resources for benefits assistance available to Kansas veterans, service members, and military families. This article also contains links to websites that provide more detailed information on Kansas and federal benefits for veterans and military families.

 Disaster Declarations O-3

This article discusses the issuance of state, emergency, major disaster, and fire management assistance declarations in Kansas, the requirements for application, and factors considered for issuance.

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Special Section:

(C-19)

The COVID-19 Pandemic in Kansas

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COVID-19

The COVID-19 Pandemic in Kansas

Select State Responses

This summary describes select actions taken by the State of Kansas in response to the coronavirus (COVID-19) pandemic.

Kansas Emergency Management Act

Restrictions due to the spread of COVID-19 in Kansas severely reduced the number of days the 2020 Legislature was in session to 63 days total from the more routine 90 days. Due to the limited number of days, a Special Session was required to finalize legislative activity. One of the major concerns that needed to be addressed was the provisions of the Kansas Emergency Management Act (KEMA) and the needs of a long-term state of disaster emergency (such as the pandemic) versus the short-term natural disasters that KEMA was designed to address.

During the 2020 Special Session, the Legislature passed HB 2016, which was later signed by the Governor. It created and amended laws concerning KEMA. Among other things, the bill:

- Extended the state of disaster emergency through September 15, 2020;
- Allowed the Board of County Commissioners of any county or the governing body of a city to review, amend, or revoke a state disaster declaration; and
- Allowed the Attorney General to act against those who have violated KEMA.

Addition information can be found in article [H-7 Kansas Emergency Management Act](#).

General information on emergency declarations can be found in article [O-3 Disaster Declarations](#).

Judiciary

The pandemic necessitated other legislative changes, such as those concerning the judiciary. House Sub. for SB 102 was passed during the regular session and provided for extension or suspension of court deadlines and allowed the Chief Justice of the Supreme Court to issue videoconferencing orders when the Chief Justice determines it is necessary to secure the health and safety

of court users, staff, and judicial officers during any state of disaster emergency.

The bill's amendments to the speedy trial statute allow the Chief Justice to issue an order to extend or suspend any deadlines or time limitations during any state of disaster emergency.

These provisions are in effect until suspended or 150 days after the state of disaster emergency is terminated. The provisions will expire on March 31, 2021, if not suspended.

Unemployment

Due to the original state of disaster emergency declaration, many businesses had to temporarily close or restrict business activities. As a consequence, the rate of unemployment increased. The federal government established three programs to help address rising unemployment:

The Pandemic Unemployment Assistance (PUA) program provided benefits to individuals who were self-employed or not otherwise eligible for unemployment benefits.

The Pandemic Emergency Unemployment Compensation (PEUC) program extended benefits for those who had exhausted their state benefits.

The Federal Pandemic Unemployment Compensation (FPUC) program provided an additional \$600 per week benefit alongside whatever state unemployment benefits an individual received.

Additional information can be found in article [B-2 Unemployment Insurance Trust Fund](#).

As the new federal programs took effect, the number of fraudulent unemployment claims increased. Article [F-1 Consumer Credit Reports and Security Freezes](#) identifies assistance available to people who have been negatively impacted by false unemployment claims or other COVID-19-related scams.

Federal CARES Act Funding

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act allocated, from the federal Coronavirus Relief Fund, a total of \$1.25 billion dollars to Kansas to be used to cover expenses that:

- Are necessary expenditures incurred due to the COVID-19 public health emergency;
- Were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act), for the State or government; and
- Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

This funding did not allow for the replacement of lost revenue.

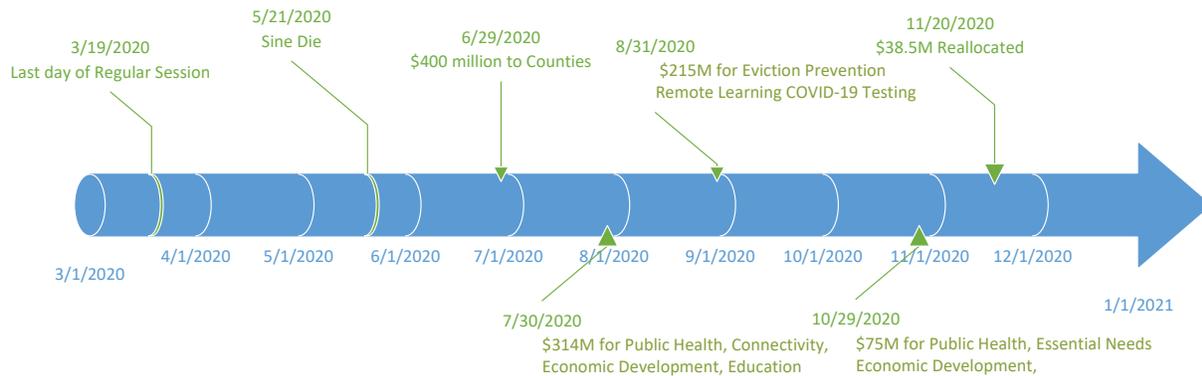
Of the \$1.25 billion, \$116.3 million went directly to Johnson County, \$99.6 million went directly to Sedgwick County, and the remaining \$1.034 billion went to the State of Kansas. The Strengthening People and Revitalizing Kansas (SPARK) Taskforce provided recommendations for the expenditure of these state relief funds. The SPARK Steering Committee consisted of 15 members appointed by the Governor, and the SPARK Executive Committee consisted of 5 members appointed by the Governor.

The State Finance Council, which consists of the President of the Senate, the Speaker of the House, the Majority Leaders of both chambers, the Minority Leaders of both chambers, the chairpersons of the Senate Ways and Means Committee and the House Committee on Appropriations, and the Governor as Chairperson, had to then approve the recommendations prior to any distribution.

The disbursement of funding from the state Coronavirus Relief Fund is reflected in the timeline that follows.

The first \$400.0 million was allocated by formula to all 105 Kansas Counties.

COVID-19 Timeline Kansas receives \$1.034 Billion



The remainder of the funding was directed to programs for three major categories: public health, essential needs and services, and business resiliency and workforce support.

Support for public health included funding for contact tracing, personal protective equipment (PPE), support for nursing homes and local health departments, and community-based services and mental health grants.

Most of the funding was provided to the Kansas Department of Health and Environment, Kansas Department for Aging and Disability Services, and the Department for Children and Families to be distributed as grants. Funding for the Kansas Department of Emergency Management was primarily for equipment and materials to be distributed, such as PPE.

Essential needs and services included funding for services such as housing stability, continuity of state government, and information technology

support for the Kansas Department of Labor for upgrades and enhanced fraud identification and mitigation.

Support for business resiliency and workforce development included funding for the Department of Commerce to make grants for broadband connectivity to increase access to telehealth and telemedicine, especially for rural and underserved areas (see articles [G-3 Impact of COVID-19 on Telehealth Advances](#) and [N-1 Broadband Expansion](#)); small business expansion and retention; business operations; and funding to the Kansas Children’s Cabinet to provide grants for remote learning centers for school-age children. Addition information can be found in article [B-3 Department of Commerce—COVID-19 Assistance](#).

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Agriculture and Natural Resources

A-1 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 State Water Plan 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 (FTE) positions or for recreational projects that do not meet the goals or objectives of the State Water Plan.

Revenue

Revenue for the State Water Plan Fund is generated from the following sources.

Water protection fees. A water protection fee of \$0.03 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 watering livestock.

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; and
- Every agricultural chemical that 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 (KDHE) 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 \$0.03 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. Since July 1, 2007, revenue from the clean water drinking fee has been distributed as follows:

- 5/106 to the State Highway Fund;
- Of the remaining, not less than 15.0 percent for on-site technical assistance for public water supply systems; and
- The remainder to renovate and protect lakes used for public water supply.

State General Fund transfer. By statute, \$6.0 million annually is to be transferred from the State General Fund (SGF) to the State Water Plan Fund. In recent fiscal years, this amount has been reduced in appropriations bills. The 2020 Legislature approved a transfer from the SGF to the State Water Plan Fund of \$4.0 million for fiscal year (FY) 2020 and the full statutory transfer of \$6.0 million for FY 2021.

Economic Development Initiatives Fund transfer. By statute, \$2.0 million is to be transferred from the Economic Development Initiatives Fund to the State Water Plan Fund. The 2020 Legislature approved a transfer from the Economic Development Initiatives Fund to the State Water Plan Fund of \$500,000 for FY 2020 and \$913,325 for FY 2021.

State Water Plan Fund Receipts and Transfers*			
Receipts and Transfers In	FY 2019 Actual	FY 2020 Approved	FY 2021 Approved
State General Fund	\$2,750,000	\$4,005,632	\$6,000,000
Economic Development Initiatives Fund	500,000	500,000	913,325
Municipal Water Fees	3,364,968	3,208,301	3,305,836
Industrial Water Fees	931,122	950,983	930,000
Stock Water Fees	336,237	430,297	350,000
Pesticide Registration Fees	1,382,211	1,374,886	1,390,000
Fertilizer Registration Fees	3,630,506	3,584,360	3,638,611
Pollution Fines and Penalties	220,533	150,000	230,000
Sand Royalty Receipts	31,153	16,466	30,000
Clean Drinking Water Fees	2,995,608	2,710,279	2,800,000
Total Receipts/Transfers In	\$16,142,338	\$16,931,204	\$19,587,772
* Does not include cash forward, released encumbrances, or other service charges.			

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.

State Water Plan Fund Expenditures			
Agency/Project	FY 2019 Actual	FY 2020 Approved	FY 2021 Approved
Department of Agriculture			
Interstate Water Issues	\$ 438,457	\$ 584,172	\$ 490,007
Water Use Study	47,600	142,778	72,600
Basin Management	463,386	777,957	608,949
Water Resources Cost Share	1,869,148	2,571,508	2,698,289
Nonpoint Source Pollution Assistance	1,720,546	2,299,045	1,857,836
Aid to Conservation Districts	2,092,637	2,192,637	2,342,637
Water Transition Assistance/CREP	223,589	469,367	699,745
Watershed Dam Construction	550,000	550,000	750,000
Water Quality Buffer Initiative	110,506	414,516	200,000
Riparian & Wetland Program	200,546	479,997	154,024
Streambank Stabilization	0	1,000,000	750,000
Irrigation Technology	67,460	132,540	100,000
Crop and Livestock Water Research	0	350,000	350,000
Crop Research-Hemp	100,000	0	0
Crop Research- Sorghum	150,000	0	0
Water Supply Restoration Program	0	0	0
Real-Time Water Management-Telemetry	0	0	0
<i>Subtotal – Department of Agriculture</i>	<u>\$ 8,033,875</u>	<u>\$ 11,964,517</u>	<u>\$ 11,074,087</u>
Kansas Water Office			
Assessment and Evaluation	\$ 401,454	\$ 796,522	\$ 829,900
MOU – Storage Operation and Maintenance	367,702	410,000	480,100
Technical Assistance to Water Users	341,000	348,219	325,000
Streamgaging	413,580	423,130	423,130
Kansas River Alluvial Aquifer Observation	50,000	0	0
Reservoir Bathymetric Surveys	200,000	350,000	350,000
Watershed Conservation Practices Implementation	900,000	700,000	1,000,000
Milford Lake Regional Conservation Partnership Program	400,000	200,000	200,000
Water Vision Education	100,000	100,000	100,000
Streambank Stabilization Effectiveness Research	100,000	0	0
Harmful Algae Bloom Research	100,000	0	0
Water Technology Farms	75,000	75,000	75,000
Equus Beds Chloride Plume	50,000	50,000	50,000
Arbuckle Study	0	68,000	0
Water Injection Dredging	0	0	660,000
Water Resource Planner	101,791	0	0
Flood Response Study	0	100,000	0
<i>Subtotal – Kansas Water Office</i>	<u>\$ 3,600,527</u>	<u>\$ 3,620,871</u>	<u>\$ 4,493,130</u>
Kansas Department of Health and Environment-Division of Environment			
Contamination Remediation	\$ 700,955	1,088,301	\$ 1,088,301
Total Maximum Daily Load	271,439	290,871	280,738
Nonpoint Source Program	251,031	365,880	303,208
Harmful Algae Bloom Pilot	6,870	893,130	450,000
Watershed Restoration and Protection (WRAPS)	625,874	840,898	730,884
Drinking Water Protection Program	0	350,000	350,000
<i>Subtotal – KDHE-Environment</i>	<u>\$ 1,856,169</u>	<u>\$ 3,829,080</u>	<u>\$ 3,203,131</u>
University of Kansas			
Geological Survey	\$ 26,841	\$ 26,841	\$ 26,841
Total Agency/Project Expenditures	<u>\$ 13,517,412</u>	<u>\$ 19,441,309</u>	<u>\$ 18,797,189</u>

Kansas Water Authority

The Kansas Water Authority (Authority) is a 24-member board that provides water policy advice to the Governor, the 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 voting members and 11 ex officio members.

Voting 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 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 Wildlife, Parks and Tourism;
- The Secretary of Commerce;
- The Executive Director of the Division of Conservation of the Kansas Department of Agriculture;
- The Secretary of Agriculture; and
- The Director of the Kansas Biological Survey.

One primary responsibility of the Authority is to consider and approve policy for inclusion in the State Water Plan. The State Water Plan includes policy recommendations that have specific statewide or local impact and priority issues and recommendations for each of the 12 river basins in Kansas.

Budgetary Process

Historically, the Division of the Budget has assigned allocations to each agency for the expenditure of State Water Plan Fund moneys.

Beginning with the FY 2008 budget cycle, the 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.

A 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 Authority each August. The Authority-approved budget is 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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Agriculture and Natural Resources

A-2 Alternative Meat Products

Alternative Meat Products and Labeling

[*Note:* The terms for alternative meat products vary greatly; “analog meat,” “imitation meat,” “meat substitutes,” “non-meat,” and the use of brand names for alternative meat products, among others, have been found in use. This article focuses on alternative meat products that are made with non-animal cell tissue. Limited analysis regarding cell-cultured meat products is provided.]

Alternative meat products have existed for decades; however, in recent years, some alternative meat product manufacturers have begun incorporating the word “meat” into their product naming and marketing.

Meat labeling is regulated by the U.S. Department of Agriculture (USDA) and must comply with the regulations of the USDA Food Safety Inspection Service (FSIS), essentially requiring agency approval before being offered for sale. Alternative meat product labeling, however, is regulated by the U.S. Food and Drug Administration (FDA), which does not have a counterpart to the FSIS and does not require approval of labels before the product is offered for sale.

Disagreements on Terms, Labeling, and Marketing Impacts

Some commodity and livestock associations believe the term “meat” in an alternative meat product’s name or marketing confuses consumers about what is and is not an animal-based meat product. As such, these associations have pursued legislation at the state level to address their industries’ concerns over labeling and marketing alternative meat products.

Opponents of this type of legislation have stated there are concerns that labeling and marketing restrictions may violate First Amendment rights to free speech. Other concerns include that by creating patchwork laws across the 50 states, it makes it difficult for alternative meat product manufacturers to sell their products. Opponents also contend that consumers are not confused by plant-based products and their labels.

Several states have recently passed legislation to specify how alternative meat products may be labeled and marketed. Included in this article is a list of the legislation by state, the date the legislation was enacted, and a summary of what changes the legislation made to previous law. Information on other related bills introduced during the 2019-2020 biennium is also included.

Kansas Legislation

HB 2437 was introduced during the 2020 Legislative Session by Representative Highland.

The bill would have amended the Kansas Food, Drug and Cosmetic Act (Act) to include several new terms, including “meat analog” and “identifiable meat term,” along with adopting

the Code of Federal Regulations definitions for “meat,” “meat food product,” “poultry product,” and “poultry food product.” The bill also would have specified what labeling requirements there would be for meat analog products and when such foods would be deemed misbranded under the Act.

The House Committee on Agriculture held a hearing on the bill on January 23, 2020. The Committee passed the bill on February 6, 2020; however, the bill was rereferred back to the House Committee on Appropriations on February 26, 2020. The bill again was rereferred to the House Committee on Agriculture on March 5, 2020. On March 11, 2020, the Committee passed the bill. The bill died on the House Calendar on May 11, 2020.

Enacted Cell-cultured and Alternative Meat Product Labeling Laws (as of 2020)			
State	Bill	Status	Summary and Keywords
Alabama	2019 AL H 518	Enacted 5/29/2020	Food products containing cultured animal tissue that is produced from animal cell cultures and not derived directly from an animal may not be labeled as meat or meat food product.
Arkansas	2019 AR H 1407	Enacted 3/18/2019	Truth in labeling of agriculture products that are edible to humans to prevent confusion or misleading of consumers due to false or misleading labeling. Civil penalties.
Colorado	2019 CO HR 1005	Enacted 4/10/2019	House resolution that gives consumers notice of cell-cultured meat products and asks the USDA and FDA to expedite necessary rule-making to require accurate food labeling of cell-cultured food to educate and inform consumers.
Georgia	2019 GA S 211	Enacted 7/24/2020	Unlawful to represent nonanimal products and non-slaughtered animal flesh as meat.
Kentucky	2019 KY H 311	Enacted 3/21/2019	Food is misbranded if it purports to be or is represented as meat or a meat product and it contains any cultured animal tissue produced from <i>in vitro</i> animal cell cultures outside of the organism from which it is derived.
	2019 KY HR 105	Enacted 2/28/2019	House resolution that asks Congress to enact legislation granting USDA jurisdiction over labeling of imitation meat products.
Louisiana	2019 LA S 152	Enacted 6/11/2019	Creates a truth in labeling of food products act and defines “cell cultured food product” as any cultured animal tissue produced from <i>in vitro</i> animal cell cultures outside of the organism from which it is derived. The definition of meat specifically excludes cell cultured food product grown in a laboratory from animal cells. Also prohibits intentional misbranding or misrepresenting of any food product as meat or meat product when it is not derived from a harvested beef, pork, poultry, alligator, farm-raised deer, turtle, domestic rabbit, crawfish, or shrimp carcass. [Note: This also includes representing food as rice when it is not rice.] Civil penalty of not more than \$500 for each violation of this act. Each day of violation is a separate offense.

Enacted Cell-cultured and Alternative Meat Product Labeling Laws (as of 2020)			
State	Bill	Status	Summary and Keywords
Missouri	2018 MO SB 627 & 925	Enacted 6/1/2018	Adds misrepresenting a product as meat that is not derived from harvested production livestock or poultry as a misleading or deceptive practice.
Mississippi	2019 MS S 2922	Enacted 3/12/2019	Cultured animal tissue food products shall not be labeled as meat or a meat food product. Cultured animal tissue is animal cells cultured outside of the organism from which it is derived. Plant based or insect based food product shall not be labeled as meat or meat food product.
Montana	2019 MT H 327	Enacted 4/18/2019	Cell-cultured edible product is the concept of meat, including but not limited to, muscle cells, fat cells, connective tissue, blood, and other components produced <i>via</i> cell culture, rather than from a whole slaughtered animal. Cell-cultured edible products derived from meat muscle cells, fat cells, connective tissue, blood, or other meat components must contain labeling indicating it is derived from those cells, tissues, blood, or components. Cell-cultured edible products do not fall within the definition of hamburger or ground beef or meat. Cell-cultured edible product is misbranded when it is labeled as meat but does not meet the definition of meat.
North Dakota	2019 ND H 1400	Enacted 3/12/2019	The definition of meat is the edible flesh of an animal born and harvested for the purpose of human consumption. Meat food product is a product usable as human food which contains any part of a carcass from an animal born and harvested for the purpose of human consumption. Misrepresentation of cell cultured protein as meat food product is prohibited. A person may not advertise, offer for sale, sell, or misrepresent cell cultured protein as a meat food product. A cell cultured food product may not be packaged in the same or deceptively similar packaging as a meat food product and must be labeled as a cell cultured food product. Deceptively similar means packaging that could mislead the reasonable person to believe the product is a meat food product.
	2019 ND HCR 3024	Enacted 3/4/2019	Congressional resolution to USDA to amend the federal law, policies, and regulations relating to food safety and labeling of cell cultured meat products.
South Carolina	2019 SC H 4245	Enacted 5/16/2019	Unlawful to advertise, sell, label, or misrepresent as “meat” or “clean meat” all or part of a carcass that is cell cultured meat or protein, or is not derived from harvested production livestock, poultry, fish, or crustaceans. This does not apply to plant-based meat substitutes. Provides for a misdemeanor charge for a guilty conviction for violating the article with not more than a year of imprisonment or fined not more than \$1000, or both.
South Dakota	2019 SD S 68	Enacted 3/18/2019	Defines misbranding of a food product if the product is labeled or branded in a false, deceptive, or misleading manner that intentionally misrepresents the product as a meat food product as defined in Section 39-5-6, a meat by-product as defined in Section 39-5-6, or as poultry.

Enacted Cell-cultured and Alternative Meat Product Labeling Laws (as of 2020)			
State	Bill	Status	Summary and Keywords
Wyoming	2019 WY S 68	Enacted 2/26/2019	Prohibits misrepresenting a product as meat that is not derived from harvested production of livestock or poultry.

Introduced Cell-cultured and Alternative Meat Product Labeling Bills (2019-2020)			
State	Bill	Status	Summary and Keywords
Illinois	2019 and 2020 IL H 2556	Introduced 2/13/2019	Amends the Meat and Poultry Inspection Act to provide that a carcass, meat or meat food product, or poultry is misbranded if it purports or is represented as meat or meat food product or poultry or poultry product but is a cell cultured food product. Cell-cultured food product means food products derived from the cells of animals or poultry, grown in laboratories from cell cultures.
Kansas	2020 KS HB 2437	Introduced 1/13/2020	Prohibits the use of meat terms on labels or in advertisements of meat analogs without a disclaimer that the products don't contain meat or the inclusion of the word "imitation" before the meat being imitated.
Vermont	2019 VT H 233	Introduced 2/13/2019	Clarifies that meat is not cell-cultured meat. Cell-culture meat is a food product derived from controlled growth of animal cells from livestock, poultry, fish, and other animals, the subsequent differentiation into various cell types, and the collection and processing into the food product grown in a cell culture instead of from an animal. Misbranding if cell cultured meat is represented as meat or a meat byproduct.
Washington	2019 WA H 1519	Introduced 1/23/2019	Restriction on cell cultured meat.
Introduced Federal Legislation – U.S. Senate			
	2019 US S 1056	Introduced 4/4/2019	Clarifies oversight and jurisdiction over the regulation, inspection, and labeling of cell-cultured meat and poultry.

Source: National Conference of State Legislatures

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Agriculture and Natural Resources

A-3 Raw Milk

Raw milk is milk that has not been pasteurized. Pasteurization is the process of heating milk to high temperatures for the purposes of prolonging shelflife and eliminating disease-causing microorganisms, such as brucella, campylobacter, E. coli, listeria, and salmonella. According to the Centers for Disease Control and Prevention (CDC), health risks associated with consuming raw milk that contains these microorganisms include diarrhea, stomach cramping, vomiting, Guillain-Barre Syndrome, and kidney failure. Because raw milk may carry these microorganisms and may pose a serious health risk, the CDC and the U.S. Food and Drug Administration (FDA) recommend against raw milk consumption.

Despite the CDC's and FDA's warnings, consumer demand for raw milk is increasing. Raw milk advocates disagree with the CDC and FDA about the health risks associated with consuming raw milk. These advocates believe raw milk and raw milk products provide more nutritional benefits than pasteurized milk, can improve physical health, and can cure some diseases.

The conflicting opinions about the risks and benefits of raw milk consumption have led to legislatures and courts joining the conversation, including the Kansas Legislature and a Kansas district court.

Raw Milk Regulation at the Federal Level

Title 21, part 1240 of the Code of Federal Regulations prohibits the interstate sale of raw milk and raw milk products in final package form and for direct human consumption. Additionally, the FDA prohibits the sale of raw unpasteurized milk and raw milk products for human consumption in § 9 of the Grade "A" Pasteurized Milk Ordinance (PMO).

However, the Code of Federal Regulations prohibition does not apply to intrastate sales, and the FDA does not regulate raw milk sales. Therefore, states may permit sales of raw milk and raw milk products within the state and override § 9 of the PMO. States can override the PMO by enacting state statutes, creating state administrative rules and regulations, and making state policy decisions that conflict with § 9.

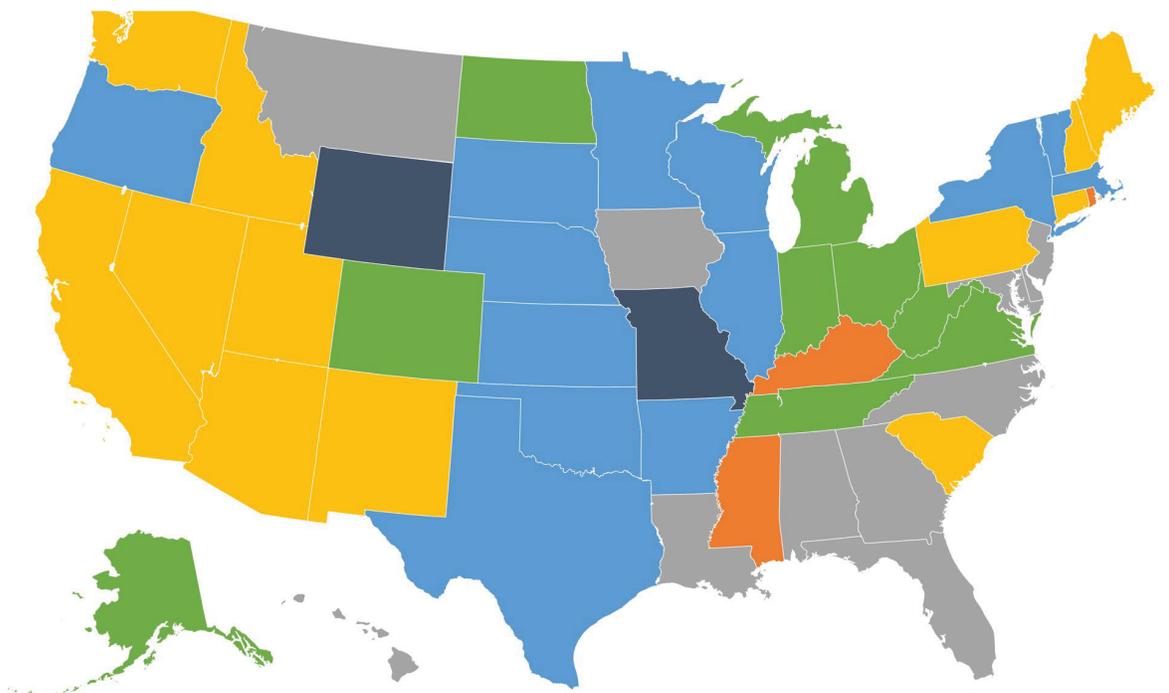
Overall, 31 states, including Kansas, have overridden the PMO to permit intrastate sales of raw milk and raw milk products for human consumption.

Raw Milk Regulation at the State Level

States that have overridden the PMO allow the sale of raw milk and raw milk products in a variety of ways. The most common ways for consumers

to purchase raw milk and raw milk products are on-farm sales and “cow-share” or “herd-share” programs. “Cow-share” programs are programs in which consumers can purchase a dairy cow or a percent of a dairy cow, and then they are allowed to receive the raw milk produced by that cow. Consumers can also purchase raw milk and raw milk products at farmers markets in 2 states and at retail stores in 12 states. The illustration below shows the various purchase options found in each state.

Raw Milk Laws



- States that permit the sale of raw milk in retail stores
- States that allow the sale of raw milk at farmers' markets and other venues
- States that allow the sale of raw milk on the farm
- States that permit cow-share programs
- States that only allow the sale of raw goat milk
- States in which raw milk sales are illegal

Source: National Conference of State Legislatures, “State Milk Laws,” 8/29/2016

Raw Milk Regulation in Select Midwestern States

Kansas

Current Law

KSA 65-771 *et seq.* permits the on-farm sale of raw milk and raw milk products to consumers. Each container of raw milk must be clearly labeled as “ungraded raw milk.” Dairy farmers who only conduct on-farm sales are not required to obtain an operating license. However, dairy farmers who sell raw butter or raw cream are required to obtain a dairy manufacturing plant license. Dairy farmers who sell raw milk and raw milk products are inspected by the State only if there is a complaint. The current statute requires that dairy farmers can advertise the sale of raw milk and raw milk products only on the farm.

Mark Bunner, et al. v. Mike Beam – Secretary of the Kansas Department of Agriculture

In 2019, Mark and Coraleen Bunner filed a lawsuit against Mike Beam in his official capacity as the Secretary of Agriculture. The Bunnors sought a declaratory judgment and injunctive relief from KSA 65-771(cc), commonly referred to as the Kansas Raw Milk Advertising Ban (Ban). The Ban prohibited any off-farm advertising for raw milk and raw milk products.

In November 2019, the Shawnee County District Court entered a judgment by consent and permanent injunction in the case. The specific language at issue was “[...] so long as the person making such sales does not promote the sale of milk or milk products to the public in any manner other than by the erection of a sign upon the premises of the dairy farm.” The court found that this language in KSA 65-771(cc) was a violation of the First and Fourteenth Amendments of the *U.S. Constitution* and *Kansas Constitution Bill of Rights* § 11. Therefore, the Kansas Department of Agriculture was permanently enjoined from enforcing the Ban and any provision related to enforcing the Ban.

2020 SB 308

In response to the Shawnee County District Court’s judgment, a bill was introduced and referred to the Senate Committee on Agriculture and Natural Resources (Senate Committee) during the 2020 Legislative Session. The bill was introduced at the request of the Kansas Department of Agriculture and would have amended KSA 65-771 to allow on-farm sales of raw milk and raw milk products and repealed the problematic language identified in *Bunner*; thus, off-farm advertising for raw milk and raw milk products would be permitted. Furthermore, the bill would have required each container of unpasteurized raw milk sold or offered for sale to bear a clearly visible label to state the following or the equivalent of the following: “This product contains raw milk that is not pasteurized.”

The Senate Committee passed SB 308 with amendments, and the Senate Committee of the Whole passed the bill by a vote of 37-3. The bill was then introduced in the House of Representatives and referred to the House Committee on Agriculture (House Committee). The House Committee held a hearing, but it ultimately took no action on the bill in the wake of the COVID-19 pandemic and abbreviated legislative session. SB 308 died in the House Committee on *Sine Die* (May 21, 2020).

Illinois

The Grade A Pasteurized Milk and Milk Products Act (410 ILCS 635/8) permits the on-farm sale of raw milk in Illinois; however, dairy farmers and consumers must comply with the following conditions:

- The dairy farmer must place a placard at the point of sale or distribution stating the milk is not pasteurized and stating the potential danger to certain individuals;
- Customers must bring their own containers;
- The dairy farmer cannot process the milk in any way; and

- The dairy farmer must produce the milk in accordance with the Department of Public Health rules and regulations.

Indiana

Ind. Code § 15-18-1 prohibits raw milk sales for human consumption. While not expressly authorized by statute, cow-share programs are operated in the state and used by consumers to purchase raw milk. Raw milk sales for animal consumption, on the other hand, are legal on the farm and in stores so long as the dairy farmer has properly obtained a commercial feed license from the State.

Iowa

Iowa Code § 192.103 prohibits raw milk sales in Iowa.

Michigan

Per the Grade A Milk Law of 2001 (Mich. Comp. Laws § 288.538), raw milk sales for human and animal consumption are illegal in Michigan. The State, however, does not regulate cow-share programs, so consumers can legally obtain raw milk through cow-sharing. Consumers in a cow-share program cannot resell the raw milk.

Minnesota

Minn. Stat. § 32D.20 notes sales of raw milk and raw milk products in Minnesota are legal only when the following conditions are met:

- Milk must be occasionally secured or purchased (*i.e.*, not on a routine basis);
- Milk must be for the consumer's personal use;
- Milk must be purchased or secured at the place or farm where the milk is produced;
- Customers must bring their own containers; and
- The farmers cannot advertise raw milk or raw milk products.

Although the first condition requires raw milk and raw milk products only be occasionally secured or purchased, dairy farmers can sell raw milk and raw milk products on a routine basis (more than “occasionally”) if they obtain a license. The licensing requirement for routine sales of raw milk and raw milk products has been challenged by Minnesota dairy farmers. For example, in *In re Application for an Order for Inspection of Berglund (Berglund)*, a dairy farmer challenged the Minnesota Department of Agriculture's authority to regulate his raw milk sales and to inspect his farm. The basis for his challenge stemmed from the State's interpretation of the licensing exemption found in the *Minnesota Constitution* and state statutes. The exemption states “any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license thereof.” The State has interpreted this licensing exemption to apply only to produce farmers and dairy farmers who sell raw milk occasionally. The Minnesota Department of Agriculture applied this interpretation in *Berglund*, and it did not dispute Berglund's assertion that he was exempt from the licensing requirement.

Nebraska

The Nebraska Milk Act (Neb. Rev. Stat. § 2-3965 *et seq.*) regulates the sale of milk, but exempts from such regulation milk and cream produced exclusively for sale on the farm directly to customers for consumption. Like Kansas dairy farmers, Nebraska dairy farmers whose businesses involve only on-farm sales of raw milk and raw milk products do not have to obtain permits.

North Dakota

N.D. Cent. Code § 4.1-25-40 permits the transfer of raw milk under a shared animal ownership agreement (“cow-share program”). On-farm raw milk sales for pet consumption are permitted by the policy of the North Dakota Department of Agriculture.

Ohio

Ohio Rev. Code §917.01 *et seq.* prohibits raw milk sales, but the statute allows raw milk sales from vendors who hold a valid raw milk retailer license issued by the State and who have been continuously engaged in the business of selling raw milk to consumers since 1965. However, there are no dairy farmers in the state who meet both criteria.

Notwithstanding the state statutes, raw milk can be obtained legally through a cow-share program in the state. The cow-share agreements must comport with Ohio contract law to be legally recognized.

South Dakota

S.D. Codified Laws § 39-6-3 permits dairy farmers to sell raw milk on the farm and through home delivery. The state adopted § 9 of the PMO, but it also created an exception that permits the sale of raw milk, cream, skim milk, or goat milk when these conditions are met:

- Must be occasionally secured or purchased;
- Must be for the customer's personal use;
- Must be obtained at the place or farm where the milk is produced;
- Must be sold directly to consumers;
- Must be bottled by dairy farmers with a milk plant license; and
- Must be clearly labeled as "raw milk" on each container.

Wisconsin

Per Wis. Stat. § 97.24, raw milk and raw milk product sales are generally illegal. However, there is an exception for incidental sales of raw milk directly to consumers and on the farm where the milk is produced. The incidental sales exception also applies to sales to employees or persons shipping milk to a dairy plant. However, the exception does not apply to sales regularly made in the course of business or to sales preceded by

any advertising or other offer to solicit members of the public.

Wisc. Admin. Code § ATCP 65.52 prohibits the sale of unpasteurized milk or dairy products, but does not prohibit such sale to:

- The milk producer licensed to operate that dairy farm;
- Individuals with a *bona fide* ownership interest in the dairy farm and milking operation, if the milk producer operating the dairy farm is a legal entity other than an individual or married couple; or
- Family members or nonpaying household guests who consume the milk at the home of the individual milk producer or *bona fide* owner.

Raw Milk Restrictions in Midwest States						
State	Statute	Retail Store Sales Legal	On-farm Sales Legal	Off-farm Sales Legal	Cow-share Programs Legal	Advertising Legal
Illinois	410 ILCS 635/8	No	Yes	No	Yes	No law on advertising
Indiana	Ind. Code § 15-18-1	No	No	No	Yes	No law on advertising
Iowa	Iowa Code § 192.103	No	No	No	No law on cow-shares	No
Kansas	KSA § 65-771 <i>et seq.</i>	No	Yes	No	No law on cow-shares	Yes, on-farm only limitation ruled unconstitutional
Michigan	MCL 288.538	No	No	No	No law on cow-shares	No law on advertising
Minnesota	Minn. Stat. 32D.20	No	Yes	No	No law on cow-shares	No
Nebraska	Neb. Rev. Stat. § 2-3965 <i>et seq.</i>	No	Yes	No	No law on cow-shares	No law on advertising
North Dakota	NDCC § 4.1-25-01 <i>et seq.</i>	No	No	No	Yes	No law on advertising
Ohio	9 Ohio Rev. Code § 917.01 <i>et seq.</i>	No	No	No	Yes	No law on advertising
South Dakota	SDCL § 39-6-3	No	Yes	Yes, only direct delivery by farm	No law on cow-shares	No law on advertising
Wisconsin	Wis. Stat. § 97.24	No	Yes, incidental sales only	No	Yes, if certain conditions are met	No

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B-1
Statewide STAR Bond
Authority

B-2 
Unemployment
Insurance Trust Fund

B-3 
Department of
Commerce –
COVID-19 Assistance

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Commerce, Labor, and Economic Development

B-1 Statewide STAR Bond Authority

STAR Bond Q&A

What is a STAR Bond?

A STAR Bond is a tax increment financing (TIF) program that allows city governments to issue special revenue bonds, which are repaid by all of the revenues received by the city or county from incremental increases in transient guest taxes, local sales taxes, and use taxes collected from taxpayers doing business within the designated portion of the city's "sales tax and revenue" (STAR) bond district. All or a portion of the increased state sales and use tax revenues also may be used to repay the bonds, which typically have a 20-year repayment period.

What type of project can use STAR Bond financing?

- A project with at least a \$50.0 million capital investment and \$50.0 million in projected gross annual sales revenues;
- A project located outside of a metropolitan statistical area (MSA) that has been found by the Secretary of Commerce (Secretary) to be in an eligible area under TIF law and of regional or statewide importance;
- A major commercial entertainment and tourism area as determined by the Secretary;
- Auto racetrack facilities, multi-sport athletic complexes, river walk canal facilities, historic theaters, the Manhattan Discovery Center, the Wyandotte County Schlitterbahn Project, museum facilities, or a major motorsports complex in Shawnee County; or
- A project involving buildings 65 years old or older and contiguous lots that are vacant or condemned.

Is any project specifically excluded from use of STAR Bonds?

Projects including a gaming casino are specifically excluded from use of STAR Bonds.

How does the STAR Bond program 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 a city's boundaries with the written approval of the county commission. However, each special bond project must be approved by the Secretary 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.

Finally, the city must complete a feasibility study, which includes:

- 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, an economic impact study, and 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 industry best practices;
- The 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 places a limit on the total amount of STAR Bonds that may be issued for any project.

A city also is required to have a certified public accountant conduct an annual audit of each project. STAR Bond districts are prohibited from including real property that was part of another project or district unless that project or district has been approved by the Secretary prior to March 1, 2016. A district is limited to those areas being developed and any areas reasonably anticipated to directly benefit the project. However, STAR Bond districts created and approved in 2017 or later must exclude tax increment revenues derived from retail automobile dealers. If a STAR Bond district adds area, the base tax year for the newly annexed area will be the 12-month period immediately prior to the month in which the new area is added to the district.

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 for reapproval of the project. If the project is reapproved, 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?

- Purchase of real property, which may be acquired by means of eminent domain;
- Relocation assistance for property owners moving out of the project district;

- Site preparation work, including relocations of utilities;
- Drainage conduits, channels, levees, and river walk canal facilities;
- Parking facilities, including multi-level parking structures devoted to parking only;
- Street improvements;
- Streetlight fixtures, connection, and facilities;
- Utilities located within the public right-of-way;
- Landscaping, fountains, and decorations;
- Sidewalks and pedestrian underpasses or overpasses;
- Drives and driveway approaches located within the public right-of-way of an auto racetrack facility, major multi-sport athletic complex, museum facility, or major motorsports complex; and
- Up to 1.0 percent of the bond proceeds, but not exceeding \$200,000, plus any actual administrative costs incurred by the Department of Commerce (Department) that exceed the fee.

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 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.

Additional Information

All cities that have projects financed with STAR Bonds are to prepare and submit an annual report to the Secretary by October 1 of each year. The Department compiles an annual report on all STAR Bond projects and submits them to the Governor; the Senate Committee on Commerce; and the House Committee on Commerce, Labor and Economic Development by January 31 of each year. For the past three calendar years and year-to-date, each STAR Bond district must report the following information:

- The amount of sales and use tax collected;
- The amount of bond payments and other expenses incurred;
- The amount of bonds issued and the balance of bonds, by district and by project;
- The remaining cash balance in the project to pay for future debt service and other permissible expenses;
- Any new income-producing properties brought into the district, identifying the base amount of revenue the State would retain and the incremental amount that goes to the district;
- The amount of bonds issued to repay private investors, identifying the share of the indebtedness financed by private and public financing;
- The percentages of state and local effort committed to the district; and
- The number of visitors to the district, identifying the number of in-state and out-of-state visitors.

Previously reauthorized in 2017, the authority to issue debt pursuant to the STAR Bond Financing Act was extended for one year by 2020 SB 66 and will sunset on July 1, 2021, unless further extended by an act of the Legislature.

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B-1
Statewide STAR Bond
Authority

B-2 
Unemployment
Insurance Trust Fund

B-3 
Department of
Commerce –
COVID-19 Assistance

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COVID-19

Commerce, Labor, and Economic Development

B-2 Unemployment Insurance Trust Fund

The Kansas Unemployment Insurance (UI) Trust Fund was created in 1937 as the state counterpart to the Federal Unemployment Insurance Trust Fund. The UI Trust Fund provides income stability for Kansas citizens during times of economic difficulty while stimulating economic activity. UI is a federal program managed by the State and requires all changes to the Employment Security Law (ESL) to be approved by the U.S. Department of Labor (USDOL) before taking effect. The ESL has been modified by the Legislature several times over the last 20 years.

State Fund Contributions

Contributions to the UI Trust Fund are made by Kansas employers and are governed by KSA 2019 Supp. 44-710a. The UI Trust Fund is designed to be self-correcting during economic cycles. Moneys in the UI Trust Fund accumulate during periods of economic expansion; benefits are primarily distributed during times of economic retraction.

The State charges employers a fee on the first \$14,000 of wages paid to each employee, referred to as the *taxable wage base*. The amount collected from employers varies depending upon the presence or absence of several factors or conditions, the primary of which is employer classifications. Employers in Kansas can be classified as a *new employer*, an *entering and expanding employer*, a *positive balance employer*, or a *negative balance employer*.

New employers with fewer than 24 months of payroll experience have a contribution rate of 2.7 percent, unless they are in the construction industry. New employers within the construction industry are instead charged a contribution rate of 6.0 percent of their taxable wage base.

If the new employer is expanding or moving from another state, they are eligible to request an alternate rate. If they meet the qualifications, then the employer's contribution rate would be equal to their previous rate in the other state provided the rate was 1.0 percent or greater of their taxable wage base. In order to retain the reduced contribution rate, the employer must maintain a positive

account balance throughout the four-year period the reduced rate is in effect.

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 UI Trust Fund exceed the amount of unemployment benefits charged to their accounts. Positive balance employers are grouped into 27 rate groups depending upon their unemployment experience, and a specific contribution rate is determined for each employer. The standard rates for the positive groups range from 0.2 percent for rate group 1 and increase by 20 basis points, or 0.2 percent, in each subsequent rate group until 5.4 percent is established for rate group 27.

An exception to this is if a positive balance employer's reserve ratio has increased significantly due to an increase in their taxable payroll. If an increase occurred by a minimum of 100.0 percent due to employment growth rather than a change in their taxable wage base from the previous year, then the employer shall be given a reduced rate. The rate would be for a period of three years and require the employer to maintain a positive and increasing account balance for the three years.

Employers are classified as negative balance when their total contributions to the UI Trust Fund do not exceed the amount of unemployment benefits charged to their accounts. These employers are grouped into 11 rate groups. The standard rates for the negative groups range from 5.6 percent for rate group N1 and increase by 20 basis points in each subsequent rate group until 7.6 percent is established for rate group N11.

Employers not classified as negative 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 UI Trust Fund balance is insufficient.

Once standard rates are set, they are modified based upon the solvency adjustment. The solvency adjustment, which is based upon the UI Trust Fund's Average High Cost Multiple (AHCM),

is applied to all experience rated employers and ranges from an increase of 1.6 percent to a decrease of 0.5 percent. The AHCM is derived by dividing the UI Trust Fund's reserve ratio¹ by the average high benefit cost rate.² This adjustment allows the rates to respond to the state of the UI Trust Fund.

Employers also have the choice to make additional contributions to the UI Trust Fund in order to become positive balance employers and qualify for an experience based rating with lower contribution rates.

In 2020 Special Session HB 2016, the Legislature exempted all employers from paying a solvency adjustment for calendar year 2021.

Federal Unemployment Trust Fund

In addition to the contributions to the UI Trust Fund, employers are taxed by the Federal Unemployment Tax Act (FUTA).

Employers pay a rate of 6.0 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 would yield an effective contribution rate of 0.6 percent for Kansas employers. FUTA funds are used for administrative purposes and to fund loans for state unemployment insurance programs when they become insolvent.

Under federal and state unemployment law, governmental entities and nonprofit organizations pay into the UI Trust Fund during the year after a laid-off employee has collected unemployment insurance benefits.

CARES Act—Relief

The Coronavirus Aid, Relief, and Economic Security (CARES) Act authorizes the USDOL to issue guidance to allow states to interpret their state unemployment insurance laws in a manner that would provide maximum flexibility

to governmental and nonprofit employers for their payments into the unemployment system. Additionally, the CARES Act authorizes the federal government to provide partial reimbursements (approximately 50.0 percent of the amount of governmental and nonprofit payments into unemployment systems) to state and local governmental entities, certain nonprofit organizations, and federally recognized Indian tribes for weeks of unemployment between March 13, 2020, and December 31, 2020. These partial reimbursements apply to all payments made during this time period, even if the unemployed individual is not unemployed as a result of the COVID-19 pandemic. As of October 20, 2020, the CARES Act had provided \$47.6 million of emergency relief for government entities and nonprofits.

Solvency of UI Trust Fund

Solvency of UI Trust Fund Kansas uses the AHCM, as recommended by the USDOL, to ensure the UI Trust Fund is adequately funded.

The primary determinants of the UI Trust Fund depletion rate are the benefits paid out, the number of persons to whom unemployment is paid, and the amount of time for which benefits are paid.

Current Status of the UI Trust Fund

If the UI Trust Fund is depleted, as occurred during the Great Recession, the Kansas Department of Labor (KDOL) is authorized to borrow from the USDOL, the Pooled Money Investment Board, or both to make weekly benefit payments.

The State General Fund is not obligated to ensure the solvency of the UI Trust Fund. Likewise, the UI Trust Fund may not be used for non-employment security purposes. Prior to the COVID-19 pandemic, the state's UI Trust Fund was considered sufficiently solvent that any loans taken from USDOL will be at 0.0 percent interest. Failure to repay the loan results in the FUTA tax credit for employers being reduced by an additional 0.3 percent annually until the debt

is repaid. The terms of the loan are such that full payment is due on November 10 following the second January 1 the loan is outstanding. Thus, if the state's UI Trust Fund requires a loan by January 1, 2021, then full payment would be due on November 10, 2022. If a loan is made on January 2, 2021, or later, then full payment would be due on November 10, 2023.

The UI Trust Fund contains a balance of \$534.6 million as of November 7, 2020.

Employee Benefits

An individual is eligible for unemployment compensation when that person has lost employment through no fault of their own.

Termination for cause or resignation generally disqualifies a person from receiving UI benefits; however, the Kansas Employment Security Law allows for several exceptions to this prohibition.

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

CARES Act—Unemployment Programs

The CARES Act established three federal unemployment programs to subsidize state programs and provide benefits for workers normally not covered by unemployment insurance. The Pandemic Unemployment Assistance (PUA) program provides benefits to individuals who are self-employed, seeking part-time employment, or would otherwise not qualify for UI benefits. The Pandemic Emergency Unemployment Compensation (PEUC) program extends benefits for those who have exhausted their state benefits, do not qualify for state benefits, or are unable to search for work due to COVID-19. The Federal

Pandemic Unemployment Compensation (FPUC) program provided an additional \$600 per week benefit alongside whatever state benefits an individual received. Both PUA and PEUC are authorized to continue through December 31, 2020, while FPUC ended on July 31, 2020. As of October 20, 2020, PUA had paid \$151.7 million, FPUC had paid \$1.2 billion, and PEUC had paid \$41.6 million in benefits to Kansans.

Following the termination of FPUC, President Trump signed an executive order establishing the Lost Wages Assistance Program (LWA), which utilized Federal Emergency Management Agency (FEMA) moneys to provide a \$300 federal benefit with a \$100 match from the states. The match could either be in addition to current state benefits, or current benefits could be used as the match. Kansas applied for the program utilizing existing state benefits as the match and was approved for the program. Kansas received money for LWA to include with all benefit payments between August 1, 2020, and September 5, 2020.

Calculating the Weekly Benefit

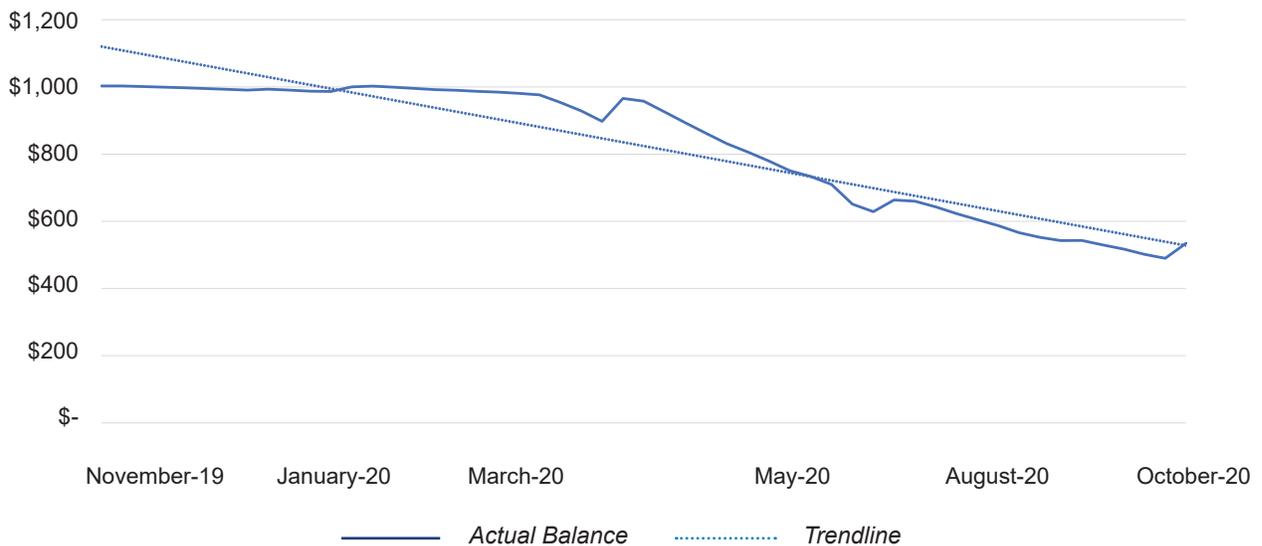
The weekly benefit amount is what the claimant will receive each week in unemployment

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. The maximum weekly benefit amount is limited to either \$474 or 55.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year, whichever is greater. The current maximum weekly benefit is \$503 per week. Claimants are guaranteed to receive at least 25.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year. The current minimum weekly benefit is \$125 per week.

Prior to the enactment of 2020 House Sub. for SB 27, workers were required to wait a week prior to making a claim and receiving unemployment insurance benefits. The new law grants workers an additional week’s benefit upon the completion of the third week of unemployment after the waiting week. This amount does not increase the total amount of benefits that a worker may claim. This provision sunsets April 1, 2021.

This was further amended in 2020 Special Session HB 2016, in which the Legislature exempted all new claims filed between April 5, 2020, and

UI Trust Fund Balance: November 9, 2019 - November 7, 2020
(Dollars in Millions)



Source: Kansas Department of Labor

December 26, 2020, from the waiting week in accordance with the Families First Coronavirus Response Act and the federal CARES Act.

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; the calculation yielding a shorter duration is used. First, an employee can receive weekly compensation for a specified number of weeks, or second, the duration of benefits is determined by multiplying one-third times the total earnings 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. 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 using a three-month, seasonally-adjusted rolling average.

The federal Emergency Unemployment Compensation Act of 2008 (Act) extends an employee's duration of benefits 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 Act are paid from federal funds and do not impact the UI Trust Fund balance. By law, 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 one-third calculation. Under state law, extended Kansas benefits are paid 50.0 percent from the UI Trust Fund and 50.0 percent from the Federal Unemployment Account.

2020 House Sub. for SB 27 provides that any worker who files a claim for unemployment compensation on or after January 1, 2020, is eligible for a maximum of 26 weeks of benefits. This provision temporarily supersedes prior law related to the maximum length of benefits and sunsets on April 1, 2021.

Furthermore, on June 9, 2020, KDOL was notified that Kansas had triggered the Extended Benefits program and that effective June 7, 2020, unemployed Kansans would be eligible for an additional 13 weeks of benefits beyond the 26 weeks authorized by 2020 House Sub. for SB 27.

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. To cope with the increase in fraudulent claims, KDOL announced the creation of a dedicated website for individuals to file fraud reports and find all the information they need related to UI fraud. KDOL further announced on October 6, 2020, that it will be doubling the size of its fraud and special investigations unit, deploy technology to target scammers, and implement a variety of steps to mitigate UI fraud.

For further information on consumer fraud mitigation, see article F-1 Consumer Credit Reports and Security Freezes, available at <http://www.kslegresearch.org/KLRD-web/Briefing-Book-2021.html>.

- 1 The reserve ratio is calculated by dividing the UI Trust Fund's balance as of July 31 by the total payroll for contributing employers.
- 2 The average high benefit cost rate is determined by averaging the three highest ratios of benefits paid to total wages in the most recent 20 years.

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B-1
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B-3 
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COVID-19

Commerce, Labor, and Economic Development

B-3 Department of Commerce – COVID-19 Assistance

The Kansas Department of Commerce (Department) is the cabinet agency concerned with economic development. Under the Office of the Secretary of Commerce, there are seven program groups: Business Incentives and Services, Community Development Assistance, Exporting and International Business, Commerce University Partnerships, Minority and Women Business and Development, Investor Programs and Services, and Workforce Services. The Athletic Commission and the Creative Arts Industries Commission also are organized within the Department.

During fiscal year (FY) 2020 and FY 2021, the Department has been tasked with assisting Kansas businesses and individuals in recovering from the economic stress of the COVID-19 pandemic. Following is a list of recovery programs that are managed by the Department.

Community Development Block Grant

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act allocated additional funding to the Community Development Block Grant (CDBG)-CV program in Kansas in three rounds, totaling \$22.1 million. The purpose of the funds were to provide working capital for businesses and meal program support for communities.

To be eligible to receive a CDBG-CV Economic Development grant, the recipient business must be a for-profit business and retain jobs for low-to-moderate income people.

Fifty-one percent or more of the full-time equivalent (FTE) jobs retained must be for persons from low-to-moderate income households as defined by the U.S. Department of Housing and Urban Development (HUD).

CDBG-CV Economic Development grants can be used to pay for the following expenses:

- Working capital such as wages, utilities, and rent; and

- The purchase of 60 days worth of inventory needed to reopen (60 days beginning on the day the business could reopen).

Funding Limits and Conditions

CDBG-CV Economic Development grants are awarded based on the following conditions:

- Businesses with five or fewer employees (including the owner) are eligible to receive up to \$25,000 per FTE job in CDBG-CV Economic Development grant funding (with a maximum of \$30,000 per company);
- Businesses with between 6 and 50 employees are eligible to receive up to \$35,000 for each FTE job in CDBG-CV Economic Development grant funding (with a maximum of \$50,000 per company);
- The maximum amount a community may apply for is \$300,000; and
- To be eligible to receive a CDBG-CV Meal Program grant, the applicant must be able to demonstrate at least 51 percent of the community meets the low-to-moderate income household criteria as defined by HUD. CDBG-CV Meal Program grant funds can be directed toward organizations, such as Meals on Wheels, for the replenishment of local food banks or to support organizations that provide meal programs for children impacted by the loss of school meal programs. The maximum amount a community may request was \$100,000.

Kansas Creative Arts Industries Commission Grants

Kansas received \$440,600 through CARES Act arts funding. Applicants were asked to provide an annual operating budget and a one-month breakdown. Awards were then determined based on three months of operational expenses. Funds could be spent on recurring operational expenses like payroll and facility costs. The program was coordinated with other concurrent CARES Act

programs to maximize the number of cultural organizations that would receive aid. CARES Act funds were supplemented with regular partnership funds to include more organizations due to the number of events and projects canceled in the last quarter of FY 2020. Individual awards were capped at \$20,000.

Connectivity Emergency Response Grants

The Connectivity Emergency Response Grant (CERG) program was created to address the increased need for Internet connectivity in Kansas in response to the COVID-19 pandemic. The goal of the program is to improve connectivity to underserved and unserved areas to address needs related to the pandemic; \$50.0 million in federal CARES Act funds was allocated for the program.

A 20.0-percent match is required for total project cost, and the maximum grant amount is \$10.0 million. Minimally adequate internet connectivity was defined as residential speeds greater than or equal to 25 megabits per second (download) and 3 megabits per second (upload). The project must be completed by December 30, 2020, to comply with the law.

Eighty-four applications for projects were received, and 67 were approved. The distribution of funds by region is:

- Northeast Kansas – \$9.7 million;
- Kansas City region – \$8.3 million;
- Southeast Kansas – \$5.2 million;
- South central Kansas – \$14.1 million;
- North central Kansas – \$590,515;
- Northwest Kansas – \$402,811; and
- Southwest Kansas – \$10.9 million.

Economic Development Grants

Business Retention and Expansion

In addition, \$61.5 million was appropriated from federal CARES Act funds for business retention and expansion; including:

- Small business grants, in which 1,982 grants were approved for an average award of \$18,954—19.0 percent was awarded to agriculture, automotive, oil and gas, and real estate businesses; 18.0 percent was awarded to the restaurant and hospitality industry; 15.0 percent was for business and professional services businesses; 12.0 percent was for personal services businesses; and 36.0 percent for other services;
- Personal protective equipment procurement and manufacturing;
- Domestic supply chain support;
- The COVID-19 Bioscience Product Development Accelerator Grant; and
- The University SARS-CoV-2/COVID Research and Diagnostic Capacity Support Grant.

Securing Local Food Systems

Also from federal CARES Act funding, \$9.0 million was appropriated to secure local food systems for meat processing, food banks, and producers. While the program was housed in

the Department, the lead technical review was handled by the Department of Agriculture.

Workforce Training and Retraining

Additionally, \$8.1 million was appropriated from federal CARES Act funding for workforce training, including:

- Information Technology (IT) Cybersecurity & IT Project Management Certification Training;
- Higher Education Advanced Manufacturing and IT Equipment; and
- The Kansas Cybersecurity Consortium.

Hospitality Industry Relief Emergency (HIRE) Fund

From the Job Creation Program Fund, \$5.0 million was appropriated to provide no-interest bridge loans of up to \$20,000 to sustain operations in the Kansas hospitality industry; 344 Kansas hospitality businesses received HIRE Fund loans. In the Kansas City metro area, \$2.0 million was distributed amongst 136 businesses; \$1.0 million was distributed to 68 companies in Sedgwick County; and \$2.0 million was distributed to 140 businesses across the rest of the state. The Job Creation Program Fund was later backfilled with \$5.0 million from the Coronavirus Relief Fund by the Kansas State Finance Council.

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Education

C-1 Career Technical Education in Kansas

In 2012, legislation (SB 155) launched a new plan to enhance career technical education (CTE) in Kansas with the purpose of better preparing high school students for college and careers. Beginning with the 2012-2013 school year, Kansas high school students could qualify for free college tuition in approved technical courses offered at Kansas technical and community colleges. The program also initially provided school districts with a \$1,000 incentive for each high school student who graduated from that district with an industry-recognized credential in a high-need occupation.

The 2015 Legislature changed the incentive to a prorated amount not to exceed \$750,000 in total. During the 2016 Session, the appropriated amount decreased from \$750,000 to \$50,000 for fiscal year (FY) 2016 and FY 2017, which was estimated to cover the cost of the certification examinations only.

The 2017 Legislature moved the \$50,000 incentive funds from the Kansas Board of Regents (KBOR) to the Kansas State Department of Education (KSDE) for FY 2018 and FY 2019. The amount changed over the next two years and then was deleted in FY 2020.

The appropriated amount for tuition was prorated in FY 2016 and FY 2017, as there was no increase in appropriations and the amount did not cover all program participants. The program was fully funded in FY 2018, FY 2019, and FY 2020.

Occupations on the qualifying credential incentive list can be found on the KBOR website. The list currently includes, but is not limited to, the following occupations:

- Heavy and tractor-trailer truck drivers;
- Computer support specialists;
- Nursing assistants;
- Automotive service technicians and mechanics;
- Machinists;
- Dental assistants;
- Firefighters;
- Carpenters;
- Welders;
- Electricians;

- Plumbers and pipefitters;
- Sheet metal workers; and
- Heating, air conditioning, and refrigeration mechanics and installers.

technical education has grown, resulting in a growth of college credit hours generated and credentials earned by high school students. The following table, published on the KBOR website, summarizes the increase in participation over time per academic year (AY).

Student Participation

Since the program’s inception, the number of students participating in postsecondary career

Student Participation in CTE										
	AY 2011	AY 2012	AY 2013	AY 2014	AY 2015	AY 2016	AY 2017	AY 2018	AY 2019	AY 2020*
Participating Headcount	3,475	3,870	6,101	8,440	10,275	10,023	10,660	11,690	13,675	13,934
College Credit Hours Generated	28,000	28,161	44,087	62,195	76,756	79,488	85,150	92,092	105,084	109,226
Credentials Earned	--	548	711	1,419	1,682	1,224	1,459	1,420	1,803	1,631

* preliminary numbers

National Recognition

In 2013, the Career Technical Education Initiative received national recognition as one of the “Top Ten Innovations to Watch” from The Brookings Institution. The same year, Martin Kollman of

KSDE and Lisa Beck of KBOR published the article “Free CTE College Tuition and Certification Funding: KS SB 155 at Work” in the September issue of *Techniques*, a national monthly magazine published by the Association for Career and Technical Education.

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C-1
**Career Technical
Education in Kansas**

C-2
**Mental Health
Intervention Team
Pilot Program**

C-3
**School Finance—
Recent Legislative
Changes**

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Kansas Legislator Briefing Book 2021

Education

C-2 Mental Health Intervention Team Pilot Program

2018 Legislation

In Sub. for SB 423 and House Sub. for SB 61, the 2018 Legislature created the Mental Health Intervention Team Pilot Program (Program) for fiscal year (FY) 2019 “to improve social-emotional wellness and outcomes for students by increasing schools’ access to counselors, social workers and psychologists statewide” (2018 Sub. for SB 423, Sec. 1(a)). The legislation required school districts and community mental health centers (CMHCs) to enter into partnerships through memorandums of understanding (MOUs) to implement the Program. Additionally, the legislation required mental health intervention teams to consist of school liaisons employed by the participating school districts, in addition to clinical therapists and case managers employed by the participating CMHCs. The legislation specified nine school districts that would participate in the Program.

The Legislature appropriated \$10.0 million from the State General Fund (SGF) to the Kansas State Department of Education (KSDE) to fund the Program. The appropriations included \$4.2 million to cover treatment costs for participating students. This included \$2.6 million in match for Medicaid costs and \$1.5 million for CMHCs. In addition, the appropriations included \$3.3 million to cover the costs associated with the school liaisons hired by participating school districts. Finally, \$2.5 million was included to create an online database to be used for the Program.

2019 Legislation

In House Sub. for SB 25, the 2019 Legislature reauthorized the Program for FY 2020. The Legislature appropriated \$8.0 million from the SGF. The Legislature also made several adjustments to the Program, reappropriating unused funds for the pilot program from FY 2019 to FY 2020, requiring a 25.0 percent local match for the school liaisons hired by participating school districts, and providing the State Board of Education (State Board) with the authority to expand the Program to additional school districts for FY 2020.

Program Overview

Scope of Program

As implemented by KSDE, the Program focuses on providing care to two groups of students.

The “alpha group” consists of youth who are Children in Need of Care (CINC) and are in state custody. These students have experienced multiple placements and moved school districts multiple times throughout the school year.

The “beta group” consists of all other youth (non-CINC) who are in need of mental health support services.

Duties of Intervention Team Members

The duties of school liaisons employed by participating school districts include, but are not limited to:

- Identifying appropriate referrals;
- Acting as a liaison between the school district and the CMHC;
- Helping the CMHC prioritize interventions for identified students;
- Facilitating connections between identified students’ families and the CMHC staff;
- Communicating with child welfare contacts to get the educational history of a student who has moved schools; and
- Gathering outcomes to monitor the effectiveness of the program.

The duties of clinical therapists employed by participating CMHCs include, but are not limited to:

- Helping the school liaison identify appropriate referrals and prioritize interventions for identified students;
- Conducting a clinical assessment of the identified student and making appropriate treatment recommendations;
- Providing individual and family therapy;

- Communicating with school personnel to help them understand a student’s diagnosis, family circumstance, and suggested interventions; and
- Gathering outcome data to monitor the effectiveness of the Program.

The duties of case managers employed by participating CMHCs include, but are not limited to:

- Working with the school liaison and clinical therapist to identify and prioritize students for treatment interventions;
- Providing outreach to students, families, and child welfare contacts to help engage in treatment;
- Helping maintain communication between all entities involved, including family, student, school, clinician, child welfare, and community;
- Making referrals to appropriate community resources; and
- Helping to reconnect students and families when they are not following through with the treatment process.

Memorandums of Understanding

Participating school districts are required to enter into two MOUs for the Program.

The first MOU is with KSDE; it outlines the basic requirements of the Program and specifies how funding received for the Program is to be spent. The second MOU is between the school district and its partner CMHC. This MOU outlines how the school district and CMHC will cooperate in the implementation of the Program. (KSDE produced and distributed a standard memorandum for this agreement, but did not require school districts to use it.)

Additionally, KSDE has entered into a MOU with the Kansas Department of Health and Environment (KDHE) to cover the distribution of the funding for Medicaid-related costs. During FY 2019, the Medicaid funding for the program was distributed to the participating school districts. The school districts then made payments to

KDHE. For FY 2020, however, KSDE paid KDHE directly for Medicaid-related costs.

Breakdown of Funding

Total funding for the Program for FY 2020 was \$9.3 million. This included the \$8.0 million appropriated by the 2019 Legislature and \$1.3 million reappropriated from FY 2019 to FY 2020.

Most of the funding for the Program flowed through the participating school districts. The following is a description of the two different grants to school districts and the payments made to KDHE.

School Liaison Grant. This grant is distributed to school districts on a monthly basis. School districts submit requests each month to cover anticipated expenditures. Allowable expenditures for this grant include salary, fringe benefits, travel expenses, and a computer that must be used exclusively by the school liaison. Beginning in FY 2020, participating school districts must cover 25.0 percent of the cost of the liaisons. School liaison grant funding for FY 2020 was \$4.0 million, compared to \$3.3 million in FY 2019.

CMHC Grant. This grant is distributed quarterly to school districts. School districts must forward all payments to the participating CMHC to cover the cost for treatment and services for students who are uninsured or underinsured.

Grant funding for FY 2020 was \$2.1 million, compared to \$1.5 million in FY 2019.

KDHE Payments. As mentioned above, KSDE will make payments directly to KDHE to cover Medicaid costs related to the Program. KDHE payments for FY 2020 were \$2.6 million, which is the same as in FY 2019.

Reporting Requirements

KSDE requires participating school districts to submit, in conjunction with their partner CMHC, two reports during the fiscal year. A report covering the first half of the school year was due December 20, 2019. The second report covering the entire year was due June 30, 2020.

These reports track the number of students served and various academic performance measures, including attendance, behavior, and graduation. In FY 2020, 3,266 total students received services from CMHCs through the program, including 343 students in foster care.

Additionally, the year-end report includes a financial report on program expenditures for the fiscal year. In the 2018-19 school year, state expenditures totaled \$7.3 million, including \$2.9 million for school district liaisons and \$1.5 million for CMHCs. In the 2019-20 school year, state expenditures totaled \$9.0 million, including \$4.0 million for school district liaisons and \$2.1 million for CMHCs.

Participating School Districts

During the first year of the Program, there were a total of 9 participating school districts, serving 82 schools.

Using the authority provided in 2019 House Sub. for SB 25, the State Board expanded the Program for FY 2020. The Program served students in 180 schools in 32 school districts during the 2019-2020 school year.

According to information provided by KSDE, the Program will serve 232 schools in 56 school districts during the 2020-21 school year.

The tables on the following pages include a list of all school districts participating in the Program during the 2021-21 school year, along with the total state aid requested for each school district.

Mental Health Intervention Team Pilot Program 2020-2021 Applications					
USD	District Name	County	State Aid Request	State Aid Request	Total State Aid Request
			School Liaisons	Mental Health Provider	
204	Bonner Springs*	Wyandotte	\$ 138,750	\$ 46,250	\$ 185,000
233	Olathe*	Johnson	109,242	36,414	145,656
239	North Ottawa Co.	Ottawa	44,760	14,920	59,680
255	South Barber*	Barber	34,500	11,500	46,000
259	Wichita	Sedgwick	1,300,201	1,049,031	2,349,232
262	Valley Center	Sedgwick	91,065	30,355	121,420
266	Maize	Sedgwick	89,503	29,834	119,337
270	Plainville	Rooks	20,222	6,741	26,963
271	Stockton*	Rooks	20,174	6,725	26,899
272	Waconda*	Mitchell	10,734	3,578	14,312
282	West Elk*	Elk	46,740	15,580	62,320
286	Chautauqua County	Chautauqua	46,092	15,364	61,456
293	Quinter*	Gove	63,491	21,164	84,655
305	Salina	Saline	279,000	93,000	372,000
306	Southeast of Saline	Saline	42,748	14,249	56,997
307	Ell-Saline*	Saline	34,500	11,500	46,000
309	Nickerson*	Reno	39,145	13,048	52,193
310	Fairfield	Reno	32,785	10,928	43,713
311	Pretty Prairie	Reno	41,099	13,700	54,799
323	Rock Creek*	Pottawatomie	41,813	13,938	55,751
329	Wabaunsee County	Wabaunsee	38,648	12,883	51,531
337	Royal Valley*	Jackson	19,530	6,510	26,040
349	Stafford	Stafford	44,939	14,980	59,919
382	Pratt	Pratt	52,512	17,504	70,016
383	Manhattan	Riley	114,873	38,291	153,164
402	Augusta	Butler	60,945	20,315	81,260
413	Chanute*	Neosho	50,224	16,741	66,965
435	Abilene	Dickinson	78,961	109,088	188,049
438	Skyline	Pratt	38,202	12,734	50,936
445	Coffeyville*	Montgomery	45,000	15,000	60,000
446	Independence	Montgomery	74,172	24,724	98,896
447	Cherryvale	Montgomery	41,674	13,891	55,565
453	Leavenworth	Leavenworth	40,871	13,624	54,495
457	Garden City	Finney	60,808	55,500	116,308
461	Neodesha	Wilson	45,580	15,193	60,773
462	Central of Burden*	Cowley	36,443	12,148	48,591
484	Fredonia	Wilson	101,709	33,903	135,612
489	Hays	Ellis	104,292	34,764	139,056
490	El Dorado	Butler	85,170	28,390	113,560

Mental Health Intervention Team Pilot Program 2020-2021 Applications					
USD	District Name	County	State Aid Request	State Aid Request	Total State Aid Request
			School Liaisons	Mental Health Provider	
500	Kansas City	Wyandotte	\$ 842,090	\$ 280,697	\$ 1,122,787
501	Topeka	Shawnee	424,441	208,000	632,441
503	Parsons	Labette	58,875	48,000	106,875
506	Labette County*	Labette	43,125	14,375	57,500
332	Cunningham*	Kingman	41,808	13,936	55,744
Total Aid Requested Statewide:			\$ 5,071,456	\$ 2,519,010	\$ 7,590,466
* indicates a new applicant					

Mental Health Intervention Team Program 2020-2021 Applications					
Membership District		County	Sponsoring District		County
240	Twin Valley	Ottawa	239	N. Ottawa Co. (240)	Ottawa
403	Otis-Bison	Rush	271	Stockton	Rush
291	Grinnell Public Schools	Gove	293	Quinter (291, 292, 274, 275, 468)	Gove
292	Wheatland	Gove	293	Quinter (291, 292, 274, 275, 468)	Gove
274	Oakley	Logan	293	Quinter (291, 292, 274, 275, 468)	Gove
275	Triplains	Logan	293	Quinter (291, 292, 274, 275, 468)	Gove
468	Healy Public Schools	Lane	293	Quinter (291, 292, 274, 275, 468)	Gove
312	Haven Public Schools	Reno	311	Pretty Prairie (312)	Reno
393	Solomon	Dickinson	435	Abilene (393, 473, 487)	Dickinson
473	Chapman	Dickinson	435	Abilene (393, 473, 487)	Dickinson
487	Herington	Dickinson	435	Abilene (393, 473, 487)	Dickinson
511	Attica	Harper	332	Cunningham (511)	Kingman
USD 239 includes USD 239 (North Ottawa County) and USD 240 (Twin Valley).					
USD 311 includes USD 311 (Pretty Prairie) and USD 312 (Haven).					
USD 435 includes USD 435 (Abilene), USD 393 (Solomon), USD 473 (Chapman), and USD 487 (Herington).					
Per KSDE, multiple smaller school districts may join together in a consortium to file one application. In this situation, one district serves as the sponsoring district for reporting and financial purposes. The sponsoring district receives all payments from KSDE and files all reports. The other districts are member districts that file reports and receive funding through the sponsoring district.					

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Education

C-3 School Finance—Recent Legislative Changes

The 2015 through 2020 Legislatures passed major changes to school finance.

2015

In House Sub. for SB 7, the 2015 Legislature created the Classroom Learning Assuring Student Success (CLASS) Act and repealed the School District Finance and Quality Performance Act (SDFQPA), which was passed in 1992. The CLASS Act provided funding for each school district for school years 2015-2016 and 2016-2017 *via* block grants.

2016

The 2016 Legislature, in both its regular session and its special session, passed school finance legislation. In its special session, the Legislature passed Senate Sub. for HB 2001, which altered and amended legislation passed by the 2016 Legislature. Senate Sub. for HB 2001 included the following:

- Reinstated the Supplemental General State Aid and Capital Outlay State Aid formulas in effect prior to the enactment of the CLASS Act for fiscal year (FY) 2017, which the 2016 Legislature fully funded;
- Reduced the amount of funding school districts were entitled to receive under the block grant for full-time virtual school students for FY 2017 from \$5,600 to \$5,000; and
- Directed the State Board of Education (State Board) to review applications for funds from the Extraordinary Need Fund (ENF).

Additionally, Senate Sub. for HB 2001 set expenditure limits on the ENF at \$13.0 million and provided that no moneys could be expended from the ENF in FY 2017 until the sale or merger of the Kansas Bioscience Authority was complete. The legislation directed the first \$25.0 million in proceeds from the sale or merger to be deposited in the State General Fund. If the remaining proceeds were less than \$13.0 million, the amount of money appropriated to the ENF was to be reduced by the amount of the shortfall.

2017

The 2017 Legislature passed the Kansas School Equity and Enhancement Act, which reinstated a weighted enrollment formula similar to the SDFQPA. Weightings include at-risk students, declining enrollment, high-density at-risk students, bilingual students, low enrollment, high enrollment, new school facilities, ancillary school facilities, cost-of-living, career technical education, and transportation.

The weighted enrollment of a school district is once again multiplied by a coefficient to determine the aid the district receives in its general fund. This multiplier—formerly known as base state aid per pupil—is now referred to as base aid for student excellence (BASE).

2018

In House Sub. for SB 423, the 2018 Legislature increased the BASE over a five-year period to arrive at an amount of \$4,713 by school year 2022-2023 and created the Mental Health

Intervention Team Pilot Program. House Sub. for SB 423 also made changes to weightings associated with transportation, at-risk students, career and technical education, and bilingual students. Finally, the legislation added aid for special education, early childhood education, and college and career entry exams.

2019

In House Sub. for SB 16, the 2019 Legislature further increased the BASE over a four-year period to arrive at an amount of \$4,846 by school year 2022-2023. House Sub. for SB 16 also made changes to various school accountability, auditing, and reporting provisions. Finally, the legislation requires the State Board to identify and approve evidence-based at-risk programs.

2020

In SB 66, the 2020 Legislature extended through FY 2022 the high-density at-risk student weighting, which was set to end on July 1, 2020.

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D-1
Election Security

D-2
Kansas Open
Meetings Act

D-3
Kansas Open Records
Act

D-4
Voter Registration and
Identification

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Elections and Ethics

D-1 Election Security

Election security continues to be an important topic of discussion at all levels of government. This article examines the major election vulnerabilities and summarizes election security activities being undertaken at the federal level as well as in Kansas.

Tools Used in Elections

The federal U.S. Election Assistance Commission (EAC) noted more than 300,000 pieces of voting equipment were deployed during the 2018 election. Since a majority of election tools are electronic, cybersecurity and tampering are major issues concerning election security. Many tools and resources increase the efficiency and security of elections. The tools and resources examined in this article include online voter registration systems, electronic poll books, election personnel, voting machines, storage and tallying of ballots, transmission of vote tallies, postelection audits, and other cybersecurity tools.

Online Voter Registration Systems

The EAC found more than 211 million registered voters for the 2018 election. According to the National Conference of State Legislatures (NCSL), currently 40 states and the District of Columbia (D.C.) use an online voter registration system to register those voters. Additionally, Oklahoma is phasing in online voter registration as of late 2020. As with any online system, there are benefits and risks. Online voter registration can expedite new voter registration, updates to existing voter registrations, and finding other election information, such as locating polling places. However, online voter registration systems are at risk of cyberattacks, as was seen when hackers targeted election systems, including voter registration systems, in 21 states during the 2016 election. While Arizona, Florida, and Illinois were confirmed to have breaches of their voter registration systems, a 2018 NBC News article¹ indicated four other states' voter registration systems were compromised to varying levels of severity before the 2016 election. To date, no evidence has been found that any voter information was altered or deleted.

The Kansas online voter registration system is about ten years old. The Kansas Director of Elections (Director) with the Office of the Secretary of State (Office) indicated in July 2018 a firewall was

in place to protect the voter registration system, which was continuously updated, and that Office staff had been trained on cybersecurity best practices. The Secretary of State previously had stated in 2016 that the voter registration system had logging capabilities to track modifications to the database.

Electronic Poll Books

In January 2014, the Presidential Commission on Election Administration recommended all jurisdictions transition to electronic poll books (EPBs). The EAC indicates 36 states and the District of Columbia (D.C.) used EPBs during the 2018 election, with seven of these states using EPBs in all election jurisdictions. EPBs replace paper poll books and allow poll workers to access the list of eligible voters, check in voters more efficiently, and prevent voters from checking in more than once.

EPBs are electronically connected to a central registration database either *via* the Internet or a closed network. This connection could be made either at the time of downloading the list onto the device or during the entire time the device is in use. However, the Brennan Center for Justice (Brennan Center) notes there are no accepted technical standards for these connections. The Center for Internet Security identifies six major risks associated with EPBs: risks associated with established (whether persistent or intermittent) Internet connectivity; network connections with other internal systems, some of which may be owned or operated by other organizations or authorities, including private networks for EPBs; security weaknesses in the underlying commercial off-the-shelf product, whether hardware or software; security weaknesses in the dedicated components, whether hardware or software; errors in properly managing authentication and access control for authorized users, including permissions for connecting to networks and attaching removable media; and difficulties associated with finding and rolling back improper changes found after the fact. Some ways in which EPBs can be secured include the use of secure sockets layer security,² use of a virtual private network,³ and proper security training for staff.

Vote Centers

EPBs are generally used in states that allow or require the use of vote centers. Vote centers are an alternative to specific precinct polling places and allow any voter to cast a ballot in any vote center in the jurisdiction (generally a county) rather than at their assigned polling place. States that allow or require the use of vote centers also generally allow or require local jurisdictions to use EPBs, which can be used to receive immediate updates on voters who have voted in other vote centers (unless the state specifies that the EPB may not be connected to the network).

In 2019, Kansas law was amended with enactment of Sub. for SB 130, permitting all voters in a county to vote at any polling place on election day, at the discretion of the county voting official.

According to NCSL, as of 2020, 16 states statutorily allow the use of vote centers as an alternative to precinct polling places.⁴ Of those 16 states: 7 require counties to use EPBs, 5 states allow counties to use EPBs, and 4 states (Kansas included) do not specify in statute whether the county is required or permitted to use EPBs.”

Postelection Audits

Currently, 38 states and the District of Columbia (D.C.) require some form of a postelection audit.

NCSL has divided postelection audits into two categories:

- Traditional postelection audit: usually conducted by hand-counting a portion of the paper records and comparing them to the electronic results produced by an electronic voting machine; and
- Risk-limiting audit: an audit protocol that makes use of statistical principles and methods and is designed to limit the risk of certifying an incorrect election outcome.

Thirty-four states⁵ and the District of Columbia (D.C.) require a traditional postelection audit, and

Colorado, Nevada, Rhode Island, and Virginia statutorily require risk-limiting audits.

In Kansas, 2018 HB 2539 required county election officers to conduct a manual audit or tally of each vote cast in 1.0 percent of all precincts, with a minimum of one precinct located within the county. The audit requirements apply to all counties for elections occurring after January 1, 2019. The requirement for audit or tally applies regardless of the method of voting used. The bill specified these contested races will be audited:

- In presidential election years: one federal race, one state legislative race, and one county race;
- In even-numbered non-presidential election years: one federal race, one statewide race, one state legislative race, and one county race; and
- In odd-numbered election years: two local races, selected randomly after the election (KSA 25-3009).

The Office of the Secretary of State selected the random offices to be audited from the 2020 general election on November 4, 2020.

Electronic Transmission of Ballots

The EAC reported The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters are increasingly using electronic means to receive and return absentee ballots. email was the most popular electronic transmission method, with 56.6 percent of UOCAVA voters receiving their absentee ballots and 29.6 percent returning the ballot *via* email. Voting securely through the Internet places much of the security responsibility on the votes and the security measures they have in place on their devices. Although it is possible to strengthen a wireless connection against an attacker for such applications, doing so is not easy and can be easily misconfigured. Also, these stronger protections can be difficult to use and maintain, especially for those unfamiliar with the technology.

According to NCSL, 4 states allow certain voters to return ballots using a web-based portal, 19 states and D.C. allow certain voters to return

ballots *via* email or fax, 7 states allow certain voters to return ballots *via* fax, and 19 states do not allow electronic transmission and permit voters to return ballots only through postal mail.⁶

Additionally, in 2018, West Virginia began using a block chain-enabled mobile voting application, called Voatz, for overseas residents from 24 counties. However, it suspended use of that application for the 2020 elections.

Other Election Security Resources

States utilize a myriad of resources to protect their election infrastructure from outside attacks. These resources may include cyber-liability insurance,⁷ enlisting the help of the National Guard and white-hat hackers,⁸ participation in interstate information sharing programs,⁹ and cybersecurity services provided by either the federal government or private entities.¹⁰

Current Federal Government Activities

The Department of Homeland Security (DHS) National Cybersecurity and Communications Integration Center (NCCIC) helps stakeholders in federal departments and agencies, state and local governments, and the private sector manage their cybersecurity risks.

The NCCIC works with the Multi-State Information Sharing and Analysis Center (MS-ISAC) to provide threat and vulnerability information to state and local officials; all states are members. The MS-ISAC membership is restricted to state and local government entities. It has representatives collocated with the NCCIC to enable collaboration and access to information and services for state chief information officers.

During the 2016 election cycle, the National Protection and Programs Directorate (NPPD) within DHS offered voluntary assistance to state and local election officials and authorities from NCCIC, which helped stakeholders in federal departments and agencies, state and local governments, and the private sector manage their cybersecurity risks. In a Senate hearing, the Secretary of Homeland Security stated 18

states accepted DHS' offer to help improve cybersecurity of their election systems prior to the 2016 election. Eleven states, including Kansas, chose not to accept DHS' offer, citing concerns with federal intrusion on state elections.

On January 6, 2017, the Secretary of Homeland Security determined election infrastructure should be designated as a critical infrastructure sub-sector. Participation in the sub-sector is voluntary and does not grant federal regulatory authority. Elections continue to be governed by state and local officials, but with additional effort by the federal government to provide security assistance through the DHS Cybersecurity and Infrastructure Security Agency (CISA).

DHS was attempting to obtain security clearances for the top election official in each state so those officials would have access to classified intelligence about cybersecurity threats. According to a report from the Office of the Inspector General, as of July 2018, 87 of the 100 eligible states' election officials received their interim or full security clearance from DHS to receive information on election-related threats. Fully granted clearances were provided to 43 officials, and 44 were granted on an interim status. According to a report from the Office of the Inspector General dated February 2019 on an audit conducted to evaluate the effectiveness of DHS' efforts to coordinate with states to secure election infrastructure, the lengthy security clearance process hinders DHS' efforts to secure the election infrastructure.

Initially, only 19 states signed up for the risk assessments DHS offered, and 14 conducted "cyber-hygiene" scans. In the Office of the Inspector General audit report, it was noted state and local officials' mistrust of federal involvement increased reluctance to request DHS assistance. The audit noted CISA performed weekly cyber-hygiene scans on 141 outward facing election networks and conducted 35 risk and vulnerability assessments for election stakeholders. An October 2020 Inspector General audit report noted CISA had increased its outreach to and coordination with election stakeholders. The CISA National Risk Management Center (Center) focuses on evaluating threats and

defending critical infrastructure against hacking. The Center runs simulations, tests, and cross-sector exercises to evaluate critical infrastructure weaknesses and threats.

In fall 2017, the Federal Bureau of Investigation (FBI) established the Foreign Influence Task Force to identify and counteract the full range of foreign influence operations targeting U.S. democratic institutions. The Foreign Influence Task Force works with personnel in all 56 FBI field offices and brings together the FBI's expertise in counterintelligence, counterterrorism, cyberterrorism, and criminal terrorism, to root out and respond to foreign influence operations.

On February 20, 2018, the U.S. Attorney General ordered the creation of the Department of Justice (DOJ) Cyber-Digital Task Force (Task Force) to canvass the ways the DOJ addresses the global cyber threat and identify how federal law enforcement can more effectively accomplish its mission in this area.

The Attorney General has asked the Task Force to prioritize its study of efforts to interfere with U.S. elections. The Task Force released a report on July 19, 2018. The DOJ also issued a statement indicating the agency planned to alert American companies, private organizations, and individuals they are being covertly attacked by foreign actors attempting to affect elections or the political process. The Task Force has released several reports focusing on cyber threats, including malign foreign influence operations and potential threats relating to the use of cryptocurrency.

In early July 2018, the Director of the National Security Agency (NSA) directed the NSA and the Department of Defense's (DOD) Cyber Command to coordinate actions to counter potential Russian government-sanctioned interference in the 2018 midterm elections. The joint program is also working with the FBI, the Central Intelligence Agency, and DHS and continues to generate insight on foreign adversaries to improve cyber defenses. DHS created the National Risk Management Center (NRMC) within the Cybersecurity and Infrastructure Agency; it is a centralized location for government and private

sector partners to share information related to digital security.

In August 2018, DHS, EAC, DOD, the National Institute of Standards and Technology, NSA, Office of the Director of National Intelligence, U.S. Cyber Command, DOJ, the FBI, 44 states (including Kansas), D.C., and numerous counties participated in the Tabletop the Vote 2018, DHS' National Election Cyber Exercise that tested the ability of state and federal officials to work together to stop data breaches, disinformation, and other voting related security issues.

Executive Order (EO) 13848 was issued in September 2018, declaring a national emergency regarding foreign influence and interference with election processes and equipment. The EO allows the imposition of sanctions on any person, entity, or foreign government who is found to be attempting to interfere or to have interfered with U.S. election processes or equipment.

EAC Current Activities

The EAC recommended the Voluntary Voting Systems Guidelines (VVSG) Version 2.0 in September 2017. The VVSG Version 2.0 states a voting device must produce a voter verifiable paper audit trail (VVPAT), and the software or hardware cannot produce errors that could lead to undetectable changes in tallies. The VVSG Version 2.0 voluntary requirements were released in February 2020. The EAC has also added a page to its website concerning election security preparedness, with many links to information on how to secure election systems, guides on what to do during and after a cybersecurity incident, and glossaries for commonly used terms (<https://www.eac.gov/election-officials/election-security-preparedness>).

New Help America Vote Act (HAVA) Funding

On March 23, 2018, the Consolidated Appropriations Act of 2018 (Act) was signed into law. The Act included \$380.0 million in grants, which were made available to states to improve the administration of elections, including to

enhance technology and make election security improvements. The majority of the funds was for election cybersecurity and to purchase new voting equipment.

In 2018, Congress appropriated \$4.3 million for election security in Kansas, requiring a 5 percent match that was met by a Kansas State General Fund (SGF) transfer in FY 2019 and FY 2020. In 2019, Congress appropriated an additional \$4.6 million for election security in Kansas under the Act, requiring a 20 percent match that was met by SGF moneys for FY 2021.

In August 2020, the EAC notified the Kansas Secretary of State (Secretary) an additional \$15,427 appropriation for election security would be added to the original appropriation, requiring a \$3,085 match. The Secretary requested this state match as a SGF transfer in FY 2022.

The EAC allowed states to combine funds into one fund titled "2018 HAVA Election Security," and the total award for Kansas is approximately \$9.3 million. Such funds do not have an expiration date for expenditure.

HAVA CARES Act Funding

In response to the COVID-19 pandemic, in March 2020, the Coronavirus Aid, Relief and Economic Security (CARES) Act was enacted and appropriated \$400.0 million in HAVA funds to states to prevent, prepare for, and respond to the COVID-19 pandemic for the 2020 federal election cycle. Such funding is separate from the 2018 and 2020 HAVA election security funding.

Kansas was awarded approximately \$4.6 million of the total \$400.0 million in funding. Such appropriation must be used by December 31, 2020, and Kansas must provide a 20 percent match by March 2022. The required state match for Kansas is \$924,500.

The Kansas Secretary of State announced the following plan for the expenditure of HAVA CARES Act funding:

- Approximately \$2.6 million to reimburse all 105 counties for COVID-19-related

expenditures, according to a formula based on voting age population for each county's allotted reimbursement cap. No county received a reimbursement allotment cap of less than \$5,000. Counties submitted plans in May 2020 for such funds and have until December 2020 to submit receipts to the Secretary for reimbursement;

- Approximately \$1.0 million to procure personal protection equipment kits, plexiglass shields, and disposable pens for voters and polling places statewide to ensure additional protection for election workers and voters;
- Approximately \$365,000 to purchase secure drop boxes for mail ballots. The Secretary authorized such funds to purchase two secure drop boxes per county, with certain exceptions;
- Approximately \$150,000 to publish targeted, digital educational ads to all registered voters in the state for the general election to educate voters on options to cast a ballot in the November 2020 election amidst the COVID-19 pandemic; and
- A small portion of such funds to establish improved teleconferencing and telework options for election-related items, including virtual election panels and media opportunities.

Kansas Election Security Activities

In February 2018, the Center for American Progress (CAP) released an analysis of election security in all 50 states. Kansas was ranked F/D, one of five states¹¹ that received an unsatisfactory ranking. However, the State received fair marks for voting machine certification requirements, pre-election logic and accuracy testing, and adherence to a number of minimum cybersecurity best practices.

Kansas received unsatisfactory marks for the lack of a VVPAT from all voting devices and postelection audits; the State's ballot accounting and reconciliation procedures; and for allowing

voters stationed or living overseas to return voted ballots electronically. [Note: At the time of the CAP report's publication, 2018 HB 2539 had not yet been passed. See more information on HB 2539 under sections "Voting Devices" and "Postelection Audits" in this article.] Kansas received an incomplete mark for minimum cybersecurity for voter registration systems due to the absence of information from state officials on these topics.

Election Personnel

Kansas poll workers must be a resident and registered voter in the area in which they will serve; normally at least 18 years of age, though they may be as young as 16 years old if they meet certain other requirements; and not a candidate in the current election. In Kansas, there are no requirements for poll workers to submit to and pass background checks. KSA 25-2806 requires county election officers to provide instruction concerning elections generally, voting devices, ballots, and duties for poll workers before each election. The curriculum specifics and training duration is left to the discretion of the county election officer.

Voting Devices

According to the EAC, Kansas deployed a total of 6,365 voting machines for the 2018 elections; 894 direct-recording electronic voting machines (DREs) without VVPAT, 57 DREs with VVPAT, 4,461 ballot marking devices, and 953 electronic scanners. As of March 2018, approximately 20 counties had replaced some or all of their voting devices or were in the process of purchasing new voting devices, including Johnson County.

Kansas statutes concerning electronic voting devices can be found in KSA 25-4401 through KSA 25-4416, also known as the Electronic and Electromechanical Voting Systems Act. KSA 25-4406(m) requires voting devices to be compliant with HAVA voting system standards. Logic and accuracy testing must be conducted on all voting devices within five days before an election, pursuant to KSA 25-4411. County commissioners and county election officers may select the type

of voting device utilized in their voting locations, as long as it has been approved by the Secretary of State.

Amendments to KSA 25-4406 in 2018 HB 2539 require any electronic or electromechanical voting system approved by the Secretary of State to provide a paper record of each vote cast at the time the vote is cast. The bill also required voting systems have the ability to be tested before an election and prior to the canvass date.

Storage and Tallying of Votes

The majority of Kansas counties use some form of paper ballot and use electronic scanners to tally the votes.

These paper ballots are stored in locked boxes with authorized access. Counties that use DREs without a VVPAT store votes on removable memory cards.

Transmitting Vote Tallies

KAR 7-21-2 states results are to be sent only by fax, phone, hand delivery, or encrypted electronic transfer. According to the Office of the Secretary of State, officials typically call in or email results, and there is no Internet uploading of results.

COVID-19 Pandemic-Related Information

In June 2020, the Brennan Center released “Preparing for Cyberattacks and Technical Problems During the Pandemic,” which included a checklist for election officials to navigate cybersecurity during the COVID-19 pandemic.¹² The checklist includes instructions for election administration and infrastructure; mail voting; in-person voting; and results reporting, certification, and public communications.

More detailed information on election security in Kansas can be found in the Kansas Legislative Research Department memorandum titled “Status of Election Security in Kansas,” located at <http://www.kslegresearch.org/KLRD-web/Elections&Ethics.html>.

- 1 Arkin, W.; Dilanian, K.; McFadden, C. *U.S. Intel: Russia compromised seven states prior to 2016 election*. (2018, February 27). Retrieved from <https://www.nbcnews.com/politics/elections/u-s-intelrussia-compromised-seven-states-prior-2016-election-n850296>.
- 2 Secure sockets layer security is the standard security technology for establishing an encrypted link between a web server and a browser. This link ensures that all data passed between the web server and browsers remain private and integral.
- 3 A virtual private network creates a safe and encrypted connection over a less secure network.
- 4 NCSL, *Vote Centers*, <https://www.ncsl.org/research/elections-and-campaigns/vote-centers.aspx>
- 5 Alaska, Arkansas, Arizona, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.
- 6 NCSL, *Electronic Transmission of Ballots*, <https://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx>.
- 7 Cyber-liability insurance is coverage for financial consequences of electronic security incidents and data breaches.
- 8 A white-hat hacker is a computer security specialist who breaks into protected systems and networks for potential improvements.

- 9 Interstate information sharing programs include the Multi-State Information Sharing & Analysis Center and the Election Infrastructure Information Sharing & Analysis Center, which collect, analyze, and disseminate threat information to members and provide tools to mitigate risks and enhance resiliency.
- 10 Cybersecurity services are provided by private entities including The Athenian Project and Project Shield.
- 11 The other states include Arkansas, Florida, Indiana, and Tennessee.
- 12 The Brennan Center for Justice, *Preparing for Cyberattacks and Technical Problems During the Pandemic*. <https://www.brennancenter.org/our-work/research-reports/preparing-cyberattacks-and-technical-problems-during-pandemic-guide>.

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D-1
Election Security

D-2
Kansas Open
Meetings Act

D-3
Kansas Open Records
Act

D-4
Voter Registration and
Identification

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Elections and Ethics

D-2 Kansas Open Meetings Act

Purpose

The Kansas Open Meetings Act (KOMA), KSA 75-4317, *et seq.*, recognizes “that a representative government is dependent upon an informed electorate” and declares 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.”

The Kansas Supreme Court has recognized KOMA is to be “interpreted liberally and exceptions narrowly construed” to carry out the purpose of the law. [*Mem'l Hosp. Ass'n v. Knutson*, 239 Kan. 663, 669 (1986)]

State and Local Public Bodies Covered by KOMA

- 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 that receive or expend and are supported in whole or in part by public funds (KSA 75-4318).

State Bodies Covered by KOMA

- The Legislature and its legislative committees and subcommittees, unless rules provide otherwise;
- State administrative bodies, boards, and commissions;
- State Board of Regents;
- State Board of Education;
- Kansas Turnpike Authority;
- Supreme Court Nominating Commission (added by 2016 SB 128); and
- Other state bodies.

Local Governments Covered by KOMA

The following local governments are 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;
- District judicial nominating commissions (added by 2016 SB 128); and
- Other special district governments.

Public Bodies Excluded from KOMA

Certain state and local bodies or entities are excluded from the requirements of KOMA, including the following:

- The Judicial Branch (except for judicial nominating commissions);
- 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); and
- Certain state bodies when performing functions that are exempt from KOMA by statute (examples include committee discussion on certain Secretary of Commerce decisions regarding sales tax and revenue (STAR) bonds).

Meetings: What are They?

KOMA covers meetings, which are defined in KSA 75-4317a as a gathering or assembly with the following characteristics:

- Occurs in person or through the use of a telephone or any other medium for “interactive” communication (see the following “Serial Meetings” section);
- Involves a majority of the membership of an agency or body; and
- Is for the purpose of discussing the business or affairs of the body. The Kansas Court of Appeals has held that informal discussions before, after, or during recesses of a public meeting are subject to the requirements of the open meetings law. [*Coggins v. Pub. Emp. Relations Bd*, 2 Kan. App. 2d 416 (1978)] Calling a gathering a “work session” does not exempt the event from the law if the three requirements of a meeting are met.

Social gatherings are not subject to KOMA as long as there is not a majority of the membership present or there is no discussion of business of the public body between a majority of the membership.

Serial Meetings

The Attorney General has said serial communications among a majority of a quorum of a public body constitute a meeting if the purpose is to discuss a common topic of business or affairs of that body by the members.

Such a meeting may occur through calling trees, email, or the use of an agent (staff member) of the body (Att’y. Gen. Op. 98-26 and 98-49).

The use of instant messaging also would qualify as a meeting. KSA 75-4318(f) now deems interactive communications in a series to be subject to open meetings requirements if the communications:

- Collectively involve a majority of the membership of the body or agency;

- Share a common topic of discussion concerning the business or affairs of the body or agency; and
- Are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency.

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 that triggers the requirements of KOMA (KSA 75-4317a).

Notice of Meetings, Agendas, Minutes, Conduct of Meeting, and Cameras

Notice Required Only When Requested

KOMA does not require notice of meetings to be published. 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 is also 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 Kan. App. 2d 290 (1986), the court concluded 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.

Requirements for Minutes

The only KOMA requirement for minutes pertains to closed or executive sessions. KSA 75-4319(a) requires any motion to recess for a closed or executive meeting be recorded in the meeting minutes. (See “Executive Sessions: Procedure and Subjects Allowed” on the following page for additional information.)

Conduct of Meetings

Any person may attend open meetings, but the law does not require the public be allowed to speak or have an item placed on the agenda. 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 (see *Stevens*) a meeting is “open” if it is accessible to the public.

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 Session: Justification and Procedure

Pursuant to KSA 75-4319, only a limited number of subjects may be discussed in executive session. Some of these are listed below.

Personnel Matters of Non-elected Personnel

The purpose of this justification 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 justification applies only to employees of the public agency. The Attorney General has opined the personnel justification does not apply to appointments to boards or committees, or nomination of public officers, nor does it apply to independent contractors (Att’y. Gen. Op. 2016-03).

Consultation with an Attorney

For the body or agency to 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.

Additional Justifications

Additional justifications for executive session are as follows:

- 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;

- Sensitive financial information contained within personal financial records of a judicial nomination candidate;
- Official background check of a judicial nomination candidate;
- Case reviews conducted by the Governor’s Domestic Violence Fatality Review Board;
- 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;
- Matters relating to information acquired and records of the Child Death Review Board;
- Matters relating to parimutuel racing;
- Matters relating to the care of children;
- Matters relating to patients and providers;
- Matters relating to maternity centers and child care facilities; and
- Matters relating to the Office of Inspector General.

Executive Session: Procedure

Requirements and restrictions on closed or executive sessions are contained in KSA 75-4319. Executive sessions are permitted only for the purposes specified. First, 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 KOMA (*O’Hair v. United Sch. Dist. 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 that normally would require a vote. The law does not require an executive session; the decision to hold an executive session is discretionary.

Generally, only the members of a public body may attend an executive session. The Attorney General indicates a public body may designate certain persons with essential information to assist in executive session deliberations. Inclusion of general observers means the meeting should be open to all members of the public.

Procedures for going into executive session include the following:

- Formal motion, seconded, and carried;
- Motion must contain a statement providing:
 - A statement describing the subjects to be discussed;
 - Justification for closure; and
 - Time and place open meeting will resume; and
- 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.

Compliance with KOMA during an Emergency Declaration

In March 2020, in response to the COVID-19 pandemic in Kansas, the State Rules and Regulation Board approved a temporary regulation proposed by the Attorney General to address compliance with KOMA during an emergency declaration. The regulation applies only during a state of disaster emergency or other emergency declaration lawfully declared (emergency), in the territory affected by the declaration, and to the extent emergency responses prevent or impede the ability of members of a body or agency subject to KOMA to meet by physically gathering in person or of members of the public to attend or observe public meetings by physically attending the meetings.

The regulation provides that all KOMA requirements remain in force and effect during an emergency, unless expressly suspended by

order of the governor, as specifically outlined in the regulation.

The regulation specifies how a public body or agency may comply with KOMA's requirement that a meeting be "open to the public" by using a telephone or other medium for interactive communication, if the members of the body or agency are not gathering in person in a physical location to conduct the open meeting. These provisions include certain requirements related to technology, notice, and meeting procedure that must be met.

The regulation also contains similar provisions setting forth requirements that must be met to comply with KOMA if emergency responses prevent or impede the ability of the public to physically attend a public meeting occurring in person, and physical access of the public to the meeting place is limited.

Both the temporary regulation and a best practices document to aid in its implementation are available at <https://ag.ks.gov/open-government>. The Attorney General has announced his intent to seek permanent adoption of the temporary regulation.

Enforcement of KOMA

HB 2256 (L. 2015, ch. 68) changed enforcement of both KOMA and the Kansas Open Records Act (KORA). The law requires the Attorney General to provide and coordinate KOMA and KORA training throughout the state, including through coordination with appropriate organizations (KSA 75-761). Further, the statute gives the Attorney General or a county or district attorney various subpoena and examination powers in KOMA and KORA investigations (KSA 45-228; KSA 75-4320b).

Among other enforcement provisions, the bill allows the Attorney General or a county or district attorney to accept a consent judgment with respect to a KOMA or KORA violation, in lieu of filing an action in district court, and allows the Attorney General to enter into a consent order with a public agency or issue a finding of violation

to the public agency upon discovery of a KORA or KOMA violation (KSA 75-4320d; KSA 45-4320f).

HB 2290 (L. 2019, ch. 62) provides for repayment by a state agency to the Tort Claims Fund of the cost of defense or indemnification provided for the agency or employee arising out of an alleged violation of KOMA (KSA 75-6617).

Pursuant to KSA 75-753, the Attorney General compiles and publishes an annual report for each fiscal year with information about complaints and investigations involving KOMA and KORA. For fiscal year 2019, the Office of the Attorney General reported no complaints under KOMA against

state agencies resulting in corrective action, two complaints against cities resulting in corrective action, six complaints against counties resulting in corrective action, and one complaint against a board of education resulting in corrective action. Additionally, 5 complaints were referred to county or district attorney offices, and 26 complaints resulted in a finding of no violation of KOMA.

For questions regarding application or suspected violations of KOMA, please contact the Office of the Attorney General. Limitations under Kansas law do not allow the Kansas Legislative Research Department to provide legal advice, interpretation of statute, or the legislative intent of a statute.

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D-4
Voter Registration and
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Elections and Ethics

D-3 Kansas Open Records Act

Purpose

The Kansas Open Records Act (KORA) declares 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 KORA?

KORA applies to those entities considered a “public agency” under the law (KSA 2019 Supp. 45-217).

Included in this definition are:

- The State;
- Any political or taxing subdivision of the State or any office, agency, or instrumentality thereof; and
- Any other entity receiving or expending and supported in whole or in part by public funds that 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 officers of the above public entities in connection with their official duties.

In addition, although not included in KORA itself, KSA 2019 Supp. 45-240 requires nonprofit 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 such nonprofit entities to document the receipt and expenditure of public funds and make this information available to the public. Like public agencies, nonprofit entities may charge a reasonable fee to provide this information.

Exclusions from Open Records Requirement

Certain entities and individuals are expressly excluded from the definition of “public agency” (KSA 2019 Supp. 45-217(f)(2)):

- Entities included only because they are property, goods, or services paid for with public funds;¹ and
- Any municipal, district, or appellate judge or justice.

What Is a Public Record?

“Public record” is defined broadly under KORA to mean “any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of any public agency; or . . . any officer or employee of a public agency pursuant to the officer’s or employee’s official duties and which is related to the functions, activities, programs or operations of any public agency” (KSA 2019 Supp. 45-217(g) (1)). Specifically excluded from the definition of “public record” are:

- Records owned by a private person or entity that are not related to functions, activities, programs, or operations funded by public funds, but “private person” shall not include an officer or employee of a public agency who is acting pursuant to the officer’s or employee’s official duties;
- 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 2019 Supp. 45-217(g)(2) and (3)).

The Attorney General opined in 2015 (Op. Atty. Gen. 2015-010) that under certain specific conditions and the law in effect at the time, an email sent by a state employee from his or her private email account related to work funded by public funds is not within the meaning of public record. However, in 2016, the definition of and

exclusions from “public record” were amended to broaden the definition of “public record” and apply it more specifically to state officers and employees, regardless of location of the record (KSA 2019 Supp. 45-217 (g)(1)). Additionally, audio and video recordings made and retained by law enforcement using a body camera or vehicle camera were added to the definition of a criminal investigation record (open only under specific circumstances) (KSA 2019 Supp. 45-254).

Right of Public to Inspect and Make or Obtain Copies of Records

All public records are open for inspection unless closed pursuant to specific legal authority (KSA 45-218(a) and (b)). Members of the public have the right to inspect public records during regular office hours and any established additional hours; the agency may require a written request but shall not require a request to be made in a particular form (KSA 2019 Supp. 45-220(a) and (b)). If the agency has business days on which it does not have regular office hours, it must establish reasonable hours when persons may inspect records and may not require a notice of desire to inspect more than 24 hours in advance of the hours established for inspection and obtaining copies; the agency also may not require the notice to be in writing (KSA 2019 Supp. 45-220(d)).

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 2019 Supp. 45-219(b)). Members of the public cannot remove a record without written permission of the custodian (KSA 45-218(a)).

KSA 2019 Supp. 75-3520 requires any document or record that contains any portion of an individual’s Social Security number be redacted before it is made available for public inspection or copying. This does not apply to documents recorded in the official records of any county recorder of deeds or in the official records of the courts. An agency also is required to give notice, offer credit monitoring service at no cost, and provide certain information to individuals if

the agency becomes aware of the unauthorized disclosure of their personal information.

Digitalized 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. 1988-152 [voter registration lists]; Op. Atty. Gen. 1989-106; and Op. Atty. Gen. 1987-137).

However, KORA explicitly states a public agency is not required to allow a person to obtain the electronic copies by attaching a personal device to the agency's computer equipment (KSA 2019 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. Regardless, the agency is not required to provide items copyrighted by someone other than the public agency (KSA 2019 Supp. 45-219(a)).

Duties of Public Agencies

Under KORA, public agencies are required to:

- 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 to request and obtain documents (KSA 2018 Supp. 45-220(a));
- Respond to requests where it is possible to determine the records to which the requester desires access (KSA 2019 Supp. 45-220(b)); and

- Provide, upon request, office hours, name of custodian of record, fees, and procedures for obtaining records (KSA 2019 Supp. 45-220(f)).

Rights of Public Agencies

The public agency may:

- Require written certification the requester will not use names or addresses obtained from the records to solicit sales to those persons whose names or addresses are contained in the list (KSA 2019 Supp. 45-220(c));
- Deny access if the request places an unreasonable burden in producing the record or is intended to disrupt essential functions of 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, but may not exceed such costs (KSA 45-218(f); KSA 2019 Supp. 45-219(c)).

[*Note:* Executive Order 18-05 waives any charge or fee for the copying of documents, up to and including the first 100 pages, for all executive branch departments, agencies, boards, and commissions under the jurisdiction of the Office of the Governor in response to a KORA request made by any resident of Kansas.]

Prohibited Uses of Lists of Names and Addresses

With some specified exceptions, a list of names and addresses cannot be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed (KSA 2019 Supp. 45-220(c)(2) and KSA 2019 Supp. 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 agency from using names and addresses in its public records for a purpose related to that

agency's services or programs (Op. Atty. Gen. 2006-026).

Any person, including the records custodian, who knowingly 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 a county or district attorney (KSA 2019 Supp. 45-230).

Records That Must Be Closed

Some public records are required to be closed by federal law, state statute, or Supreme Court rule.

These types of public records must be closed and are broadly referenced in KSA 2019 Supp. 45-221(a)(1). Approximately 280 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 2019 Supp. 38-2209);
- Unexecuted search or arrest warrants (KSA 2019 Supp. 21-5906);
- Grand jury proceedings records (KSA 2019 Supp. 22-3012);
- Health care provider peer review records (KSA 2019 Supp. 65-4915(b)); and
- Certain records associated with the Kansas Department of Health and Environment's investigation of maternal death cases (KSA 2019 Supp. 65-177).

Records That May Be Closed

KSA 2019 Supp. 45-221(a)(1) to (55) lists other types of public records that are not required to be disclosed. The public agency has discretion to 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. The types of records that may be closed 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;
- 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 that has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain;
- Records that are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure;
- Medical, psychiatric, psychological, and alcohol or drug treatment records that pertain to identifiable individuals;
- Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment in public agencies;
- Letters of reference or recommendation pertaining to the character or qualification of an identifiable individual and not related to the appointment of persons to fill a vacancy in an elected office;
- Information that would reveal the identity of any undercover agent or any informant reporting a specific violation of law;
- Criminal investigation records;

- Records of emergency or security information or procedures of a public agency; plans, drawings, specifications, or related information for any building or facility used for purposes requiring security measures in or around the building or facility; or for the generation or transmission of power, water, fuels, or communications, if disclosure would jeopardize security of the public agency, building, or facility;
- Attorney work product;
- Records of public agencies that identify home addresses of certain public officials such as judges, certain officers of the courts, and county and city attorneys; and
- Public records containing information of a personal nature when public disclosure would constitute a clearly unwarranted invasion of personal privacy.

Limited Disclosure Provisions

Some statutes provide for disclosure of limited information in response to KORA requests, rather than disclosure of the complete record requested.

Recently created limited disclosure provisions include those concerning body-worn and vehicle camera recordings and certain records of the Department for Children and Families (DCF) regarding child fatalities.

Body-worn and Vehicle Camera Recordings

Every audio or video recording made and retained by law enforcement using a body camera or vehicle camera must be considered a “criminal investigation record,” as defined in KORA, thereby bringing such recordings within the exception to disclosure for criminal investigation records. This provision will expire July 21, 2021, unless reviewed and reenacted prior to that date (KSA 2019 Supp. 45-254).

In addition to any disclosures generally authorized for such recordings as criminal

investigation records under KORA, the law allows certain persons to request to listen to an audio recording or to view a video recording. The law enforcement agency must allow access to these certain persons, within 20 days of the request, subject to a reasonable fee. The persons who may make such a request include the subject of the recording, any parent or legal guardian of a person under the age of 18 years who is a subject of the recording, an heir-at-law of a deceased subject of a recording, or an attorney for any of the previous persons listed (KSA 2019 Supp. 45-254(c)).

Child Fatality Information

House Sub. for SB 336 (L. 2018, ch. 87), among other provisions, added a requirement that the Secretary for Children and Families (Secretary), as allowed by applicable law, release within seven days the following information when child abuse or neglect results in a child fatality and a request is made under KORA: age and sex of the child; date of the fatality; a summary of any previous reports of abuse or neglect received by the Secretary involving the child, along with the findings of such reports; and any service recommended by DCF and provided to the child (KSA 2019 Supp. 38-2212(f)(3)).

The bill added a similar provision requiring the Secretary, as allowed by applicable law, to release the following information within seven days when a child fatality occurs while the child was in the custody of the Secretary and a request is made under KORA: age and sex of the child, date of the fatality, and a summary of the facts surrounding the death of the child (KSA 2019 Supp. 38-2212(f)(4)).

Sunset of Exceptions

A sunset provision for all exceptions added in 2000 required review of any exception within five years, or the exception would expire. It also required any exceptions continued after legislative review to be reviewed again five years later (KSA 2019 Supp. 45-229).

In 2013, the Legislature modified the review requirement in KSA 2019 Supp. 45-229 so that exceptions will no longer be subject to review and expiration if the Legislature has twice reviewed and continued the exemption or reviews and continues the exemption during the 2013 Session or thereafter (2013 HB 2012; L. 2013, ch. 50).

In 2020, Senate Sub. for HB 2137 (L. 2020, ch. 12) continued exemptions present in 10 statutes. Topics included, but were not limited to, law enforcement records identifying victims of certain crimes, public records identifying the home address of certain officials, treatment records in the possession of a treatment facility, and survey responses to audits conducted under the Legislative Post Audit Act.

Enforcement of the Open Records Law

HB 2256 (L. 2015, ch. 68) changed enforcement of both KORA and the Kansas Open Meetings Act (KOMA). The law requires the Attorney General to provide and coordinate KORA and KOMA training throughout the state, including through coordination with appropriate organizations (KSA 2019 Supp. 75-761). Further, the statute gives the Attorney General or a county or district attorney various subpoena and examination powers in KORA and KOMA investigations (KSA 2019 Supp. 45-228; KSA 2019 Supp. 75-4320b).

Among other enforcement provisions, the bill allows the Attorney General or a county or district attorney to accept a consent judgment with respect to a KORA or KOMA violation, in lieu of filing an action in district court, and allows the Attorney General to enter into a consent order with a public agency or issue a finding of violation to the public agency upon discovery of a KORA or KOMA violation (KSA 2019 Supp. 75-4320d; KSA 2019 Supp. 45-4320f).

Finally, HB 2290 (L. 2019, ch. 62) provides for repayment by a state agency to the Tort Claims Fund of the cost of defense or indemnification provided for the agency or employee arising out of an alleged violation of KORA (KSA 2019 Supp. 75-6617).

Pursuant to KSA 2019 Supp. 75-753, the Attorney General compiles and publishes an annual report for each fiscal year with information about complaints and investigations involving KORA and the Kansas Open Meetings Act. For FY 2019, the Attorney General's Office reported five complaints under KORA against state agencies resulting in corrective action, three complaints against cities resulting in corrective action, three complaints against counties resulting in corrective action, and two complaints against community colleges resulting in corrective action. Additionally, 3 complaints were referred to county or district attorney offices, and 29 complaints resulted in a finding of no violation of KORA.

For more information on KOMA, see article D-2 Kansas Open Meetings Act, available at <http://www.kslegresearch.org/KLRD-web/Briefing-Book-2021.html>.

Criminal Penalty for Altering Public Record

Altering, destroying, defacing, removing, or concealing any public record is a class A nonperson misdemeanor (KSA 2019 Supp. 21-5920).

For questions regarding application or suspected violations of KORA, please contact the Office of the Attorney General. Limitations under Kansas law do not allow the Kansas Legislative Research Department to provide legal advice, interpretation of statute, or the legislative intent of a statute.

1 See Ted Frederickson, *Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act*, 33 Kan. L. Rev. 216-7. This analysis was utilized as recently as the 2017 Kansas Court of Appeals decision in *State v. Great Plains of Kiowa County, Inc.* (53 Kan. App. 2D 609, 389 P3d 984).

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Act

D-4
Voter Registration and
Identification

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Elections and Ethics

D-4 Voter Registration and Identification

Voter Registration and Requirements

National Voter Registration Requirements

Federal and state elections in the United States are generally run by the states themselves, according to Article I and Article II of the *U.S. Constitution*. Nevertheless, there are some federal requirements that impact voter registration in the states.

The Voting Rights Act of 1965 allows all U.S. citizens to vote at any election in any state, so long as they are otherwise qualified by law to vote in that election (42 USC §1971).

The National Voter Registration Act of 1993 (NVRA), also known as the “Motor Voter” law, expanded the locations where a person may register to vote by requiring states to allow driver’s license applications to also serve as an application for voter registration.

The NVRA requires a voter registration application made as part of a driver’s license application to include a statement containing each eligibility requirement (including citizenship) for that state (42 USC § 1993gg-3).

Finally, the Help America Vote Act (HAVA) (Public Law 107-252, § 303) requires applicants to provide one of the following when registering to vote:

- 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; or
- The applicant’s state assigned identification number for voter registration purposes, for those applicants with neither a driver’s license nor a Social Security number.

State Voter Registration Requirements

Every state except North Dakota requires voter registration. Generally, state voter registration laws require applicants to:

- Be 18 years old on or before the next election;
- Be a resident of the state where they are registering;
- Not be in jail and not have been convicted of a felony (or have had civil rights restored);
- Be mentally competent/not declared incapacitated; and
- Not be registered to vote in another state.

Same-day Voter Registration

Most states also have registration deadlines applicants must comply with to qualify to vote in an upcoming election. As of October 2020, 21 states and the District of Columbia have laws that allow same-day voter registration. Twenty of these states and the District of Columbia allow same-day registration on Election Day. One state (North Carolina) allows same-day registration only during the early voting period.

New Mexico passed legislation in the 2019 Legislative Session allowing qualified voters to register on Election Day beginning January 1, 2021.

During the 2019 Kansas Legislative Session, HB 2092, which would have enacted same-day voter registration in the state, was introduced and referred to the House Committee on Elections. The bill had a hearing and was worked by the Committee, but was not passed out for consideration by the full House of Representatives.

Online Voter Registration

As of October 2020, 41 states and the District of Columbia have laws allowing for online voter registration. Arizona was the first state to use online voter registration in 2002. Michigan, New Jersey, and North Carolina are the most recent states to adopt the practice. Michigan passed authorizing legislation in 2018, and New Jersey passed similar legislation in 2020. North Carolina

did not require legislation to enact online voter registration. The states that have not provided for the use of online voter registration are Arkansas, Maine, Mississippi, Montana, New Hampshire, North Dakota (no registration required), South Dakota, Texas, and Wyoming.

Oklahoma is currently in the process of implementing phase two of the online voter registration passed in 2015. Starting in 2018, the state began allowing citizens to update their voter registration online. Phase two, which will allow new voter registrations online, was slated to be available by 2020 but appears to not be available yet.

Preregistration

The minimum age to vote in all federal and state elections is 18 years old. However, many states allow persons who are not yet 18 years old to register to vote before they turn 18 so they will be added to the voter rolls and able to vote as soon as they reach the required age. This practice is commonly referred to as preregistration and is administered by states in a variety of ways.

Twenty-six states allow an individual to register to vote if they will turn 18 on or before the next election, usually referring to the next general election. Fourteen states and the District of Columbia begin preregistration at 16 years of age, and 4 states allow such registrations beginning at 17 years of age. Five other states have their own unique age requirements: Alaska—90 days before 18th birthday; Georgia, Iowa, and Missouri—17 years, 6 months old; Texas—17 years, 10 months old.

North Dakota does not require voters to register, but specifies that qualified electors must be 18 years of age.

Automatic Voter Registration

The NVRA of 1993 required states to allow individuals to register to vote when applying for or renewing their driver's licenses. Some states

have taken this requirement a step further and adopted automatic voter registration (AVR).

AVR is a process by which individuals are automatically registered to vote and must opt out if they do not wish to be on the voter rolls. As of April 2020, 17 states and the District of Columbia have implemented AVR.

Voter Identification Requirements

As of August 2020, 36 states have enacted laws requiring or requesting voters to provide some form of identification (ID) before voting. However, there are many variations as to which forms of ID are accepted, whether the ID is required to include a photo, and what happens if a voter does not provide the required or requested ID upon arriving at the polling place.

North Carolina's voter ID statute is currently unenforceable under temporary injunctions issued in state court by the Court of Appeals of North Carolina and in federal court by the U.S. District Court for the Middle District of North Carolina. The Court of Appeals heard oral arguments in 2020 and are currently determining whether the statute is a form of voter suppression given past state actions and court rulings.

Kansas Law

Prior to the 2011 Legislative Session, Kansas law required persons voting for the first time in a 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 or 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 enactment of HB 2067. Effective January 1, 2012,

all individuals voting in person were required to provide photo ID 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 were required to include the ID 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 were available to anyone 17 or older for the purposes of meeting the new photo voter ID requirements. Each applicant for a free ID had to sign an affidavit stating he or she plans to vote and possesses no other acceptable ID form. The individual also had to provide evidence of being registered to vote.

Relatively minor amendments were also made in 2012 SB 129, including adding an ID card issued by a Native American tribe to the list of photo ID documents acceptable for proving a voter's identity when voting in person.

A U.S. District Court judge issued an order striking down Kansas' Voter ID law as it applies to registration for federal elections on June 18, 2018. (*Fish v. Kobach*, 309 F. Supp.3d 1048 (D. Kan. 2018).)

The decision was appealed to the U.S. Court of Appeals for the Tenth Circuit, which upheld the ruling of the U.S. District Court on April 29, 2020 (*Fish v. Schwab*, 957 F.3d 1105 (10th Cir. 2020)). On July 28, 2020, Secretary of State Scott Schwab petitioned for a writ of *certiorari* to the U.S. Supreme Court seeking to appeal the case.

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Federal and State Affairs

E-1 Carrying of Firearms

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 (PFPA) was enacted.

Personal and Family Protection Act (2006 SB 418)

Enactment of the PFPA made Kansas the 47th state to allow concealed carry. 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, which made it the 36th state that “shall issue” concealed carry permits. Permits were issued beginning on January 1, 2007.

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

The 2013 Legislature passed Senate Sub. for HB 2052, which added new sections to the PFPA, primarily authorizing concealed carry of handguns by licensees into certain public buildings enumerated in the legislation. Also passed was SB 21, which enacted amendments to firearms-related statutes.

2015 Legislative Changes (SB 45)

SB 45 allowed the concealed carry of a firearm without a concealed carry license issued by the State as long as the carrier is not prohibited from possessing a firearm by federal or state law.

2017 Legislative Changes (Senate Sub. for HB 2278)

There is a general requirement in law that public buildings have adequate security measures in place before the concealed carry of handguns can be prohibited (KSA 75-7c20). Senate Sub. for HB 2278 exempted the following institutions from the general requirement:

- 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 (HB 2145)

HB 2145 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 that for any “criminal use of weapons” violation that occurred on or after April 25, 2013, 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.

Carrying of Concealed Weapons

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.

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.

Permit Qualifications

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. Under current law, persons are not required to possess a permit, provided the person is otherwise lawfully able to possess a firearm.

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 (\$132.50).

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 Medical Care Facilities, Adult Care Homes, 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 adopted a policy that states those who carry on campus must be 21 years of age (https://www.kansasregents.org/about/policies-by-laws-missions/board_policy_manual_2/chapter_ii_governance_state_universities_2/chapter_ii_full_text#weapons.)

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 12 states where state public universities must allow concealed weapons on their campuses; however, Oregon, Virginia, and Wisconsin limit such carry to the open areas of campus, and Tennessee allows only university employees to carry concealed firearms, provided the employee possesses a valid permit. Eighteen states have law that restricts the carrying of concealed weapons on college and university 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 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

E-2 Legalization of Medical and Recreational Marijuana and Industrial Hemp

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 36 states and the District of Columbia. Recreational use of marijuana is legal in 15 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 in Kansas

Enacted Legislation

In the last 16 years, 23 bills have been introduced in the Kansas Legislature addressing the topic of medical marijuana or cannabidiol; two of these bills have been enacted. The 2019 Legislature passed SB 28, also known as “Claire and Lola’s Law,” which prohibits state agencies and political subdivisions from initiating child removal proceedings or child protection actions based solely upon the parent’s or child’s possession or use of cannabidiol treatment preparation in accordance with the affirmative defense established by the bill. Additionally, the 2018 Legislature amended the definition of marijuana to exempt cannabidiol in SB 282.

Recent Legislation Introduced

Two bills that would have removed cannabis products containing less than 0.3 percent tetrahydrocannabinol (THC) from the list of controlled substances listed in Schedule I of the Uniform Controlled Substances Act were introduced in the 2020 Legislative Session (SB 449 and HB 2709). The Senate Committee on Agriculture and Natural Resources held a hearing on SB 449, but no further action was taken on the bill. HB 2709 also died in the House Committee on Agriculture.

Two bills that would have authorized and regulated the use of medical marijuana were introduced in the 2020 Legislative Session (HB 2740 and HB 2742). Both bills were referred to the House Committee on Federal and State Affairs, with no further action taken in the 2020 Legislative Session. An identical version of HB

2742 was introduced in the 2020 Special Session (HB 2017) with no action taken.

Three bills that would have legalized the use of medical cannabis were introduced in the 2019 Legislative Session (SB 113, HB 2163, and HB 2413). The Senate Committee on Public Health and Welfare held a hearing on SB 113 but failed to take any further action on the bill.

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.

Medical Use of Marijuana in Other States

Thirty-six states and the District of Columbia 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 11 states allow use of low THC, high cannabidiol products for specific medical conditions or as a legal defense. Six states have recently enacted comprehensive medical marijuana laws after previously legalizing low THC products (Florida, Mississippi, Missouri, Oklahoma, Utah, and Virginia).

Recreational Use of Marijuana

Fifteen states (Alaska, Arizona, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, Oregon, South Dakota, Vermont, and Washington) and the District of Columbia have legalized the recreational use of marijuana as of November 2020.

Illinois and Vermont legalized recreational marijuana through the legislative process, while the remaining states used a ballot initiative.

Penalties and Decriminalization

Marijuana Opportunity Reinvestment and Expungement Act of 2019 (MORE Act of 2019)

The U.S. House of Representatives passed the MORE Act of 2019 on December 4, 2020. The bill would remove marijuana from the list of scheduled substances under the Controlled Substances Act and eliminate criminal penalties for an individual who manufactures, distributes, or possesses marijuana. The bill was referred to the Senate Committee on Finance on December 7, 2020.

In 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.

Local Ordinances

On June 13, 2017, the Wichita City Council voted to approve an ordinance passed by Wichita voters in April 2015 that would reduce the penalty for first-time marijuana possession. The ordinance would impose up to a \$50 fine for first-time offenders 21 years of age and older who possess less than 32 grams of marijuana.

On March 19, 2019, the Lawrence City Commission voted to decrease the penalty for first- and second-time offenders 18 years of age or older who possess less than 32 grams of marijuana to \$1.00.

Other States

Twenty-seven states and the District of Columbia have decriminalized the use of small amounts of marijuana. Additional decriminalization efforts were introduced in 19 states in 2019, and 14 more bills were introduced in 2020.

In addition to legalization and decriminalization, efforts to reduce penalties related to marijuana were before 18 state legislatures in 2019 and 2020.

Commercial and Industrial Use—Hemp

In 2019, Senate Sub. for HB 2167 created the Commercial Industrial Hemp Act (Act), which requires the Kansas Department of Agriculture (KDA), in consultation with the Governor and Attorney General, to submit a plan to the U.S. Department of Agriculture (USDA) under which the KDA would monitor and regulate the commercial production of industrial hemp within Kansas in accordance with federal law and any adopted rules and regulations. The bill

includes “industrial hemp” as an exception to the definition of “marijuana” in the definition sections of crimes involving controlled substances. The bill also excludes from the Schedule I controlled substances list any THC in:

- Industrial hemp, as defined by the Act;
- Solid waste and hazardous waste, as defined in continuing law, that is the result of the cultivation, production, or processing of industrial hemp, as defined in the Act, and the waste contains a THC concentration of not more than 0.3 percent; or
- Hemp products as defined in the Act, unless otherwise considered unlawful.

In 2018, SB 263 enacted the Alternative Crop Research 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 this act.

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Federal and State Affairs

E-3 Liquor Laws

Kansas laws concerning intoxicating liquor are included in the Liquor Control Act, the Cereal Malt Beverage (CMB) Act, the Club and Drinking Establishment Act, the Nonalcoholic Malt Beverages Act, the Flavored Malt Beverages Act, the Beer and CMB 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 CMB 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.

CMB Act

Local governments have additional authority under the CMB Act. According to law, applications for CMB 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 CMB 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 CMB Act govern the sale of CMBs. Counties and cities also may establish zoning requirements that regulate establishments selling CMBs and that may limit them to certain locations.

The CMB 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 Director of ABC 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 CMB 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 CMBs, they are regulated under the CMB Act.

Beer and Cereal Malt Beverage Keg Registration Act

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

Although local governments have delegated authority under the CMB 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.

2020 Changes to Liquor Laws—2020 Special Session HB 2016

The bill, among other things, amends the statute governing removal of unconsumed alcoholic liquor from premises of a club or drinking establishment to allow legal patrons to remove from the licensed premises one or more containers of alcoholic liquor not in the original container, subject to the following conditions:

- It must be legal for the licensee to sell the alcoholic liquor;
- Each container of alcoholic liquor must have been purchased by a patron on the licensed premises;
- The licensee or the licensee's employee must provide the patron with a dated receipt for the alcoholic liquor; and
- Before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must place the container in a transparent bag that is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

These provisions expire on January 26, 2021.

2019 Changes to Liquor Laws—SB 70 and HB 2035

SB 70

Temporary permit holders. The bill allows a temporary permit holder to serve alcohol for consumption on licensed or unlicensed premises, or on premises subject to a separate temporary permit.

Common consumption areas. The bill allows a drinking establishment licensee, public venue, hotel, hotel caterer, or drinking establishment caterer to extend its licensed premises into a city, county, or township street, alley, road, sidewalk, or highway under certain circumstances.

Delivery of liquor. The bill requires every express company or other common carrier that delivers

alcohol from outside the state to consumers within the state to prepare a monthly report of shipments.

Sale of farm wine by producer licensees.

The bill allows producers of certain fermentative products to sell wine made at a farm winery with certain minimum Kansas content requirements.

HB 2035

The bill, among other things, makes notice and procedural requirements for violations of the CMB Act the same as for violations of the Liquor Control Act and the Club and Drinking Establishment Act and places violations of the CMB Act under the authority of the ABC. The bill makes the enforcement authority for violations involving beer with up to 6.0 percent alcohol by volume uniform across state liquor laws. The bill also clarifies all retail sales of liquor, CMB, and nonalcoholic malt beverage are subject to the liquor enforcement tax described in KSA 79-4101.

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, which include the licensee's name and the name and type of beer in the container, to all containers sold.

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.

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Federal and State Affairs

E-4 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 fiscal year (FY) 2020, these funds received a total of \$159.4 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; and
- Provide funding for correctional facilities, juvenile facilities, economic development, and the SGF *via* transfers.

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

The bill further provided that the first \$4.0 million in revenue in FY 2019 and \$8.0 million in FY 2020 and each fiscal year thereafter from the sale of lottery tickets through LTVM be used for transfers to the Community Crisis Stabilization Centers Fund and the Clubhouse Model Program Fund of the Kansas Department for Aging and Disability Services. Due to delays in implementation of LTVM, the revenue for FY 2019 was derived from other sources.

The Lottery purchased 272 LTVM in FY 2019. The first group of machines began testing in July 2019. The Lottery was directed to pay for the LTVM from existing Lottery proceeds, thereby reducing the transfer to the SGF from Lottery proceeds by roughly \$2.5 million for the first group. The Lottery anticipated purchasing an additional 70 to 100 LTVM in FY 2021 and FY 2022 at a cost of \$1.5 million.

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.

For FY 2021, the Veterans Benefit Lottery was converted from a net-profit distribution to a fixed distribution starting at \$1.2 million.

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 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 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 2020, revenue from the Kansas Regular Lottery was transferred from the SGRF in the following manner:

Veterans' Programs	\$ 1,260,000
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
Mental Health Program	1,716,218
State General Fund	16,279,271
Total	\$ 66,151,571¹

¹ Kansas statute allows no more than \$50.0 million from online games, ticket sales, and parimutuel wagering revenues to 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 of lottery gaming facilities.

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 (UAL) of the Kansas Public Employees Retirement System (KPERS). In FY 2020, expenditures and transfers from the ELARF included:

KPERS Bonds Debt Service	\$ 36,126,992
Public Broadcasting Council Bonds	434,115
KPERS School Employer Contributions	41,632,883
Kan-Grow Engineering Fund	10,500,000
Total	\$ 88,693,990

(Note: \$15,071,688 was transferred from the State General Fund to the ELARF in FY 2020. The shortfall in the fund was attributable to the shutdown of expanded lottery facilities due to the COVID-19 pandemic.)

In addition to funds deposited in the ELARF, \$6.7 million was transferred to the Problem Gambling and Addictions Grant Fund, and \$10.2 million was transferred to local cities and counties from expanded gaming in FY 2020.

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* nonprofit 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 nonprofit 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

E-5 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. Notice for scheduled hearings is provided for orders that could result in a firearm divestment for a specific period of time. Defendants may participate in such hearings.

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.

Enacted Legislation in Other States

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 giving 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 (CGSA §29-38c).

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

When California enacted its red flag law in 2014, it became the first state to allow family members to file a petition for firearms to be removed from an individual's possession. The California Legislature passed a measure in 2016 to allow high school and college employees, coworkers, 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 which, 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 (ORS §166.525 *et seq.*).

As of February 2020, an additional 14 states have enacted red flag laws. These states are Colorado, Delaware, Florida, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Virginia.

In 2020, Oklahoma enacted the nation's first "anti-red flag law," which prohibits the state and any county or city from enacting laws to allow for the enforcement of extreme risk protection orders (ERPOs).

Federal Legislation

Numerous bills concerning ERPOs have been introduced in the 116th Congress. Most proposed legislation would establish a method of obtaining an ERPO in a federal district court.

Legislation would allow both *ex parte* and long-term protection orders. *Ex parte* orders would result in a protection order that begins immediately upon issuance and would expire after a set term, sometimes 14 days or less. A long-term order would expire after a definite period of time, but would require notice and a hearing.

Kansas Legislation

Red flag legislation has recently been considered by the Kansas Legislature.

HB 2129 (2019) was referred to the House Committee on Federal and State Affairs, but died in committee. The bill would have created the "Gun Safety Red Flag Act" and would have allowed plaintiffs to seek a gun safety protective order. Plaintiffs would have been required to file a petition in the district court of the county where the defendant resides and would have been required to include information such as:

- The number, types, and locations of any firearms and ammunition the defendant is believed to possess;
- Whether a current or prior protective order has been issued against the defendant; and
- Whether there are any pending legal matters between the parties.

The court would have been required to set a hearing within 14 days, and notice of the hearing would have been required to be served upon the defendant.

The bill would also have allowed for *ex parte* protective orders to be issued before a hearing. Such orders would have required detailed allegations to be included in the plaintiff's petition that the defendant poses an "immediate and present danger" to either self or others if such person were to continue to possess firearms and ammunition. The court would have been required to issue an *ex parte* order if it finds reasonable cause the defendant is an immediate threat to self or others if such person were to continue to possess firearms and ammunition. The court would also have been directed to set a hearing within 14 days to determine whether a full gun safety protective order is necessary.

Additionally, at any time the court is unavailable, and a judge believes the defendant is an immediate threat to self or others if such person were to continue to possess firearms and ammunition, such judge would also have been able to issue an emergency order. The order would expire at 5:00 p.m. on the next day the court is in business.

All above orders would not have allowed the person subject to the order to possess firearms or ammunition while such order is in effect. The bill would also have required when law enforcement serves any of the above orders, the defendant be requested to turn over firearms and ammunition at that time. Persons subject to an order who later purchase, possess, receive, or attempt to purchase or receive firearms or ammunition could

have been charged with a class C misdemeanor and would have been subject to a five-year prohibition on firearm or ammunition ownership.

SB 183 (2019), which was referred to the Senate Committee on Federal and State Affairs, but died in committee, contained similar provisions to HB 2129, except the bill would have allowed the issuance of extreme risk protection orders that would prohibit persons subject to the order from possessing firearms and ammunition for a period of one year.

Anti-Red Flag Laws

SB 245 (2020), which was referred to the Senate Committee on Judiciary, but died in committee, would have been cited as the Anti-Red Flag Act and would have prohibited the enforcement or the attempt to enforce an extreme risk protection order. The bill would have defined "extreme risk protection orders" as an order prohibiting an individual from owning, possessing, or receiving a firearm; having a firearm removed; or enforcing an extreme risk protection order. Those found in violation of the act would be guilty of a severity level 9, personal felony.

HB 2425 (2020) was referred to the Senate Committee on Federal and State Affairs, but died in committee. The bill's provisions were identical to those of 2020 SB 245.

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Federal and State Affairs

E-6 Sports Wagering

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

In *Murphy v. NCAA*, 138 S. Ct. 1461 (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.

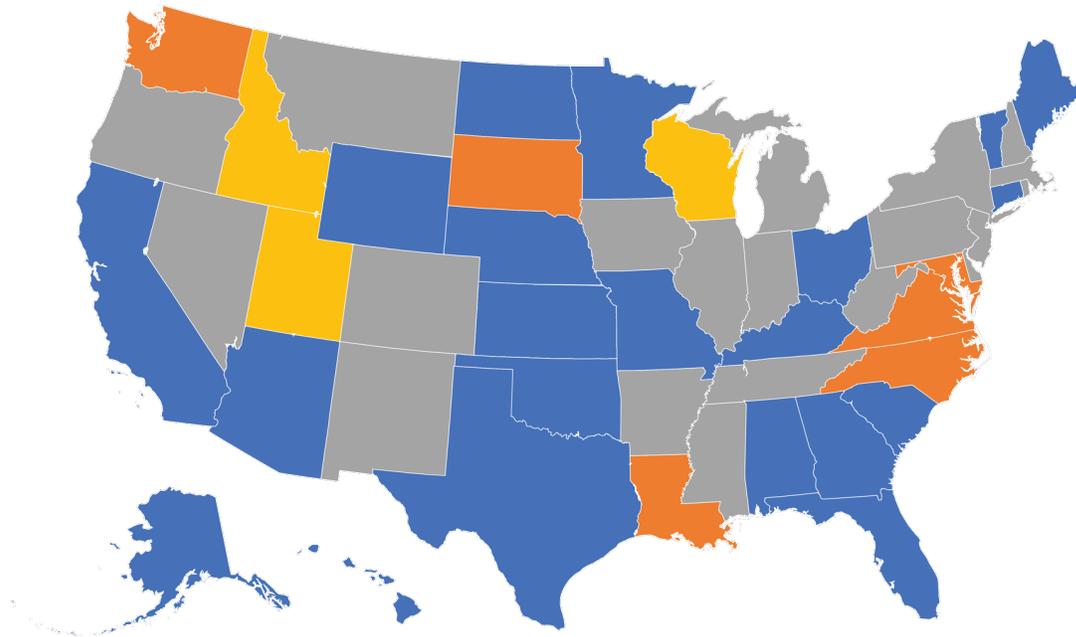
State Action Since *Murphy v. NCAA*

As a result of the U.S. Supreme Court's declaring PASPA to be unconstitutional, states can legally regulate gambling on sporting events. Twenty-five states and the District of Columbia have legalized sports wagering and twenty-two other states have considered legislation related to legalizing the practice since the Supreme Court's decision was released in May 2018.

According to ESPN, a total of nineteen states and the District of Columbia currently accept sports wagers, and a total of six states have legalized sports betting, but are not yet operational (https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization).

The map below shows states that currently allow sports wagers in gray. States that have legalized the practice, but do not yet have operational systems, are shown in orange.

Status of Sports Betting Legislation



- Recent bill introduced but not passed
- Legalized sports betting
- Recent bill passed
- No recent bill introduced

Source:
ESPN,
November 3, 2020

Notable State Policies

In nearly every state with legal sports wagering, gamblers must be age 21 or older to place a wager. However, in Montana, New Hampshire, Rhode Island, and Virginia, persons age 18 or older may place sports wagers.

Out of the 25 states with legal sports wagering, 13 states restrict wagering on either local collegiate teams or on amateur sports: Arkansas, Delaware, Illinois, Indiana, Iowa, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Virginia, and Washington.

Two states, Illinois and Tennessee, require the use of official league data by operators who offer proposition and in-play wagers.

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Federal and State Affairs

E-7 Tobacco 21

On December 20, 2019, the President signed 2019 HR 1865 into law, a bill containing provisions that raised the federal minimum age for tobacco product sales from 18 to 21. This policy change is commonly known as “Tobacco 21.” The bill amended section 906(d) of the Federal Food, Drug, and Cosmetic Act by including a new section 906(d)(5), which applies to all “covered tobacco products” including cigarettes, smokeless tobacco, hookah tobacco, cigars, pipe tobacco, and electronic nicotine delivery systems (ENDS). The new law prohibits the sale of such products to adolescents under the age of 21, thus reducing adolescents access to tobacco products.

Federal Policy

In October 2009, the federal Food and Drug Administration (FDA) prohibited “characterizing flavors,” like fruit flavors contained in cigarettes, under the authority granted by the Family Smoking Prevention and Tobacco Control Act (Act). The Act also allows the FDA to issue regulations deeming other products that meet the statutory definition of “tobacco product” to be subject to the Act.

In May 2016, the FDA published a final rule that deemed ENDS products to be a “tobacco product” subject to the Act.

The new tobacco provisions of 2019 HR 1865 amend prior regulation pertaining to the manufacturing and advertising of tobacco, package warnings, and the Synar Amendment. The Synar Amendment requires states to be in compliance with the federal tobacco minimum purchase age law as a condition of each states’ receipt of Substance Abuse Prevention and Treatment Block Grant (SABG) funding.

With this change in law, the federal government sought to prioritize enforcement against youth access to not only traditional tobacco products, but also ENDS products that appeal to children, such as certain flavored tobacco products like mint and fruit flavors or flavors other than menthol or tobacco. The 2016 U.S. Surgeon General report concluded that youth use of ENDS products is a major public health concern and associated with the use of other tobacco products (https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/index.htm). On January 2, 2020, the FDA released

a policy statement on flavored cartridge-based electronic cigarettes (e-cigarettes) (<https://www.fda.gov/media/133880/download>).

Synar Amendment

Under 42 U.S.C. 300x-26, to receive SABG funding, states are required to annually conduct random inspections to ensure that retailers do not sell tobacco to individuals under age 21; annually report such findings to the federal government; and comply with reporting and enforcement requirements within the three-year grace period before funds are withheld, upon the discretion of the Secretary of Health and Human Services (Secretary). If states do not demonstrate the compliance rate determined by the Secretary, they risk losing up to 10.0 percent of their SABG money. Additionally, penalties for noncompliance include civil penalties between \$300 and \$12,000, depending on the number of violations, warning letters, and “No-Tobacco-Sale Orders” to retailers who remain out of compliance. The Substance Abuse and Mental Health Services Administration’s Synar webpage outlines the procedures for compliance with the Synar Amendment.

Kansas Tobacco Laws

Currently, there is no state law that increases the tobacco use, sale, or consumption age from 18 to 21. However, many local municipalities like Wyandotte County, Finney County, Douglas County, Shawnee County, Johnson County, Leavenworth County, Labette County, and Allen County had adopted Tobacco 21 ordinances prior to federal measures.

Unlawful Acts

KSA 79-3321 describes the following as unlawful:

- The sale, furnishing, or distribution of tobacco and consumable materials like cigarettes, e-cigarettes, or tobacco products to persons under 18 years of age;

- The purchase or attempt to purchase these products by a person under 18 years of age; and
- The sale of tobacco and consumable materials through a vending machine in an establishment open to minors.

Indoor Clean Air Act

KSA 2019 Supp. 21-6109 to KSA 2019 Supp. 21-6116 prohibits the use of tobacco products in public places except on gaming floors of Lottery and Racetrack facilities.

Likewise, the use of tobacco products in school buildings is also prohibited by KSA 72-6285.

Penalties

Penalties for selling or furnishing tobacco and consumable materials to a person under 18 years of age are:

- A class B misdemeanor, punishable by a minimum fine of \$200 (KSA 79-3322(c) (1)); and
- An additional \$1,000 penalty by the Department of Revenue (KSA 79-3391(a)).

2020 HB 2563

HB 2563 (2020) was introduced by the House Committee on Federal and State Affairs. The bill would have increased the minimum age to purchase or possess cigarettes and tobacco products from 18 to 21 and prohibited cigarette vending machines and flavored vaping products in Kansas. Like the federal law, the bill would have prohibited the sale of flavored tobacco products, with an exception for tobacco and menthol flavors. Under the bill, self-service displays would have been prohibited. Sales of tobacco products would only have been allowed in indoor, enclosed areas where those under 21 may not be present.

The bill would have also amended the Kansas Cigarette and Tobacco Products Act, the Indoor Clean Air Act, law concerning student health, and criminal statutes related to the use and possession

of cigarettes, e-cigarettes, consumable material, alternative nicotine products, and tobacco products by persons under age 21. The bill would have also removed the gaming floor exception to the Indoor Clean Air Act, which would have banned smoking in those locations. Additionally, the definition of “smoking” would have been amended to include the use of e-cigarettes. Selling, furnishing, and distribution of tobacco to a minor, or individual under age 21, would have been classified a class B misdemeanor penalty.

The bill was passed out of the House Committee, but was not considered by the full House Committee of the Whole.

Other States’ Tobacco 21 Laws

Prior to the new federal law raising the tobacco purchase age to 21, 19 states, the District of Columbia, and over 540 localities had implemented their own Tobacco 21 laws with varying exemptions, levels of enforcement, and penalties. States like Maryland, Pennsylvania, and Texas exempted active duty military personnel from the tobacco age restriction, while Vermont, Connecticut, and Ohio maintained purchase, use, and possession provisions.

Since enactment of the federal Tobacco 21 provisions, 33 states have passed legislation to reflect the age increase. Legislation was passed before enactment of the federal law in 19 states, and 14 states passed legislation after enactment of the federal law.

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COVID-19

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F-1 Consumer Credit Reports and Security Freezes

Protecting Consumer Data – COVID-19 Concerns

Social Media Scams. According to data released in October 2020 from the Federal Trade Commission (FTC), there has been a surge in reports from consumers who say they lost money to a scam that started on social media, including what the FTC calls “a spike of complaints” at the height of the COVID-19 pandemic. The data show the number of complaints about social media-based scams more than tripled in the last year, with reported losses of more than \$117 million attributed to this type of scam in the first 6 months of 2020 (\$134 million for all of 2019). Additional information about COVID-19 resources, including tips to avoid pandemic-related scams, is available at: <https://www.ftc.gov/coronavirus>.

Unemployment Benefits Fraud. Another emerging scam during this pandemic features imposters filing claims for unemployment benefits using the names and personal information of persons who have not filed claims. People learn about this fraud when they receive notice from their state unemployment benefits agency or their employer about a supposed application for benefits. In this instance, consumers are advised by the FTC to report this fraud to their employers and the state unemployment benefits agency. In Kansas, individuals may file such reports with the Kansas Department of Labor, filing with this form: <https://www.fraudreport.ks.gov/>. Individuals will also need to take steps to report the fraud to the FTC and monitor their consumer credit reports. Information about these steps follows.

Identity Theft

Identity theft, including fraudulent claims for unemployment benefits described above, is a fast-growing crime in the United States. Consumers can combat identity theft by placing a security freeze on their credit reports (known as “consumer reports” under Kansas law), making it more difficult for identity thieves to open new accounts in the consumer’s name. In recent years, various states, including Kansas, and the federal government have taken action to allow consumers to place and remove security freezes on their credit reports for free.

Security Freezes

The FTC provides consumer information on security freezes. A consumer may place a security freeze, also known as a credit freeze, on the consumer's credit report. The security freeze allows a consumer to restrict access to the credit report (the credit report or any consumer information contained in the report cannot be released without authorization from the consumer), which makes it more difficult for identity thieves to open new accounts in the consumer's name. A security freeze does not affect the consumer's credit score or prevent the consumer from obtaining a free annual credit report. However, if the consumer wants to open a new account, apply for a job, rent an apartment, or buy insurance, the consumer will need to temporarily lift the freeze.

Consumer Reporting Agencies and Credit Reports

Consumer reporting agencies (CRAs), also known as credit bureaus or credit reporting companies, compile and sell credit reports. According to the Consumer Financial Protection Bureau (CFPB), CRAs collect credit account information about consumer borrowing and repayment history, including the original amount of a loan; the credit limit on a credit card; the balance on a credit card or other loan; the payment status of the account, including whether the consumer has repaid loans on time; items sent for collection; and public records, such as judgments and bankruptcies. Credit reports also contain personal information, including the consumer's name and any name used in the past in connection with a credit account, including nicknames; current and former addresses; birth date; Social Security number; and phone numbers.

CRAs sell the information in a consumer's report to creditors, insurers, employers, and other businesses. Lenders use these reports to help determine whether they will loan a consumer money, what interest rates to offer, and whether the consumer will meet the terms of a credit account. Other businesses might use these credit reports to determine whether to offer the

consumer insurance; rent a home to a consumer; or provide the consumer with cable television, Internet, utilities, or cellphone service.

The FTC specifies CRAs may not provide information about the consumer to the employer or a prospective employer without the consumer's written consent. (*Note:* Kansas law contains provisions governing release of consumer report information to employers; see KSA 50-705 and 50-712.)

The FTC's role is to protect consumers and promote competition. The FTC enforces the Fair Credit Reporting Act (FCRA) with respect to CRAs. The FCRA is a federal law that provides directions and limits on how CRAs disclose credit report information. The FCRA requires each of the nationwide CRAs (Equifax, Experian, and TransUnion) to provide a consumer with a free copy of the consumer's credit report, at the consumer's request, every 12 months. A consumer may order reports from each of the three nationwide CRAs at the same time or separately.

Equifax, Experian, and TransUnion have set up a central website, a toll-free telephone number, and a mailing address through which a consumer may obtain a free annual report. Additionally, a consumer is entitled to a free credit report if a company takes adverse action against the consumer, such as denying an application for credit, insurance, or employment, and the consumer asks for the report within 60 days of receiving notice of action. The consumer is also entitled to one free report a year, if the consumer is unemployed and plans to look for a job within 60 days; the consumer is on public assistance; or the report is inaccurate due to fraud or identity theft. Otherwise, a CRA may charge the consumer a reasonable amount for another copy of the report within a 12-month period. Kansas also has a state version of the FCRA, codified at KSA 50-701 *et seq.*

COVID-19. Each CRA has published resources for consumers:

- Equifax: <https://www.equifax.com/personal/education/covid-19/>

- Experian: <https://www.experian.com/blogs/ask-experian/coronavirus/>
- TransUnion: <https://www.transunion.com/covid-19>

Equifax Data Breach and Subsequent Action by Kansas and the Federal Government

On July 29, 2017, Equifax learned of a cybersecurity incident potentially impacting approximately 147 million U.S. consumers. According to Equifax, criminals exploited a U.S. website application vulnerability to gain access to certain files from May 13, 2017, through July 30, 2017. The information accessed primarily included names, Social Security numbers, addresses, and, in some instances, driver's license numbers. Criminals also accessed credit card numbers for approximately 209,000 U.S. consumers and certain dispute documents with personal identifying information for approximately 182,000 U.S. consumers. As part of Equifax's investigation into application vulnerability, Equifax identified unauthorized access to limited personal information for certain residents of the United Kingdom and Canada.

Equifax Settlement

In July 2019, the CFPB, FTC, 48 states (including Kansas), the District of Columbia, and Puerto Rico announced a \$425.0 million settlement with Equifax as the result of an investigation into the 2017 data breach. Under the settlement, all U.S. consumers may request up to 6 free copies of their Equifax credit report during any 12-month period, starting in January 2020 and extending for 7 years. These reports are in addition to the free reports consumers are entitled to under current law. For information about filing a claim, consumers should visit <https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement>.

Kansas Law

In 2018, the Kansas Attorney General requested introduction of a bill that would prohibit CRAs from

charging consumers for placing or removing a security freeze in light of the Equifax data breach. The Kansas Legislature passed 2018 HB 2580, which amended the state's FCRA to clarify that continuing statutes governing security freezes on consumer reports fall within the FCRA. The legislation also amended KSA 2018 Supp. 50-723 to remove a provision allowing a \$5 fee to place, temporarily lift, or remove a freeze, and instead prohibited CRAs from charging a fee for these services.

Further, the bill amended KSA 2018 Supp. 50-725 governing security freezes for "protected consumers" (defined under the state's FCRA as an individual under 16 years of age when the request for a security freeze is made or an individual for whom a guardian or conservator has been appointed) to remove a provision allowing a \$10 fee to place or remove a security freeze.

Federal Law

In May 2018, President Trump signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155). The bill, among other things, amended the FCRA to require a CRA to provide consumers with free credit freezes and to notify consumers of their availability, established provisions related to placement and removal of these freezes, and created requirements related to the protection of the credit records of minors.

As of September 21, 2018, CRAs may not charge a fee for the placement or removal of a security freeze on consumer credit reports. If a consumer requests a security freeze online or by phone, the CRA must place the freeze within one business day. If the consumer requests a freeze to be lifted, the CRA must lift the freeze within one hour. If the consumer makes the request by mail, the agency must place or lift the freeze within three business days after the CRA receives the request.

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Financial Institutions and Insurance

F-2 Kansas Health Insurance Mandates

This article provides an overview of benefit, provider, and other coverage requirements placed on certain health insurance companies in Kansas. Also discussed is the impact of the federal Patient Protection and Affordable Care Act (commonly referred to as the ACA) and recent trends in enacted requirements in Kansas law.

Mandates in Kansas Law

Health insurance mandates in Kansas law apply to:

- Individual health insurance policies issued or renewed in Kansas; and
- Group health insurance policies issued or renewed in Kansas. [*Note:* 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 (Employee Retirement Income Security Act of 1974 [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; and
- Supplemental benefit policies. Examples include dental care, vision (eye exams and glasses), and hearing aids.

Since 1973, the Kansas Legislature has added new statutes to insurance law that mandate certain health care providers be paid for services rendered (provider mandates) and be paid for certain prescribed types of coverage or benefit (benefit mandates). The Legislature more recently authorized the study of proposed benefit mandates. (*Note:* See Table A on the next page for a comprehensive list of enacted 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 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 cancer interest groups sought and received similar mandated coverage for prostate cancer screening. After several attempts, 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
Pharmacists	1994	Maternity Stays	1996
Advanced Practice Registered Nurses	1995	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
		Autism Spectrum Disorder	2014

* 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 (FDA) 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 periodically review all state mandated health insurance coverage. 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 an impact report that assesses both the social and financial effects of the proposed mandated coverage to the legislative committees assigned to review the proposal. The law also requires the Commissioner of 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 persons being unable to obtain necessary health care treatment;
- 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 (other than premiums and administrative costs) on

the question of the costs and benefits of coverage.

The financial impact factors include the extent to which the proposal would change 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 Plan Study. KSA 40-2249a provides, in addition to the impact report requirements, that any new mandated health insurance coverage approved by the Legislature would only apply to the state health care benefits program (State Employee Health Plan [SEHP]) 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 this 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 SEHP, including data on the utilization and costs of the mandated coverage. The report also is to include a recommendation of whether the mandated coverage should be continued by the Legislature to apply to the SEHP or whether additional utilization and cost data are required.

Recent Review and Legislative Trends

Table B on page 5 illustrates recent legislation and enacted law with coverage requirements and related provisions placed on health insurance companies in Kansas.

2009 Session—Mandates Review

Kansas legislative review (KSA 40-2249a). The Senate Committee on Financial Institutions

and Insurance and the House Committee on Insurance received briefings during the regular session from committee staff on the current and recently considered health insurance mandates. Testimony was also received from interested parties.

2010 Session—An Emerging Trend: the Study Directive

The study before the law. The Legislature's review and response to health insurance mandates has recently included a new direction: the study before the mandate is considered and passed by the Legislature. As prescribed by the 1999 statute, a mandate is to be passed by the Legislature, applied to the SEHP for at least one year, and then a recommendation is made about continuation in the SEHP or statewide (KSA 40-2249a). Legislation in 2008 (HB 2672) directed the Kansas Health Policy Authority (KHPA) to conduct a study on the impact of extending coverage for bariatric surgery in the SEHP (corresponding mandate legislation in 2008: SB 511, HB 2864). No legislation requiring treatment for morbid obesity (bariatric surgery) was introduced during the 2009-2010 Biennium.

In addition, Sub. for HB 2075 (2009) would have directed the KHPA to study the impact of providing coverage for colorectal cancer screening in the SEHP, the affordability of the coverage in the small business employer group, and the state high risk pool (corresponding legislation in 2009: SB 288, introduced as HB 2075).

During the 2010 Session, the House Committee on Insurance considered the reimbursement of services provided by certain Behavioral Sciences Regulatory Board licensees (SB 104; HB 2088 and HB 2546). The House Committee recommended a study by KHPA on the topic of requiring this reimbursement. The study design would have included determining the impact that coverage has had on the SEHP, providing data on utilization of such professionals for direct reimbursement for services provided, and comparing the amount of premiums charged by insurance companies that provide reimbursement for these provider services to the amounts of

premiums charged by insurers that do not provide direct reimbursement. Under SB 388, KHPA would also 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 was also included as a proviso to the Omnibus appropriations bill; the proviso was vetoed by the Governor and the veto was sustained.

Autism benefit and oral anticancer medications study and law. The 2010 Legislature considered mandating coverage for certain services associated with the treatment of Autism Spectrum Disorder (ASD). Senate Sub. for HB 2160 required the Health Care Commission, which administers the SEHP, to provide for the coverage of services for the diagnosis and treatment of ASD in any covered individual whose age was less than 19 years during Plan Year 2011. The services provided and limitations on benefits also were prescribed. The Health Care Commission was required to submit on or before March 1, 2012, a report to the Senate President and the House Speaker that included information (e.g., cost impact utilization) pertaining to the mandated ASD benefit coverage provided during the 2011 Plan Year. The Legislature was permitted to consider in the next session following the receipt of the report whether to require the coverage for ASD to be included in any individual or group health insurance policy, medical service plan, HMO, or other contract that provided for accident and health services and was 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 SEHP) 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 indicated the impact the provisions for orally administered anticancer medications had on the SEHP, including data on the utilization and costs of such coverage. The report was required to include a recommendation

on whether the coverage should continue for the SEHP or whether additional utilization and cost data was required. The report was required to be provided to the legislative representatives on or before March 1, 2011.

Legislation	Proposed Mandate	Mandate Type	Action Status
2009 SB 12/ HB 2387; 2010 SB 554	Autism, coverage of	Benefit	See Senate Sub. for HB 2160 (study only).
2009 SB 195; 2010 SB 390	Anticancer medications, orally-administered; genetic testing (introduced version, SB 390)	Benefit	See Senate Sub. for HB 2160 (study only).
2009 SB 288; Sub. for HB 2075	Colorectal cancer screening	Benefit (substitute bill contained a study only)	Referred to Senate Committee on Financial Institutions and Insurance. Died in Committee (SB 288); Substitute bill passed. Re-referred to House Committee on Insurance; no action taken by 2010 Legislature.
2009 SB 104/ HB 2088; 2010 HB 2546	Clinical professional counselors, therapists, psychotherapists	Provider	Hearings held (SB 104, HB 2546); bills died in committee.
2009 HB 2344	Dietary formulas	Benefit	Hearing held; died in House Committee on Health and Human Services.
2009 SB 49/ SB 181/ HB 2244/ HB 2231	Mental health, substance abuse	Benefit	See HB 2214 (modifies existing Mental Health Parity Act/ mandate)
2009 HB 2329	Procedures, implants approved by the FDA	Benefit	Died in Committee.
2010 HB 2424	Telemedicine, payment for (telecommunications services)	Benefit	Jointly referred, later separately referred. Died in Committee.
2011 SB 226; HB 2216; HB 2764	Autism Spectrum Disorder, coverage of	Benefit	SB 226 and HB 2216 died in Committee. HB 2764 passed the House; died in Senate Committee. *The bills exempted the proposed mandate from the test track requirements (study).
2011 HB 2228	Hearing aids, coverage of	Benefit	Died in Committee.
2013 SB 175, HB 2317, HB 2395; 2014 HB 2704; HB 2759; HB 2744	Autism Spectrum Disorder, coverage of	Benefit	See HB 2744 (benefit mandate).
2014 HB 2690	Telemedicine mental health services, coverage of	Benefit	Died in Committee.
2015 SB 303	Autism Spectrum Disorder, coverage of	Benefit	See HB 2352 (modified existing mandate).
2017 SB 165	Abuse-deterrent opioid analgesic drug products; emergency opioid antagonists	Benefit	Hearing held. Died in Committee.
2017 HB 2103	Amino acid-based elemental formula	Benefit	Hearing held. Study requested.

Table B Kansas Provider and Benefit Mandates			
Legislation	Proposed Mandate	Mandate Type	Action Status
2017 HB 2119, HB 2255	Dental services	Contract/ Network	Hearing held. Died in Committee.
2017 HB 2021	Hearing aids	Benefit	Hearing held. Died in Committee.
2017 HB 2254; HB 2206; 2018 HB 2674	Telehealth; telemedicine	Benefit	See Senate Sub. for HB 2028.
2018 SB 417; HB 2679	Contraceptives	Benefit	Died in Committee.
2019 SB 163; HB 2124	Contraceptives	Benefit	Died in Committee.
2019 HB 2307; 2020 HB 2633	Dental Services	Contract/ Network. Establishes non-covered dental benefits and plan limitations.	Passed House; Died in Senate Committee. Died in House Committee.
2019 HB 2074	Preexisting Conditions	Contract (Individual market only).	Hearing held. Died in Committee.
2020 SB 401	Hearing Aids	Benefit	Died in Committee.
2020 HB 2556	Prosthetic Devices	Benefit	Died in Committee.

The Health Care Commission opted to continue ASD coverage in the SEHP, 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. The 2014 Legislature again considered ASD coverage in HB 2744. Following amendments in the House Committee on Insurance and House Committee of the Whole, the bill passed the Senate and was signed into law on April 16, 2014. The bill required, subject to limitations on benefits and services provided, health insurance coverage for the diagnosis and treatment of ASD in children under the age of 12 years and also created the Applied Behavior Analysis (ABA) Licensure Act.

The SEHP updated its benefits coverage for Plan Year 2015 to reflect the changes enacted in HB 2744.

2017-2018 Biennium Study, Special Committee

The House Committee on Insurance held hearings on two benefit mandate bills: HB 2103 (amino acid-based elemental formula) and HB 2021 (hearing aids). No formal committee action was taken during the 2017 Session; however, a SEHP study was requested relating to HB 2103 to provide more information on economic and social impact factors associated with the requirements of KSA 40-2249. Telehealth and telemedicine legislation, including proposed insurance coverage requirements, were assigned to the 2017 Interim Special Committee on Health.

Amino acid-based elemental formula. Following receipt of the SEHP report, the House Committee on Insurance recommended a substitute bill limiting the coverage of formula to the SEHP enrollees for a one-year (“test

track”) period in Plan Year 2019 and requiring a report to the 2020 Legislature. These provisions ultimately were enacted in 2018 SB 348. (*Note:* The report, submitted in March 2020, indicates in 2019, the SEHP had 4 members for whom prior authorizations for the formula were submitted. One of the requests met the guidelines for coverage and was approved. This member submitted one claim, for a total allowed amount of \$203.80. The SEHP elected to continue the pilot program for the elemental formula for Plan Year 2020.)

Telemedicine. The 2017 Special Committee on Health did not recommend the 2017 legislation (HB 2206 and HB 2254), but did recommend the introduction of comprehensive telemedicine legislation in the 2018 Session.

The Kansas Telemedicine Act (Senate Sub. for HB 2028) provides that coverage for a health care service delivered *via* telemedicine is not mandated if such service is not already covered when delivered by a health care provider and subject to the terms and conditions of the covered individual’s health benefits plan.

2019-2020 Biennium; Amendments to Existing Mandates, Coverage Requirements

In addition to the legislation highlighted in Table B, legislation was introduced to expand existing mandated benefits—breast cancer screening and mental health treatment. SB 464 would have required a health insurer that provides benefits for diagnostic breast cancer examinations to ensure that the cost-sharing requirements and treatment limitations that are applicable to a diagnostic examination are not less favorable than the requirements and limitations that apply to a screening examination for an insured patient. The bill died in Senate Committee.

HB 2459/SB 249 would have amended provisions in the Kansas Mental Health Parity Act previously applying to coverage of mental illness, alcoholism, drug abuse, or other substance use disorders to expand the coverage associated with treatment of mental illness or substance use disorders. Among

amendments, the bill would have required insurers to provide coverage without the imposition of prior authorization, concurrent review or retrospective review or other forms of utilization review for the first 14 days of medically necessary inpatient and 180 days of medically necessary outpatient treatment and services provided in-network. The bill would further designate the amendments to this act as “The Kristi L. Bennett Mental Health Parity Act.” Following its hearing in the House Committee on Insurance, HB 2459 was assigned to a subcommittee for further review. The bill died in House Committee; SB 249 died in Senate Committee.

ACA Requirements—Essential Health Benefits

The 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 [HHS]), directs the Secretary of HHS to determine the “essential health benefits” to be included in the “essential health benefits” package that qualified health plans (QHPs) in the Exchange marketplaces are required to cover (coverage effective beginning in 2014). “Essential health benefits,” as defined in Section 1302(b), include the required coverage of at least the following ten 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. 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 K health plan or health insurance issuer must cover certain items and services, without costsharing." 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 must defray 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" allowing 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.

Should a state not select a benchmark, the default option would become the small group plan with the largest enrollment in the state. In 2010, the Kansas 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 Commissioner submitted the following recommendations and conclusions to the Governor for consideration of a state essential health benefits benchmark: selection of the largest small group plan, by enrollment (the Blue Cross Blue Shield of Kansas Comprehensive Plan); supplementing the recommended benchmark plan with the required pediatric oral and vision benefits available in the Kansas Children's Health Insurance Program; and anticipation of further guidance from HHS on the definition of "habilitative services" later in fall 2012. No specific recommendation was made by the Commissioner.

Including Kansas, 25 states did not provide a recommendation on a benchmark plan to HHS by the September 30, 2012, deadline; therefore, HHS assigned those states the largest small group plan as the benchmark for 2013-2016 (in August 2015, HHS extended the plans to 2017).

Recent developments. On April 9, 2018, the Centers for Medicare and Medicaid Services finalized its Benefits and Payment Parameters rule for 2019. Among changes prescribed in the rule, beginning in Plan Year 2020, states are given additional flexibility to define their benchmark plan and can update plans on an annual basis. States will also be permitted to maintain their current 2017 benchmark plan without taking any action.

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Financial Institutions and Insurance

F-3 Payday Loan Regulation and Update on Small Dollar Lending in Kansas

The Kansas Legislature began its review of payday lending during the 1991 Session. At that time, the Consumer Credit Commissioner requested legislation, citing a concern that check cashing for a fee had become a prevalent practice in Kansas and was being conducted in a manner violating the Kansas Uniform Consumer Credit Code (generally referred to as either the UCCC or Code). 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 Consumer Credit Commissioner indicated to the Senate Committee on Financial Institutions and Insurance (Senate Committee) there appeared to be both a need for this type of service and 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 Attorney General, concurring such practice violated the UCCC, 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.

SB 363 (1991) addressed the concern about excessive interest charges and fees. In some instances, the annual percentage rate on these short-term loans ranged from 600.0 percent to 1,600.0 percent. Despite these rates, neither the Consumer Credit Commissioner nor the Office of the Attorney General 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 6-32. The Senate later reconsidered its action and sent the bill back to the Senate Committee for possible action.

Review of payday loan regulation, continued. 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 in the House, 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 36.0 percent to 360.0 percent. Several 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 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 1992 Session.

In the Legislature's third year of consideration of payday loan legislation, 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 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 10.0 percent of the amount, plus a \$5.00 administrative fee;
- On amounts in excess of \$100 but not more than \$250, the finance charge could be 7.0 percent of the amount with a \$10 minimum, plus a \$5.00 administrative fee; and
- For amounts in excess of \$250 but less than the maximum amount, the finance charge could be 6.0 percent of the amount with a minimum of \$17.50, plus a \$5.00 administrative fee.

The law also provided:

- The maximum term of the loan cannot exceed 30 days;

- The contract interest rate after maturity cannot be more than 3.0 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; and
- Certain loans made under this section may be unconscionable conduct—the Consumer Credit 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. There have been attempts, however, to amend the law. During the 1999 Session, 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. The Acting Consumer Credit Commissioner commented to the Senate Committee the bill “would substantially alter the rates charged by payday loan companies.” In testimony on another UCCC bill (SB 301) before the Senate Committee, the Attorney General advised that while the “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, argued that reducing the allowable interest rate charge to 36.0 percent would have the effect of putting them out of business. The Senate Committee took no action on the measure.

SB 301, as enacted during the 1999 Session, made several significant changes to 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.

During the 2001 Session, the Deputy Commissioner (who is the 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, which 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 10.0 percent to 8.0 percent; on amounts in excess of \$100 but not more than \$250, the charge would have been reduced from 7.0 percent to 5.0 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 6.0 percent to 4.0 percent and the minimum allowable charge 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 requested, and the Legislative Coordinating Council (LCC) created,

an interim Special Committee on Financial Institutions and Insurance to study, among other topics, the 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 topic.

The 2004 Legislature passed a measure, HB 2685, addressing the regulation of payday loans. The bill:

- Revised the maximum cash advance from \$860 to \$500;
- 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 also reviewed a payday loan bill, SB 439, that would have created a maximum loan amount (\$500, rather than \$860, which was adopted in HB 2685) 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 (OSBC) 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, which included provisions for both mortgage brokers and supervised lenders. In addition to the new 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 15.0 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 U.S. 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 U.S. Armed Forces, any member of the National Guard, or any member of the Armed Forces Reserve.

The Special Committee on Financial Institutions and Insurance convened during the 2005 Interim to study topics that included a broad review of the UCCC. A proposed non-depository lending model, a closed-end installment loan (proposed in 2005 HB 2278 and 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 (2007-2010)

The regulation of payday lending again was addressed during the 2007, 2008, and 2010 Sessions. SB 217 (2007) and HB 2244 (2007) 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. 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 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 OSBC. The moneys would have been transferred to the Professional Development Fund (Kansas State 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 the bill would generate approximately \$1.2 million from the estimated 1.2 million payday and title loans that would be issued in FY 2011. The bill was

referred to the Senate Committee; the bill died in Committee.

Recent Legislative Proposals (2013-2019)

The 2013 Legislature introduced legislation (SB 30 and HB 2036) that would have amended the UCCC to prevent lenders from making payday loans to a consumer who already has two outstanding loans with any lender. Restrictions would have been established on the amount of consecutive loans allowable between a particular borrower and lender. Additionally, the bill would have permitted the Code Administrator to establish an Internet database; a verification fee of up to \$1 could be charged by the OSBC or its 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 Committee and HB 2036 was referred to the House Committee on Financial Institutions. The bills died in their respective committees.

The 2015 Legislature introduced SB 100, which would have set a single finance charge not to exceed 36.0 percent for closed-end credit consumer loans. SB 100 was referred to the Senate Committee. A hearing was not held on the bill, and the bill died in the Committee.

During the 2016 Legislative Session, HB 2695 was introduced and referred to the House Committee on Insurance and Financial Institutions. HB 2695 would have added a new section to the UCCC, to be known as the “Respectful Lending to Kansas Seniors Act.” The bill would have placed a 36.0 percent interest cap on payday loans for senior citizen consumers, as well as allowed a modification for a senior citizen’s federal adjusted gross income for the taxable year. A hearing was not held on the bill, and it died in Committee.

The 2017 Legislature introduced SB 234, which would have set a 36.0 percent cap and restricted the terms of payday loans. The bill was referred to the Senate Committee on Federal and State Affairs. A hearing was not held on the bill, and the bill died in the Committee. (*Note:* The Senate Committee on Federal and State Affairs held an informational briefing on payday lending during

the 2017 Session, but did not hold a hearing on a specific piece of legislation.) The 2017 Legislature also introduced HB 2267, which would have, among other things, amended provisions in the Code relating to consumer loans and would impose a cap of 36.0 percent annual percentage rate on all consumer loans with open-end credit, including all fees, interest, and charges. The bill would have amended the definition of “consumer loan” and rules relating to how consumer loans can be repaid by borrowers and how many consumer loans a single borrower can have outstanding from a single lender. The bill was originally referred to the House Committee on Financial Institutions and Pensions, but was referred to the House Committee on Federal and State Affairs.

HB 2267 and related regulatory review was assigned by the LCC to the interim Special Committee on Financial Institutions and Insurance (Special Committee). The Special Committee met in October 2017. As part of the Report of the Special Committee to the 2018 Legislature, the Special Committee noted its discussion on HB 2267, the UCCC and its present structure, and the update and comments submitted by stakeholders on the small dollar lending Final Rule published by the Consumer Financial Protection Bureau (CFPB). The Special Committee also encouraged the OSBC to hold regular stakeholder meetings to assist in drafting changes to the UCCC and requested regular updates during the 2018 Session.

No further action was taken on HB 2267 during the 2018 Session. In addition, the 2018 Legislature introduced SB 402, which would have established the Kansas Veterans Loan Act and added a new section to the UCCC regarding consumer loan transactions made with veterans. SB 402 was referred to the Senate Committee. A hearing was not held on the bill; the bill died in Committee.

2019-2020 Biennium. The House Committee on Veterans and Military introduced HB 2363, which would have required certain lenders under the Code to inquire about any potential borrower’s veteran status on loan applications. Lenders who extend loans to veterans would have been required to provide veterans with the pamphlet

“Protecting Our Kansas Veterans.” The pamphlet would be published by the OSBC and would explain the veteran’s rights under the Code. Fines could be assessed on lenders violating provisions of the bill. The bill was referred to the House Committee on Financial Institutions and Pensions.

HB 2254 would have addressed the broader topic of small dollar lending and supervised loans by requiring state-chartered banks to provide subprime loans totaling at least 5.0 percent of the bank’s capital. The bill would define “subprime loan” as a loan made to a borrower that has “either a nonexistent credit score or a credit score lower than 620.” In addition, the bill would exempt banks from any penalties under the State Banking Code for providing subprime loans. The bill was referred to the House Committee on Financial Institutions and Pensions. Both HB 2254 and HB 2363 died in the House Committee on Financial Institutions and Pensions at the conclusion of the biennium.

On February 17, 2020, the House Committee on Financial Institutions and Pensions held a hearing on the topic of payday lending, with invited conferees representing payday loan regulators, consumers, and the industry. The meeting was informational only, and no action was scheduled or taken on pending legislation.

Small Dollar Lending Activity in Kansas

During the 2017 Interim Special Committee meeting, the Deputy Commissioner addressed trends in small dollar lending, noting some lenders have moved away from the traditional payday loan model into an installment loan product (also permitted under the UCCC) and a growing challenge in unlicensed lenders that operate primarily, or only, online.

Data provided by the Deputy Commissioner in November 2020 summarizes small dollar loans provided by licensees: payday only (39); payday only branches (62); payday and title (10); payday and title branches (114); title only (4); and title only branches (41). The number of locations for these loans totals 270 (53 companies, 217 branches).

The calendar year (CY) 2019 loan volume for payday loans was an estimated \$239.2 million (in CY 2013, the volume was an estimated \$396.0 million).

The OSBC—Division of Consumer and Mortgage Lending maintains an online database available to the public of entities that are authorized to engage in the practice of consumer lending or mortgage business entities, as well as those lenders.

The searchable database contains the license number, company name, company location, date of next renewal, and notes the status of each license. This information is accessible on the OSBC’s website at <https://www.osbckansas.org/lookup.html>.

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 the CFPB 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 CFPB the primary rulemaking and enforcement authority over several federal consumer protection laws, including the Truth in Lending Act. The CFPB 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.

The CFPB has been evaluating what rules may be appropriate to address the “sustained use of short-term, high-cost credit products” (various types of small dollar loans). In June 2016, it proposed a rule intended to require lenders to “take steps to make sure consumers have the

ability to repay their loans” and include other borrower protections to address debit fees assessed on payday loans. The comment period closed on October 7, 2016 (see *Federal Register* for the Final Rule, 12 CFR part 1041). On October 5, 2017, the CFPB issued its Final Rule. The implementation period would be 21 months following the formal publication of the Final Rule. The Final Rule covered short-term loans less than 45 days in duration that are open-end or closed end, as well as longer-term loans more than 45 days in duration that are either open-end or closed-end and have a balloon payment feature.

CFPB actions. On January 16, 2018, the CFPB issued the following statement: “January 16, 2018 is the effective date of the Bureau of Consumer Financial Protection’s Final Rule entitled ‘Payday, Vehicle Title, and Certain High-Cost Installment Loans’ (‘Payday Rule’). The Bureau intends to engage in a rulemaking process so that the Bureau may reconsider the Payday Rule.”

Proposed Rule. In February 2019, the CFPB issued proposed rules to rescind the mandatory underwriting provisions of the 2017 Final Rule and to delay the August 19, 2019, compliance date for those provisions to November 19, 2020. Public comment was sought on both proposals (the Final Rule delaying the compliance date was issued in June 2019).

The provisions of the Final Rule the CFPB proposes to rescind: (1) provide that it is an unfair and abusive practice for a lender to make

a covered short-term or longer-term balloon payment loan, including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay those loans according to their terms; (2) prescribe mandatory underwriting requirements for making the ability to-repay determination; (3) exempt certain loans from the underwriting requirements; and (4) establish related definitions, reporting, and recordkeeping requirements.

Final Rule. On July 7, 2020, the CFPB issued the Final Rule, rescinding the mandatory underwriting provisions (described above). The CFPB issued a statement indicating the provisions were rescinded after “re-evaluating the legal and evidentiary bases for these provisions and finding them to be insufficient.” The Final Rule does not rescind or change the payments provisions of the 2017 rule. In response to the *Seila* Law decision (structure of and rulemaking authority of the CFPB), the payments provisions were separately ratified. Among those provisions retained, the Final Rule prohibits lenders from making a new attempt to withdraw funds from an account after two consecutive failed attempts without consumer consent.

Information about covered loans, payment notices, and payment transfers under the Final Rule is available at:

<https://www.consumerfinance.gov/policy-compliance/guidance/consumer-lending-resources/payday-lending-rule/payday-lending-rule-faqs/>.

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Health and Social Services

G-1 Improving the Workforce within the Child Welfare System

The Special Committee on Foster Care Oversight (Special Committee) met during the 2020 Interim to discuss various topics related to the State's child welfare system. This article addresses the workforce issues within the system, including barriers faced and best practices from other states.

Child Welfare Professionals

The American Academy of Pediatrics defines child welfare professionals as foster parents and kin caregivers, pediatricians, other physicians in medical specialties, child advocates, psychologists, and therapists. In Kansas, this definition can be expanded to Kansas Department for Children and Families (DCF) employees who conduct child protective service investigations, staff who support grantee organizations, staff members of the Kansas Protection Report Center, and case management and prevention services staff through grantees.

Child welfare professionals range in their education level, employment, role within the system, and location. However, each professional is impacted by legislative requirements and DCF policies.

Barriers to the Workforce

Stakeholders reported various barriers that contribute to the current state of the workforce within Kansas' child welfare system. Some of the common reasons stated for the high turnover rate of child welfare professionals are burnout, unmet needs, and lack of support.

A National Association of Social Workers (NASW) report on child welfare described challenges to recruitment and retention of child welfare professionals, including low salaries, high caseloads, administrative burdens, risk of violence, and inadequate supervision (<https://www.socialworkers.org/LinkClick.aspx?fileticket=Mr2sd4diMUA%3D>). Although salaries increase with experience, many professionals do not stay in the child welfare system for an extended amount of time.

Many child welfare professionals spend more time on paperwork than with their clients; however, they do recognize that some paperwork is necessary. The number of caseloads per worker can range from 10 to 100 across the country; an excessive number of cases leads to burnout. Child welfare supervisors often have their own caseload or manage a significant number of employees, which leaves all employees without the support or guidance some professionals need.

Considerations

The Child Welfare League of America introduced the National Blueprint for Excellence in Child Welfare, which addresses workforce needs. Some of these needs include orientation and training programs, continuing education, annual performance evaluation, and reasonable workloads. Additionally, the Blueprint indicates employers should encourage self-care and provide wellness opportunities and stress management strategies. The Blueprint is available at <https://www.cwla.org/our-work/cwla-standards-of-excellence/national-blueprint-for-excellence-in-child-welfare/>.

During a presentation before the Special Committee, a representative of the Kansas chapter of the NASW suggested the State consider increasing recruitment and retention of child welfare professionals by offering financial incentives such as student loan forgiveness, tuition reimbursement, and free continuing education units. It was also recommended an annual survey be conducted to determine which incentives are utilized. The representative further recommended the State consider career readiness at the middle and high school level to introduce students to the profession, career paths within the system that provide opportunities for advancement, and field placement experiences to assist the tenure of the Kansas child welfare workforce. To assist with the unmet needs regionally, the representative recommended the Rural Opportunity Zone Student Loan Repayment Program could be expanded to additional communities where there is a greater need of support. Other suggestions included ensuring professionals have a work/life

balance, maintain the recommended caseload size, and have access to supervisors and self-care in order to combat burnout, compassion fatigue, and secondary traumatic stress.

Legislative Changes

To positively impact the child welfare workforce, state legislatures are passing bills that affect training, caseload capacity, and other factors.

Kansas

In 2019, the Kansas Legislature passed House Sub. for SB 25 (the Appropriations Bill), which created 16 additional full-time equivalent child welfare staff positions. DCF reported that these positions lowered caseloads for frontline child protective services staff and increased the efficiency of service delivery. Additionally, DCF made policy changes to decrease the supervisor to caseworker ratio across the state to be more in line with the Council on Accreditation best practices.

The Kansas Legislature also passed SB 15 in 2019, which provided for licensure by reciprocity for social workers at baccalaureate, master's, and specialist clinical levels and amended the requirements for licensure by reciprocity for other professions regulated by the Behavioral Sciences Regulatory Board (BSRB). Applicants who are deficient in the qualifications or in the quality of educational experience required for licensure are allowed to obtain provisional licenses to allow the applicants time to fulfill remedial or other requirements prescribed by the BSRB. For several professions, the bill amended provisions related to temporary licenses for applicants who have met all licensure requirements except for taking the required licensing examination. The bill also amended the licensure requirements for a specialist clinical social worker to reduce the number of hours of postgraduate supervised professional experience required.

During the Special Committee, committee members recommended the creation of a workforce development task force or work group

to further examine improvements that can be made within the child welfare system.

Illinois

Illinois passed SB 1889 in 2019, which amended its Children and Family Services Act to continue developing and utilizing the Child Protection Training Academy that was originally established in 2015. The Academy is conducted by the University of Illinois-Springfield's Center for State Policy and Leadership. The Academy incorporates simulation training for recognizing and responding to cases of child abuse or neglect for mandated reporters. Cultural competency training is also provided through the Academy for the workforce's "response to and engagement with families and children of color." Additionally, development of laboratory training facilities, including mock houses, courtrooms, medical facilities, and interview rooms is also encouraged by the Illinois Legislature.

Maine

The Maine Legislature passed HB 595 in 2019 to require the Department of Health and Human Services to review caseload standards and develop recommendations. The Office of Child and Family Services (OFCS) determined it was understaffed in 2019 and 2020 and implemented a workload analytic tool to establish appropriate

workload and caseload expectations. While this tool incorporates the number of reports, assessments, and children in care, it also takes OFCS's vacancy rate, the experience level of current staff, and geographical areas into consideration to determine the workforce's current capacity.

Virtual Workforce

In light of the COVID-19 pandemic, the National Child Welfare Workforce Institute created the Virtual Workforce Supports Resource Collection, available at <https://www.ncwwi.org/index.php/resourcemenue/virtual-workforce-supports>, which contains training and documents for child welfare professionals addressing supervising through distancing, hosting virtual meetings, tips for teleworking, and using video conferences for caseworker visits. Additionally, the National Conference of State Legislatures released child welfare resources, including "COVID-19 and Child Welfare: A Series of Virtual Meetings" (<https://www.ncsl.org/research/human-services/covid-19-child-welfare-a-series-of-virtual-meetings637256622.aspx>); one entry focused on supporting the child welfare workforce. The webinar examined issues such as the decrease in child abuse reporting, the lack of appropriate personal protective equipment, and the inability to directly engage with children.

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Health and Social Services

G-2 Reimbursement Rates under the Medicaid Home and Community Based Services Waivers

Overview of Home and Community Based Services Waivers

The Medicaid Home and Community Based Services (HCBS) waiver program is authorized under Section 1915(c) of the Social Security Act. Through the HCBS waiver program, a Medicaid beneficiary can receive a wide range of services designed to allow the individual to live in their home or community and avoid institutionalized care.

Services under the HCBS waiver program may be a combination of standard medical services and non-medical services. Standard services may include, but are not limited to:

- Case management (support and service coordination);
- In-home care (home health aide and personal care attendants); and
- Habilitation services (both day and residential).

Currently, 47 states, including Kansas, and the District of Columbia have HCBS waivers approved with the Centers for Medicare and Medicaid Services (CMS). The only states that currently do not have an approved 1915(c) waiver with CMS are Arizona, Rhode Island, and Vermont.

HCBS Waivers in Kansas

Currently, KanCare allows the State to administer all its HCBS waiver services through managed care. There are seven separate 1915(c) HCBS waivers: Autism (AU), Frail Elderly (FE), Intellectual and Developmental Disability (I/DD), Physical Disability (PD), Serious Emotional Disturbance (SED), Technology Assisted (TA), and Brain Injury (BI).

To participate in a HCBS waiver, the individual requiring services must be financially and functionally eligible for Medicaid. Individuals with income above \$1,177 a month must share in the cost of care, called the “client obligation.” The client obligation is paid directly

by the client to a medical provider, not to the State of Kansas nor to a KanCare Managed Care Organization (MCO).

Individuals on the HCBS waivers receive services through individual providers, contracted through MCOs. Those providers are then reimbursed through KanCare for providing those services. Each service has a different category with different rates. Due to rising costs to provide these services, there have been efforts to increase the rates at which HCBS services are reimbursed. Additional information for each of the seven HCBS waivers follows.

Autism (AU)

The AU waiver provides services to children who have been diagnosed with Autism Spectrum Disorder, Asperger's syndrome, or pervasive developmental disorder not otherwise specified. Children are eligible for services from the time of diagnosis until their sixth birthday. Autism services are limited to three years; however, an additional year may be submitted for approval.

The AU waiver generally has five service categories, which represent different therapy services and respite care. The current rates range from \$3.26 to \$10.87 per 15-minute increment.

Frail Elderly (FE)

The FE waiver provides home and community based services to Kansas seniors as an alternative to nursing facility care. The waiver serves those individuals 65 and older who meet the Medicaid nursing facility threshold score and are financially eligible for Medicaid.

The FE waiver has approximately 17 service categories, which generally represent various personal care services and life management services. Services vary in reimbursement frequency and range from 15-minute increments for personal care services to once-a-month for more specialized services.

For more-frequent services, the rates range from \$2.96 to \$4.49 per 15-minute increment.

Less-frequent services range from \$17.30 to \$125.04 per occurrence. These types of services range from medication reminders to financial management services.

Intellectual and Developmental Disability (I/DD)

The I/DD waiver provides services to individuals five years of age and older who meet the definition of intellectual disability, have a developmental disability, or are eligible for care in an intermediate care facility for individuals with intellectual disabilities. Those with a developmental disability may be eligible if their disability was present before age 22 and they have a substantial limitation in 3 areas of life functioning.

Services for the I/DD waiver are divided into approximately 14 service categories, which generally represent various personal care services and life management services. Services vary in reimbursement frequency and range from 15-minute increments for personal care services to once-a-month for more specialized services.

For more-frequent services, the rates range from \$3.34 to \$8.16 per 15-minute increment. Less-frequent services range from \$16.31 to \$125.04 per occurrence. These types of services range from medication reminders to financial management services.

Two common services are residential supports and day supports, which are each divided into tiered rates. Residential supports rates are reimbursed per day. These rates range from \$46.14 to \$208.81. Day supports are reimbursed in 15-minute increments. These rates range from \$2.01 to \$6.47.

Physical Disability (PD)

The PD waiver provides services to individuals 16 to 64 years of age who meet the criteria for nursing facility placement due to their physical disability, have been determined disabled by the Social Security Administration, and need assistance to perform activities of daily living.

The PD waiver has approximately 17 service categories, which generally represent personal care and life management services. Services vary in reimbursement frequency and range from 15-minute increments for personal care services to once-a-month for more specialized services.

Personal care services are generally reimbursed at \$3.08 to \$3.56 per 15-minute increment. Home-delivered meals are reimbursed at \$6.04 per meal. Less-frequent services range from \$17.30 to \$125.04 per occurrence. These types of services range from medication reminders to financial management services.

Serious Emotional Disturbance (SED)

The SED waiver provides services to individuals ages 4 to 18 who have been diagnosed with a mental health condition that substantially disrupts the individual's ability to function socially, academically, or emotionally. The waiver is designed to divert the individual from psychiatric hospitalization to intensive home and community based supportive services.

The SED waiver has approximately seven service categories, which represent various therapy types and respite care. These services are generally reimbursed at \$3.26 to \$21.75 per 15-minute increment.

Technology Assisted (TA)

The TA waiver provides services to people through the age of 21 who require substantial and ongoing daily care by a nurse comparable to the level of care provided in a hospital.

The TA waiver has approximately seven service categories, which represent various attendant care services. These services are generally reimbursed at \$3.61 to \$8.70 per 15-minute increment. The TA waiver includes a few less-frequent services, such as health maintenance monitoring and financial management services, which are reimbursed at \$76.11 per visit and \$125.04 per month, respectively.

Brain Injury (BI)

The Brain Injury (BI) Waiver is a habilitative/rehabilitation and independent living program with an emphasis on the development of new independent living skills and/or relearning of lost independent living skills due to an acquired or traumatic brain injury.

The BI waiver has approximately 16 service categories, which generally represent various personal care services and life management services. Services vary in reimbursement frequency and range from 15-minute increments for personal care services to once-a-month for more specialized services.

For more-frequent services, the rates range from \$3.24 to \$18.99 per fifteen-minute increment. Less-frequent services range from \$17.30 to \$125.04 per occurrence. These types of services range from medication reminders to financial management services.

Recent Changes in Provider Reimbursement Rates

Services through the HCBS waiver program are provided by a contracted entity, which is subsequently reimbursed for its services. Over the years, there has been an effort to increase reimbursement.

2019 Legislative Session

During the 2019 Legislative Session, the Kansas Department for Aging and Disability Services (KDADS) requested additional funding to increase the reimbursement rates for the BI waiver for FY 2020. The request did not make it into the Governor's Budget Recommendation.

During the Legislative Session, both the House Committee on Social Services Budget and the Senate Committee on Ways and Means Social Services Subcommittee considered providing rate increases for all waiver categories. During deliberations on the budget, the two chambers agreed on an increase of 1.5 percent for all

waivers. This increase was included in SB 25, the 2019 appropriations bill.

The effect of this increase was wide, ranging from a several cent increase for some non-specialized care services to a dollar increase for the more specialized care services.

2020 Legislative Session

During the 2020 Legislative Session, KDADS specifically requested an increase for both the TA and BI waivers. The increases did not make it into the Governor's Budget Recommendation.

The Legislature considered a rate increase for the Specialized Medical Care (T1000) service code for the TA waiver, taking it from its current rate of \$31.55 to \$37.00 per 15-minute increment. As a result, the Legislature added \$6.4 million, including \$2.7 million from the State General Fund (SGF), in SB 66, the 2020 appropriations bill, to increase the rate for that specific service code.

Additionally, 2020 SB 348 and 2020 HB 2550 were introduced. These bills would have increased the reimbursement rates for the I/DD waiver over the course of three years, with a set yearly increase beginning in fiscal year (FY) 2024. The bills were heard in the Senate Committee on Ways and Means and the House Committee on Social Services Budget.

While the bills did not advance beyond hearings in either committee, the Legislature added \$22.1 million, including \$9.0 million from the SGF, for a 5.0 percent increase in I/DD waiver services in FY 2021.

COVID-19 Pandemic and the June 25 Governor's Allotment Plan

On June 25, 2020, the Governor released her allotment plan due to projected shortfalls in state revenue resulting from the COVID-19 pandemic. The plan included several items added by the Legislature during the 2020 session being removed from the approved budget.

Among those items were:

- \$9.0 million, from the SGF, for the 5.0 percent increase to provide reimbursement rate increases in I/DD waiver services; and
- \$2.6 million, from the SGF, for the increase to \$37.00 in the Specialized Medical Care (T1000) service code for the TA waiver.

The effect of the Governor's allotment plan was to remove the SGF contribution for these items. Since the SGF contribution would have been used to draw down additional federal funds, these allotments also resulted in the additional loss of:

- \$13.2 million, in matching federal funds, for the 5.0 percent increase to provide reimbursement rate increases in I/DD waiver services; and
- \$3.8 million, in matching federal funds, for the increase to \$37.00 in the Specialized Medical Care (T1000) service code for the TA waiver.

These funds were removed from the budget; the reimbursement rates effectively remain at the FY 2020 levels for FY 2021.

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COVID-19

Health and Social Services

G-3 Impact of COVID-19 on Telehealth Advances

With the emergence of the COVID-19 pandemic in the United States in early 2020, both the federal government and the State of Kansas responded by issuing orders to waive regulations pertaining to telehealth to ease the access to medical care for individuals, in light of social distancing measures to prevent the transmission of COVID-19. This article provides an overview of the federal government changes to telehealth regulations, the Kansas telehealth flexibilities initiated as they relate to the KanCare program and executive orders, and other flexibilities related to prescriptions and Health Insurance Portability and Accountability Act (HIPAA) patient communications.

According to the National Conference of State Legislatures, telehealth is defined differently by nearly all states and even by different entities within the federal government. Generally, “telemedicine” refers to clinical services, and “telehealth” encompasses a broader scope and can refer to remote non-clinical services, including provider training, administrative meetings, and continuing medical education, in addition to clinical services. Telehealth and telemedicine can often be used interchangeably. The Kansas Legislative Research Department (KLRD) provides several memorandums concerning telehealth, including an overview on telehealth and telemedicine definitions, coverage of telehealth services in Medicaid and Medicare, and telemedicine laws and recent legislation in nearby states, which may be found at <http://www.kslegresearch.org/KLRD-web/Health&SocialServices.html>.

Federal Actions

Federal Legislation

On March 6, 2020, Congress passed the Coronavirus Preparedness and Response (CPR) Supplemental Appropriations Act 2020 [PL 116-123]. The CPR Act facilitated changes for telehealth services, allowing the Secretary of Health and Human Services (Secretary) the authority to temporarily waive or modify Medicare requirements related to telehealth services during the emergency period.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted on March 27, 2020, included funds for the provision

of telehealth services and increased telehealth capacity through the purchase of equipment and other methods. More specifically, telehealth provisions in the CARES Act include:

- Appropriated \$29 million for each of federal fiscal years 2021 through 2025 for the Telehealth Network Grant Program that awards eligible entities for projects that demonstrate telehealth technologies can be used in rural areas and medically-underserved areas. The program was extended from four to five years;
- Under Section 3701, for plans beginning on or before December 31, 2020, the Act allowed high-deductible health plans with a health savings account (HSA) to cover telehealth services prior to a patient reaching the deductible;
- Granted the Secretary the authority to waive provisions with regard to payment for telehealth services and, for telehealth services provided during the COVID-19 emergency period, removed the requirement that providers of telehealth services have treated the Medicare beneficiary receiving telehealth services in the last three years;
- Allowed federally qualified health centers (FQHCs) and rural health clinics (RHCs) to provide telehealth services to Medicare beneficiaries during the COVID-19 emergency period;
- Allowed Medicare beneficiaries receiving hospice care to have a face-to-face encounter *via* telehealth with a hospice physician or nurse practitioner to re-certify continued eligibility for hospice care during the COVID-19 emergency period;
- Required the Secretary to issue clarifying guidance regarding the use of telecommunications systems for home health services, including remote patient monitoring, during the COVID-19 emergency period;
- Allocated \$200 million to the Federal Communications Commission for

salaries and expenses to respond to the coronavirus pandemic (COVID-19), domestically or internationally, including to support efforts of health care providers to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services during an emergency period; and

- Allocated \$180 million to the Health Resources and Services Administration to carry out telehealth and rural health activities, of which no less than \$15 million was required to be allocated to tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes.

Federal Regulations

In certain emergency circumstances the Secretary, using Section 1135 of the Social Security Act, can temporarily modify or waive certain Medicare, Medicaid, and Children's Health Insurance Plan regulations using blanket waivers. The Centers for Medicare and Medicaid services (CMS) has continued to publish guidance on these changes. The full list of changes can be found at <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>.

The following are some of the major changes to Medicare telehealth policy made by the Secretary due to the COVID-19 public health emergency:

- Allows certain practitioners to bill for telehealth services that were not previously allowed. This includes physical therapists, occupational therapists, speech language pathologists, and others;
- Allows the use of audio-only equipment to furnish services described by the codes for audio-only telephone evaluation and management services and behavioral health counseling and educational services;

- Waives certain regulations for critical access hospitals regarding telemedicine and making it easier for telemedicine services to be furnished to the hospital's patients through an agreement with an off-site hospital;
- Allows physicians and non-physician practitioners to perform in-person visits for nursing home residents in skilled nursing facilities and visits to be conducted, as appropriate, *via* telehealth options;
- Allows physicians and other practitioners to render telehealth services from their homes without reporting their home address on their Medicare enrollment while continuing to bill from their currently enrolled location; and
- Removes limitations on where Medicare patients are eligible for telehealth during the emergency, in particular, allowing patients outside of rural areas and patients in their homes to be eligible.

Prescription Flexibilities

The U.S. Drug Enforcement Administration (DEA) Diversion Control Division issued guidance on many areas concerning controlled substances and electronic prescribing during the COVID-19 pandemic. The Controlled Substances Act contains exceptions to the general rule that a prescription for a controlled substance issued by means of the Internet (including telemedicine) must generally be predicated on an in-person medical evaluation. One of these exceptions is when the Secretary has declared a public health emergency.

As of March 16, 2020, and continuing as long as the Secretary's designation of a public health emergency remains in effect, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting

in the usual course of his/her professional practice;

- The telemedicine communication is conducted during an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable federal and state laws.

The DEA also announced that practitioners may prescribe buprenorphine to new and existing patients with opioid use disorder *via* telephone by otherwise authorized practitioners without requiring such practitioners to first conduct an examination of the patient in-person or *via* telemedicine. This exception lasts until the Secretary declares the public health emergency ended, unless the DEA specifies an earlier date.

HIPAA Flexibilities

The U.S. Department of Health and Human Services Office for Civil Rights (OCR) issued a Notification of Enforcement Discretion (Notification) regarding COVID-19 and telehealth communications. The Notification states HIPAA-covered health care providers may, in good faith, provide telehealth services to patients using remote communication technologies, even if the application does not fully comply with HIPAA rules. The OCR would exercise its discretion and would not impose penalties for noncompliance with the regulatory requirements under the HIPAA rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 public health emergency.

The Notification only applies to HIPAA-covered health care providers. A health care provider is a covered entity under HIPAA if it transmits any health information in electronic form in connection with a transaction for which the Secretary has adopted a standard. The Notification applies to all HIPAA-covered health care providers, with no limitations on patients they serve with telehealth, including those patients that receive Medicare or Medicaid benefits.

Under the Notification, covered health care providers may use popular applications to deliver telehealth as long as they are “non-public-facing.” Examples of public-facing applications are Facebook Live and Twitch. Examples of non-public-facing video chat applications include:

- Apple FaceTime;
- Facebook Messenger video chat;
- Google Hangouts video;
- Zoom; and
- Skype.

Kansas Telehealth Actions

KanCare

On March 20, 2020, the State Medicaid Director sent a communication to CMS detailing the Medicaid requirements that pose challenges for health care delivery in Kansas during the pandemic. On March 24, 2020, CMS sent a response of the different approvals related to the requests, pursuant to Section 1135 of the Social Security Act.

In regard to reimbursement rates for distance sites, Kansas Medical Assistance Program (KMAP) General Bulletin 20045 states services delivered through telemedicine will be equivalent to identical services provided in person. The Medicaid fee-for-service fee schedule that is posted on the KMAP website will serve as the source for reimbursement by code. The bulletin states there will be no change in reimbursement levels for existing originating sites. In the instance that “home” is the originating site, then there will be no originating site fee paid for that claim.

The following are some of the flexibilities that Kansas may now utilize during the COVID-19 pandemic for telehealth services:

- No geographic limitations for telehealth services (e.g. services are not limited to rural or non-metropolitan service locations);

- Patient’s home is now an eligible “originating site” or “patient site” for telehealth services;
- Other non-healthcare facilities (e.g. schools, work sites, libraries) are eligible as originating/patient sites;
- Originating and patient sites, other than the patient’s home, can bill for a facility fee (this also applies to federally qualified health centers and rural health clinics);
- Providers are allowed to be reimbursed for certain codes when the originating telehealth site place of service is “home” (Place of Service code 12);
- A prior existing relationship with a patient is not required to provide telehealth services;
- Any eligible member service can be provided *via* telehealth when medically-necessary and appropriate;
- Patient co-pays and out-of-pocket costs still apply unless waived by the payer or plan (not applicable for COVID-19 services);
- Prior authorization is not required for telehealth services, unless in-person services also require prior authorization;
- For some services, providers may utilize telephone/audio-only visits;
- Verbal consent, and not requiring written consent of the patient for some services, is allowed; and
- The use of personal devices such as smartphones and tablets may be used to deliver telehealth services (Kansas allows for some, but they must be HIPAA compliant).

KMAP provides a detailed list of the changes made due to the COVID-19 pandemic. A full list of the bulletins and provider information can be found at <https://www.kmap-state-ks.us/Documents/Content/Provider/COVID%2019%20.pdf>.

While the majority of telehealth changes in Kansas are in place until the public health emergency ends or until further notice by the State Medicaid Director, some flexibilities have

expired. For example, certain dental codes that were approved for payment when provided by way of telecommunication technology by KMAP Dental Bulletin 20052 expired June 30, 2020.

State Employee Health Plan

The Kansas State Employee Health Plan (SEHP) issued a memorandum related to benefits and COVID-19. Effective through December 31, 2020, SEHP partners Aetna Better Health of Kansas and Blue Cross Blue Shield of Kansas will provide telehealth services with a virtual doctor's office. There is 24/7 access to this service and the member cost share is waived for any telehealth service.

Executive Orders

On March 20, 2020, the Governor signed Executive Order No. 20-08, which temporarily expanded telemedicine access and addressed certain licensing requirements to combat the effects of COVID-19. The order encourages physicians to utilize telemedicine and prevents the Kansas State Board of Healing Arts (Board) from enforcing any statute, rule, or regulation that would require physicians to conduct an in-person examination of a patient prior to prescribing medication, including controlled substances. The order allows for out-of-state physicians, who hold unrestricted licenses to practice medicine in the state in which they practice medicine and are not the subject of an investigation or disciplinary proceeding, to treat Kansans through telemedicine upon notice to the Board.

Executive Order No. 20-35 extended the provisions of Executive Order No. 20-08 until June 30, 2020.

The Office of Recovery

The Governor established the Office of Recovery within the Office of the Governor; it is composed of governor-appointed members representing the business community, economic development community, and the Legislature. The Strengthening People and Revitalizing Kansas (SPARK) Taskforce, a 5-member executive committee that makes recommendations based on the work of a 15-member steering committee, was tasked with making recommendations to the Governor on how \$1.03 billion in state Coronavirus Relief Fund moneys, received through the CARES Act and appropriated in 2020 Special Session HB 2016, should be allocated. An Investment Dashboard on the Office of Recovery's website outlines the various programs and funding levels created to expend the money before December 30, 2020.

According to the Investment Dashboard, \$10 million of the funds was allocated through the Department of Commerce to address broadband connectivity issues including barriers for telehealth and to create a Provider Partnership Support Program that works with internet service providers to expedient deployment of assistance for vulnerable populations and families (<https://covid.ks.gov/covid-data/>).

For more information on funding enhancements at the federal and state level for broadband expansion, see article N-1 Broadband Expansion.

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Health and Social Services

G-4 Mental Health Services in Kansas

Community Mental Health Centers

In 1963, President John F. Kennedy signed the Community Mental Health Act, which led to the establishment of Community Mental Health Centers (CMHCs) across the nation. The Kansas Mental Health Reform Act of 1990 initiated the state's transition from institutional to community-based mental health care. The Act deemed that Kansas residents in need of mental health services should receive the least restrictive treatment and the most appropriate community-based care through coordination among CMHCs and state hospitals.

After 1990, CMHCs served as the primary points of entry into the mental health system. As more patients used community-based services, the need for state hospital beds declined.¹ The Kansas Department for Aging and Disability Services (KDADS) still oversees the larger State-owned mental health institutions: Larned State Hospital (LSH) and Osawatomie State Hospital (OSH).

Today, Kansas has 26 CMHCs that primarily serve adults with severe and persistent mental illness, severely emotionally disturbed children and adolescents, and other individuals at risk of requiring institutional care. Anyone experiencing a mental health crisis but who lacks a mental health illness diagnosis can seek treatment at a CMHC.² According to KDADS, CMHCs offer "comprehensive mental health rehabilitation services, such as psychosocial rehabilitation, community psychiatric support and treatment, peer support, case management, and attendant care."³

Impact of COVID-19. As a result of the 2020 COVID-19 pandemic, CMHCs shifted to telehealth options for nearly all of their services. As the year went on, CMHCs reopened in-person service delivery but maintained telehealth services. According to the Association of CMHCs of Kansas, Inc., symptoms of anxiety disorder and depressive disorder increased during the first few months of the pandemic in the United States compared to 2019.

State Hospitals and Regional Care

Since 2015, LSH and OSH have been the only State-owned mental health institutions. LSH and OSH generally serve Kansans who

require longer-term inpatient acute care. The Care and Treatment Act for Mentally Ill Persons (KSA 59-2945 *et seq.*) provides definitions and guidance for admission to the state hospitals.

Moratorium Plan

In April 2015, the Secretary for Aging and Disability Services imposed a moratorium on voluntary admissions to OSH, as the hospital lacked sufficient space for involuntary, long-term patients. The census for involuntary patients was capped at 146. In 2018, OSH increased its capacity to 166 patients.

In January 2020, KDADS presented its plan to lift the OSH moratorium to the House Committee on Social Services Budget. The agency's plan includes increasing regional beds within the community. According to KDADS' plan, "Adding this capacity regionally will help serve patients closer to their home communities." The agency's goal is for regional beds to supplement OSH capacity with shorter stays in community facilities, limiting the number of patients sent to state hospitals. One of the long-term goals for KDADS is to fund more community-based and crisis outpatient services to reduce the need for institutional and other inpatient services.⁴

The proposed moratorium plan was included in the Governor's Budget Recommendation for fiscal year (FY) 2021. The plan included adding an additional 15 to 20 KDADS-contracted regional beds. Currently, KDADS pays for six beds among three of those centers: Freedom Behavioral Hospital of Topeka, Prairie View in Hillsboro, and Cottonwood Springs in Olathe. The plan also proposed an increase in OSH beds from 174 to 182, an increase in crisis stabilization beds from 100 to 125, and adding 30 crisis intervention center beds for a net system increase from 46 to 76 beds.

KDADS anticipates the additional bed capacity at OSH will allow the hospital to begin a Census Management Initiative pilot. The goal of this program is to determine how many adults with severe mental illness are screened as needing treatment but who are on the waiting list for

inpatient hospital care. KDADS plans to use the expanded system capacity of both state hospitals and CMHCs to supply each patient with the most appropriate care.

Community Inpatient and Structured Care

Community Inpatient Care and Structured Care Environments are the two levels directly below the State Hospitals on the adult continuum of care. Structured Care Environments include crisis stabilization services, Nursing Facilities for Mental Health, Residential Care Facilities, sobering beds, and social detox beds. Community Inpatient Care includes crisis intervention, community inpatient psychiatric beds, medical detox beds, and substance use disorder treatment.

In 2017, the Kansas Legislature enacted the Crisis Intervention Act, which allows adults to stay in crisis intervention centers for up to 72 hours for emergency evaluation and treatment. The Act also requires a center to file an affidavit with the district court within 48 hours of admission if the patient meets the criteria to be retained. The center must discharge the patient if they no longer meet the criteria or if 72 hours has passed since admission. For more information on the Crisis Intervention Act and associated issues, see article H-4 Mental Health and the Criminal Justice System.

KDADS proposes expanding services at RSI, Inc. in Wyandotte County to designate it as a crisis intervention center. If RSI were to meet those service requirements, it could admit involuntary patients, decreasing the need for beds at OSH. This shift to community intervention services aligns with KDADS's broader goal of connecting patients to nearby treatment options in appropriate settings.

Kansas currently has five established crisis stabilization centers located in Kansas City, Topeka, Wichita, Salina, and Manhattan. These centers provide patients short-term mental health crisis care of 48 hours or less before they can transition to community-based care. Crisis stabilization is not traditionally provided in

hospitals, but it can be an alternative to psychiatric hospitalization.

Mental Health Treatment for Youth

Youth have access to several mental health treatment options throughout the state. Options include psychiatric residential treatment facilities (PRTFs), the Medicaid Home and Community Based Services waiver for Serious Emotional Disturbance, and Professional Resource Family Care. Each option is detailed in more depth below.

PRTFs. These facilities provide comprehensive mental health inpatient treatment for youth who cannot otherwise be served safely and effectively in a less-restrictive environment. They generally provide services for longer-term stays. There are currently eight PRTFs in Kansas.

The Children's Continuum of Care Task Force noted in its 2017 report that PRTFs had gradually shifted from treating chronic mental health illnesses to crisis stabilization. Additionally, from 2011 to 2017, there was a 65 percent decrease in the number of PRTF beds across the state, from 780 to 272. As a result, PRTF waiting lists have expanded. The Task Force recommended that PRTFs return to their original treatment model with a focus on chronic illnesses, rather than acute and crisis care. The 2020 Legislature added funding for 8 PRTF beds in Hays.

Medicaid Home and Community Based Services Serious Emotional Disturbance Waiver. The Serious Emotional Disturbance (SED) waiver is designed to assist adolescents who have been diagnosed with a mental health condition to avoid psychiatric hospitalization. Children with a serious emotional disturbance, who are financially eligible, and who meet admission criteria for a state mental health hospital are eligible for the SED waiver.

Services and supports under the SED Waiver may include attendant care, independent living and skills building, short-term respite care, parent support and training, professional resource family care, and wraparound facilitation.

Professional Resource Family Care. This service provides short-term and intensive supportive resources for the patient and their family.

In October 2015, the Centers for Medicare and Medicaid Services (CMS) ruled that Kansas was in violation of the federal Mental Health Parity and Addiction Equity Act because a third party (the CMHCs), rather than the Managed Care Organizations (MCOs), granted prior authorization for PRTF services in order for a provider to receive Medicaid reimbursement. After the ruling, the MCOs gained authorization privileges.

Child Welfare System Task Force

House Sub. for SB 126 (2017) directed the Secretary for Children and Families to study the child welfare system. The Child Welfare System Task Force was directed to convene working groups to study the general administration of child welfare by the Kansas Department for Children and Families. The Task Force made several recommendations related to mental health among Kansas youth:

- First, the State “shall require access to high-quality and consistent medical and behavioral health care for youth in foster care through the Medicaid state plan” by MCO oversight;
- Second, the State “should provide young adults age 18-21 with the option to seamlessly re-enter the child welfare system and ensure continuity in medical behavioral health and support services for youth who have exited the custody of DCF”; and
- Third, the State “should fully fund, strengthen, and expand safety net and early childhood programs through public services (DCF, mental health, substance abuse, and education) and community-based partner programs, and reduce barriers for families needing to access concrete supports.”

Kansas Legislation Related to Youth

2016 SB 367 and the Establishment of the Juvenile Justice Oversight Committee

The Juvenile Justice Oversight Committee (JJOC) was established in 2016. Pursuant to KSA 75-52,161, the Committee recommends to the governor and legislature the reinvestment of funds that result from the reduction in the number of youth placed in out-of-home placements. Among the evidence-based programs funded through reinvestment include several aimed at mental health, including the Massachusetts Youth Screening Instrument to identify mental health needs and mental health training for staff who work with youth. The Kansas Department of Corrections administers the programs.

2019 HB 2290 and Suicide Prevention

In 2019, the Legislature passed HB 2290, which required the Office of the Attorney General to appoint a Kansas youth Suicide Prevention Coordinator and additional support staff to identify, create, coordinate, and support youth suicide awareness and prevention efforts throughout the state. The coordinator was empowered to develop web resources to facilitate communication with youth to promote safety and well-being, develop interagency strategies to help mental health stakeholders, coordinate efforts to prevent and address youth suicide, and disseminate information on suicide reduction, among other duties. Funding for the position was not included in the Governor's FY 2020 and FY 2021 budget recommendation. The 2020 Legislature added the position in FY 2020 and FY 2021 and directed the agency to use existing special revenue funds to fund the position.

Federal Law

In 2018, President Trump signed into law the Family First Prevention Services Act, which encourages the maintenance of families to preempt a child's entrance into the foster care system. The Act allows for federal reimbursement

for mental health services, substance use treatment, and in-home parenting skills training.

Funding of Mental Health Services

Medicaid provides the largest source of state funding for community-based mental health services. CMHCs use certified Medicaid match funds to provide services for children with a Serious Emotional Disturbance, children referred to CMHCs by Children and Family Service contractors, and all other children and adults who are Medicaid eligible. Medicaid covers Targeted Case Management, Comprehensive Medication Services, Personal Care Services, Pre-admission Screens, Activity Therapy, Group and Individual Psychotherapy, Training and Educational Services, Crisis Intervention, Community Transition, and Respite Care. CMHCs also receive county funding through mill levies (up to two mills for mental health services) and other taxes.

Federal law generally prohibits states from using Medicaid funds for services provided to non-elderly adults in "institutions for mental disease" (IMDs). IMDs are any inpatient or residential facility of more than 16 beds that specializes in psychiatric care. However, the federal government provides mechanisms for states to finance certain IMD services. In 2018, CMS approved Kansas' application to waive the 15-day monthly maximum on substance use disorder treatment for IMD utilization. This waiver also allows the State to expand screening, brief intervention, and referral to treatment services as mitigation practices.

Crisis stabilization services are generally funded through lottery vending machine revenue. However, given this relatively new source of revenue, several of the crisis stabilization centers receive individual funds for their operations. These include centers in Wichita, Topeka, and Salina. RSI in Kansas City receives its own established fund.

During the 2020 Legislative Session, the Legislature passed the 2020 appropriations bill (2020 SB 66).

Included in the 2020 appropriations were the following items related to mental health:

- \$1.5 million from the State General Fund (SGF) and \$500,000 from the State Institutions Building Fund to open a 14-bed unit at OSH in spring 2021;
- \$5.3 million, all from the State Institutions Building Fund, to remodel the OSH Biddle Building to allow KDADS to apply to CMS for federal reimbursement certification for 30 beds;
- \$5.0 million, all from the SGF, to add the regional inpatient beds outlined above;
- \$4.0 million, all from the SGF, to create 8 acute care psychiatric beds for youth in Hays;
- \$2.0 million, all from the SGF, to increase grant funding for CMHCs;
- \$1.0 million, all from the SGF, to create a PRTF pilot program at Ember Hope in Newton; and

- \$750,00, all from the SGF, to establish a separate SGF account for funding the Douglas County Community Crisis Center.

Due to estimated shortfalls in state revenue caused by the COVID-19 pandemic, the Governor announced her allotment plan on June 25, 2020. Her allotment plan included several of the following mental health-related items:

- \$2.5 million of the \$5.0 million for regional beds;
- \$2.0 million for additional CMHC grant funding;
- \$1.0 million for the Ember Hope pilot program; and
- \$750,000 to create a separate SGF account for funding the Douglas County Community Crisis Center.

- 1 2018 Mental Health Task Force Report.
- 2 According to the National Alliance on Mental Illness, a “mental health crisis is any situation in which a person’s behavior puts them at risk of hurting themselves or others and/or prevents them from being able to care for themselves or function effectively in the community.”
- 3 <https://www.kdads.ks.gov/commissions/behavioral-health/services-and-programs/community-mental-health-centers>
- 4 See the 2019 Report of the Kansas Mental Health Taskforce for the Adult and Children’s Continuum of Behavioral Health Care.

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Judiciary, Corrections, and Juvenile Justice

H-1 Adoption of Minors: Statutory Overview

Adoption establishes a legal parent-child relationship between a child and third persons and terminates existing rights and obligations between a child and his or her biological parents. In Kansas, the Adoption and Relinquishment Act (KSA 59-2111 to 59-2144) governs adoptions, which include termination of parental rights and the transfer of legal custody to and creation of legal rights in the adoptive parents. Any adult or married couple may adopt.

KSA 59-2112 defines the different methods of adopting: “adult adoption,” “agency adoption,” “independent adoption,” and “stepparent adoption.” This article focuses on adoption of minors.

Agency adoptions are handled by 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.

Independent adoptions can occur directly with an adoptive family or through an intermediary such as a doctor, lawyer, or friend.

Stepparent adoptions involve the adoption of a minor child by the spouse of a biological parent, which requires termination of the parental rights of only one natural parent.

Jurisdiction and Venue

In Kansas, district courts may hear adoption petitions; however, the court must have jurisdiction. Generally, Kansas will have jurisdiction if the birth mother and adoptive parents are all Kansas residents.

If the child is of Native American heritage, the Indian Child Welfare Act, 25 USC §§ 1901 to 1963, may apply. Further, the parties may need to comply with the Interstate Compact on the Placement of Children (KSA 38-1201 to 38-1206) if the child is born in Kansas and is to be placed with adoptive parents in another state or is born out of state and an agency will be involved in the adoption in Kansas.

Intercountry Adoptions

Additional requirements exist for intercountry adoptions. An intercountry adoption is the process of legally adopting a child from a foreign country. Kansas law 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;
- The adoption is evidenced by proof of lawful admission into the United States; and
- The foreign decree is filed and recorded with any county within the state.

The U.S. Department of State outlines procedures for intercountry adoptions at <https://travel.state.gov/content/travel/en/Intercountry-Adoption.html>.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Legislation enacted in 2018 (Kansas SB 284) clarifies jurisdiction over adoption proceedings, including termination of parental rights proceedings, which are governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) [KSA 23-37,101 to 37,405]. 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 pursuant to the UCCJEA, 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 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 the memorandum "Child Custody and Visitation Procedures," which can be found at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.

Petition

KSA 59-2128 lists the required contents of a petition for adoption and requires the following items be filed with the petition:

- Written consents to adoption;
- Background information for the child's biological parents;
- Accounting for all consideration and disbursements; and
- Any required affidavit concerning venue.

Consent

KSA 59-2114 requires consent to be in writing and acknowledged before a judge or officer authorized to take acknowledgments, such as a notary. If acknowledged before a judge, the judge must inform the consenting person of the legal 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 type of consent depends on the kind of adoption sought, e.g., independent adoptions or stepparent adoptions.

Independent Adoption

In an independent adoption, consent is required from:

- The child's living parents; or one of the parents if the other parent's consent is unnecessary pursuant to Kansas law; or the child's legal guardian if both parents are dead or their consents are unnecessary; or the court terminating parental rights under the Revised Code for the Care of Children (the Child in Need of Care [CINC] Code), KSA 38-2201 to 38-2286;
- If parental rights have not been terminated, any court having jurisdiction over the child pursuant to the CINC Code; and

- Any child older than 14 sought to be adopted who is of sound intellect.

Stepparent Adoption

In a stepparent adoption, consent must be given by:

- The living parents of a child;
- If the other parent's consent is unnecessary, one of the parents;
- If parental rights have not been terminated, the judge of any court having jurisdiction over the child pursuant to the CINC Code; and
- Any child older than 14 sought to be adopted who is of sound intellect.

Adopting Minors

If the parent is a minor, this does not invalidate the parent's consent; however, birth parents younger than 18 years old must receive the advice of independent legal counsel on the consequences of execution of a consent. Unless the minor birth parent is otherwise represented, the petitioner or child placement agency must pay for the cost of independent legal counsel. An attorney providing independent legal advice shall be present at the execution of the consent.

The natural mother cannot give consent until 12 hours after the birth of the child. A father may give consent any time after the birth of a child, or before the birth of the child if he has the advice of independent legal counsel as to the consequences prior to its execution.

Agency Adoption

For an agency adoption, once parents relinquish their child to an agency, consent must be given by the authorized representative of the agency and any child older than 14 sought to be adopted who is of sound intellect.

Relinquishment

Relinquishment is the process of custody and parental rights being forfeited by the parent and assumed by another party. Relinquishments to an agency will be deemed sufficient if they are in substantial compliance with the form created by the Kansas Judicial Council. Like consents, the relinquishment must be in writing and acknowledged by a notary or the court. (Again, the judge must inform the person of the legal consequences of the relinquishment.)

Similar to consent, the law requires independent counsel for a minor relinquishing a child and provides the natural mother cannot relinquish the child until 12 hours after the birth. A father may relinquish any time after the birth of a child. 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. When a parent relinquishes a child, all parental rights are terminated.

Termination of Parental Rights

When parents consent to an adoption, they agree to the termination of their parental rights. Parental rights are not terminated until the judge makes the final decree of adoption. A court can also terminate parental rights pursuant to a CINC proceeding if a parent does not sign a consent. For more information on CINC proceedings, see the memorandum "Foster Care," which can be found at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.

Additionally, KSA 59-2136 addresses circumstances in which the necessity of a parent's consent or relinquishment is in question. While it frequently refers to fathers, it specifies, insofar as it is practicable, those provisions applicable to fathers also apply to mothers. Absent a father's consent, his parental rights must be terminated.

If a father is unknown or his whereabouts are unknown, the court must make an effort to identify the father; appoint an attorney to represent him; and, if no person is identified as the father or

possible father or if the father's whereabouts are unknown, order publication notice of the hearing.

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 claims parental rights, the court must determine parentage pursuant to the Kansas Parentage Act (KSA 23-2201 to 23-2225).

Further, if the father cannot employ an attorney, the court must appoint one for him. Thereafter, the court may terminate a parent's rights and find the consent or relinquishment unnecessary if it determines by clear and convincing evidence:

- 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 immediately preceding the filing of the petition to adopt.

In determining whether to terminate parental rights, the court must consider all of the relevant surrounding circumstances and may disregard incidental visitations, contacts, communications, or contributions.

Assessments

Petitioners must obtain an assessment and a report of the assessment and have it filed to the court before the hearing on the petition. The assessment includes the results of the investigation of the adoptive parents, their home, and ability to care for the child. An assessment is performed by a person meeting statutory qualifications. Assessments are only valid if performed within a year of filing the petition for adoption.

Temporary Custody Order

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

Adoption Hearing and Final Decree

KSA 59-2133 requires the court to set the hearing within 60 days from the date of the filing of the adoption petition. Additionally, in independent and stepparent adoptions, it requires notice be given to parents or possible parents at least ten calendar days before the hearing, unless parental rights have been terminated or waived, and to any person who has physical custody of the child, unless waived. The court may designate others to be notified. In agency adoptions, notice must be served upon the consenting agency, the parents or possible parents, any relinquishing party, and any person who has physical custody of the child at least ten calendar days before the hearing, unless waived. After the hearing on the petition, the court considers the assessment and all evidence and, if the adoption is granted, makes a final decree of adoption.

Rights of an Adopted Child

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 and KSA 59-2136 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.

Recent Enacted Legislation

2018 SB 284

Legislation enacted in 2018, SB 284, created the Adoption Protection Act (codified at KSA 2019 Supp. 60-5322), which states, notwithstanding any other provision of state law and to the extent allowed by federal law, no child placement agency (CPA) shall be required to perform, assist, counsel, recommend, consent to, refer, or otherwise participate in placement of a child for foster care or adoption when the proposed placement of the child violates the CPA's sincerely held religious beliefs. The bill also prohibits taking the following actions against a CPA, if taken solely because of the CPA's objection to providing any of the services described above on the grounds of such religious beliefs:

- State agency or political subdivision denial of a license, permit, or other authorization or denial of renewal, revocation, or suspension of the same;
- Denial of participation in a Department for Children and Families (DCF) program in which CPAs are allowed to participate;
- Denial of reimbursement for performing foster care placement or adoption services on behalf of an entity that has a contract with DCF as a case management contractor; or
- Imposition of a civil fine or other adverse administrative action or any claim or cause of action under any state or local law.

The CPA's sincerely held religious beliefs must be described in the CPA's organizing documents, written policies, or such other written document approved by the CPA's governing body. The provisions of the bill do not apply to an entity while the entity has a contract with DCF as a case management contractor.

The bill also made numerous amendments to the Adoption and Relinquishment Act based on Kansas Judicial Council recommendations.

Recent Proposed Legislation

2020 HB 2587

HB 2587 would have amended venue requirements for agency adoptions in the Adoption and Relinquishment Act to allow adoption proceedings to take place in a county where DCF or a subcontracting agency has an office when the State or a department of the State is the adoption agency. The bill was passed by the House and referred to the Senate Committee on Judiciary, but it died in committee.

2019 SB 6

SB 6 was prefiled for introduction in the 2019 Legislative Session. The bill would have required that DCF collaborate with stakeholders to develop a plan to implement performance-based contracts to provide evidence-based prevention and early intervention services for at-risk families to have out-of-home placement for children awaiting adoption. Additionally, savings from reduced foster care caseloads would be reinvested into these programs to reduce the duration of foster care placement. The bill was referred to the Senate Committee on Public Health and Welfare, with no further action taken.

2019 HB 2025

HB 2025 was prefiled for introduction in the 2019 Legislative Session. The bill would have amended definitions used in the CINC Code (KSA 2018 Supp. 38-2202 and 38-2241) by adding to the definition of "interested party": "a person who

has filed a petition for adoption pursuant to KSA 59-2128, and amendments thereto, while such petition is pending.” The bill was referred to the House Committee on Children and Seniors, with no further action taken.

2019 HB 2164

HB 2164 would have repealed the Adoption Protection Act. The bill was referred to the House Committee on Federal and State Affairs. No further action was taken on the bill.

2019 HB 2333

HB 2333, as amended by the House Committee on Judiciary, would have provided that a final decree of adoption shall take effect upon the filing of the judgment, except that, if the child being adopted is 16 or 17 years of age, the court may order a final decree of adoption to take effect at an earlier date. The bill was stricken from the House Calendar on February 27, 2020.

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Judiciary, Corrections, and Juvenile Justice

H-2 Juvenile Services

The Division of Juvenile Services within the Kansas Department of Corrections (KDOC) oversees juvenile offenders in Kansas.

Individuals as young as 10 years of age and as old as 17 years of age may be adjudicated as juvenile offenders. KDOC may retain custody of a juvenile offender in a juvenile correctional facility (JCF) until the age of 22.5 years old and in the community until the age of 23 years old.

Juvenile Services leads broadly based state and local, public, and private partnerships to provide the State's comprehensive juvenile justice system, including prevention and intervention programs, community-based graduated sanctions, and JCFs.

Juvenile Services' operations consist of two major components:

- Community-based prevention, immediate interventions, and graduated sanctions programs for nonviolent juvenile offenders. Juvenile Services 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; and
- A juvenile correctional facility for violent juvenile offenders. At present, the only JCF in Kansas is the Kansas Juvenile Correctional Complex (KJCC) located in Topeka. Previously, JCFs were also located in Atchison, Beloit, and Larned.

The 2016 Legislature passed SB 367, which made substantial reforms to the Kansas juvenile justice system in both the community-based services and the JCF operations for which Juvenile Services is responsible. KDOC's Juvenile Services program is tasked with implementing many of the provisions of SB 367, either alone or in conjunction with other partners in the juvenile justice system.

The 2017 Legislature passed House Sub. for SB 42, which made further amendments to the system as a follow-up to SB 367.

Further detail regarding SB 367 and House Sub. for SB 42 is provided on the following pages.

Kansas Juvenile Justice Authority'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, with the premise that a youth should be placed in a JCF for rehabilitation and reform only as a last resort and that 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 (OJA); the Department of Social and Rehabilitation Services (SRS), which is now the Department for Children and Families (DCF); and KDOC. Other objectives included separating juvenile offenders from children in need of care in the delivery of services.

Due to the focus on serving youth in their own 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 KDOC for operation of community juvenile justice services.

SB 367 will adjust the focus and funding mechanisms for some of this funding over the next several years.

Juvenile Justice Reform Time Line

1993 and 1994. Research began on the proposed transition with a 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 the Kansas Juvenile Justice Authority (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.

The JJA was assigned to:

- Control and manage the operation of the state youth centers (now referred to as JCFs);
- Evaluate the rehabilitation of juveniles committed to the 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 need 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 that 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

- Direct 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, 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 a 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 KYA must develop a transition plan that included a juvenile placement matrix, aftercare services upon release from a JCF, coordination with SRS to consolidate the functions of juvenile offender and children in need of care 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, which took the place of KYA. On July 1, JJA began operations and assumed all the powers, duties, and functions concerning juvenile offenders from SRS.

2013. Executive Reorganization Order (ERO) No. 42 abolished the JJA and transferred the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice to 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.

2014. Following an informational hearing on juvenile justice reform initiatives, the House Committee on Corrections and Juvenile Justice charged a subcommittee with evaluating reform proposals and recommending legislation on the topic.

Various proposals were consolidated and passed by the Legislature in Senate Sub. for HB 2588.

The provisions included:

- Requiring a standardized risk assessment tool or instrument be included as part of the pre-sentence investigation and report following an adjudication;
- Prohibiting the prosecution of any juvenile less than 12 years of age as an adult;
- Restructuring the placement matrix to make commitment to a JCF a departure sentence requiring a hearing and substantial and compelling reasons to impose such sentence for certain lower level offense categories;
- Allowing juvenile offenders serving minimum-term placement sentences under the matrix to receive “good time” credit;
- Requiring the Secretary of Corrections to take certain measures to evaluate

youth residential centers (YRCs) and develop fee schedules and plans for related services;

- Prohibiting a child alleged or found to be a child in need of care from being placed in a juvenile detention facility unless certain conditions are met; and
- Creating a new alternative adjudication procedure for misdemeanor-level juvenile offenses to be utilized at the discretion of the county or district attorney with jurisdiction over the offense.

Recent Reform Efforts

2015. Additional reform efforts continued with the passage of HB 2336, which required the court to administer a risk assessment tool or review a risk assessment tool administered within the past six months before a juvenile offender can be placed in a juvenile detention center, under house arrest, or in the custody of KDOC or can be committed to a sanctions house or to a JCF.

Further, to examine Kansas' juvenile justice system, leaders of the executive, judicial, and legislative branches of government established a bipartisan, inter-branch Juvenile Justice Workgroup. In cooperation with the Pew Charitable Trusts' Public Safety Performance Project, the Workgroup was charged with a comprehensive examination of the system to develop data-driven policies based upon research and built upon consensus among key stakeholders from across the state. The Workgroup recommendations were presented at its November 17, 2015, meeting. A complete list of the Workgroup's recommendations can be found at <https://www.doc.ks.gov/juvenile-services/Workgroup/report>.

2016. The recommendations from the 2015 Workgroup were drafted into legislation and introduced as SB 367 in the 2016 Session. While substantial changes were made to the bill during committee action and the conference committee process, the enacted bill nevertheless represented a comprehensive reform of the Kansas juvenile justice system. Major provisions of the bill include the following.

Juveniles in custody. The bill narrows the persons authorized to take a juvenile into custody and makes delivery of a juvenile to the juvenile's parent the default in most instances. The bill also requires both release and referral determinations once a juvenile is taken into custody to be made by juvenile intake and assessment workers, who must be trained in evidence-based practices.

Immediate interventions and community-based programs. The bill requires KDOC and OJA to develop standards and procedures for an immediate intervention process and programs and alternative means of adjudication. The bill requires KDOC to plan and fund incentives for the development of immediate intervention programs, removes limitations on eligibility for such programs, requires immediate intervention be offered to certain juveniles, and requires juveniles making a first appearance without an attorney to be informed of the right to an immediate intervention.

Further, courts must appoint a multidisciplinary team to review cases when a juvenile does not substantially comply with the development of an immediate intervention plan.

Eligibility for alternative means of adjudication is changed from a juvenile committing a misdemeanor to a juvenile with fewer than two adjudications. The bill establishes overall case length and probation length limits for all juvenile offenders except those adjudicated of the most serious felonies.

The bill also requires KDOC to consult with the Kansas Supreme Court in adopting rules and regulations for a statewide system of structured, community-based, graduated responses for technical probation violations, conditional release violations, and sentence condition violations, which community supervision officers will use based on the results of a risk and needs assessment. The community supervision officer must develop a case plan with the juvenile and the juvenile's family. Probation revocation may be considered only for a third or subsequent technical violation, subject to additional limitations. KDOC is required to develop an earned-time calculation system for the calculation of sentences. Similarly,

the Kansas Supreme Court and KDOC must establish a system of earned discharge for juvenile probationers.

Criteria for detention and alternatives. KDOC and OJA are required to develop, implement, and validate a statewide detention risk assessment tool for each youth under consideration for detention.

The criteria for detention are amended to require certain detention risk assessment results or grounds to override such results. Courts must establish a specific term of detention when placing a juvenile in detention, which may not exceed the overall case length limit.

The bill prohibits placement in a juvenile detention center in certain circumstances and removes juvenile detention facilities as a placement option under the Revised Kansas Code for Care of Children, unless the child also is alleged to be a juvenile offender and the placement is authorized under the Juvenile Code. The permissible justifications for extended detention are narrowed, and a detention review hearing is required every 14 days a juvenile is in detention, except for juveniles charged with the most serious offenses.

The bill requires OJA and KDOC adopt a single, uniform risk and needs assessment to be administered and used statewide in the post adjudication and predisposition process.

The bill narrows and eliminates some alternatives and amends the alternative allowing commitment to a JCF to allow placement in a JCF or YRC. Effective January 1, 2018, the Secretary of Corrections may contract for up to 50 non-foster home beds in YRCs for placement of juvenile offenders. The bill limits commitment to detention and adds certain short-term placement options if a juvenile has been adjudicated of certain sexual or human trafficking-related offenses. Further, KDOC must develop community integration programs for juveniles ready to transition to independent living.

The bill amends the placement matrix for commitment to a JCF to require a written finding before such placement, remove a

departure sentence provision, create a serious offender category, remove two chronic offender categories, and create a rebuttable presumption certain offenders will be placed in a YRC instead of a JCF. The bill also requires a case plan be developed for every juvenile sentenced to a JCF, with input from the juvenile and the juvenile's family.

Adult prosecution. The bill limits extended jurisdiction juvenile prosecution to cases involving the most serious offenses and raises the age for adult prosecution from 12 to 14.

Implementation. The bill establishes a 19-member Kansas Juvenile Justice Oversight Committee (Oversight Committee) to oversee implementation of reforms in the juvenile justice system and requires annual reports. [Note: The Oversight Committee is separate from the Joint Committee on Corrections and Juvenile Justice Oversight, established by KSA 46-2801 and charged in that statute with certain ongoing oversight duties related to the juvenile justice system. Additional members and duties were added to the Oversight Committee by 2017 House Sub. for SB 42, discussed in the following subsection.] The bill adds a juvenile defense representative member to the previously existing juvenile corrections advisory boards and requires the boards to adhere to the goals of the Juvenile Code and coordinate with the Oversight Committee. The boards must annually consider the availability of treatment programs, alternative incarceration programs, mental health treatment, and development of risk assessment tools, and report annually to KDOC and the Oversight Committee the costs of programs needed in its judicial district to reduce out-of-home placement and recidivism.

The bill requires KDOC and OJA to provide at least semiannual training on evidence-based programs and practices to individuals who work with juveniles. The OJA is required to designate or develop a training protocol for judges, county and district attorneys, and defense attorneys who work in juvenile court. Further, the bill requires the Attorney General to collaborate with the Kansas Law Enforcement Training Center and the State Board of Education (KSBE) to create skill

development training for responding effectively to misconduct in school, while minimizing student exposure to the juvenile justice system, and directs KSBE to require school districts to develop and approve memorandums of understanding with guidelines for referral of school-based behaviors to law enforcement or the juvenile justice system.

Funding. The bill creates the Kansas Juvenile Justice Improvement Fund (renamed the “Evidence-Based Programs Account of the State General Fund” by 2017 House Sub. for SB 42, discussed below), administered by KDOC, for the development and implementation of evidence-based community programs and practices for juvenile offenders and their families by community supervision offices. Each year, the Secretary of Corrections is required to certify actual or projected cost savings in state agency accounts from decreased reliance on incarceration in a JCF or YRC, and these amounts are then transferred to the fund.

2017. The Legislature passed House Sub. for SB 42, which adjusted changes made by 2016 SB 367 and made further modifications to the juvenile justice system. Major provisions of this bill include the following.

Absconding from supervision. Among other changes regarding absconding from supervision, the bill allows a court to issue a warrant after reasonable efforts to locate a juvenile who has absconded are unsuccessful and to toll the probation term limits and overall case length limits (established by SB 367) while a juvenile has absconded.

Immediate intervention programs. The bill requires KDOC to establish and maintain a statewide searchable database containing information regarding juveniles who participate in an immediate intervention program.

The bill establishes that immediate intervention does not have to be offered to a juvenile charged with a misdemeanor sex offense, a juvenile who has previously participated in immediate intervention, or a juvenile who was originally charged with a felony but had the charge

amended to a misdemeanor as a result of a plea agreement.

Sentencing and placement. The bill amends the sentencing alternatives and placement matrix to allow a court to commit a juvenile directly to a JCF or YRC placement for a term of 6-18 months, regardless of the risk level of the juvenile, upon a finding that a firearm was used in the commission of a felony offense by the juvenile.

The bill removes a three-month limit on short-term alternative placement allowed when a juvenile is adjudicated of certain sex offenses and certain other conditions are met.

Juvenile Justice Oversight Committee. The bill adds two members to the Oversight Committee—a youth member of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention (appointed by the chairperson of the Group) and a director of a juvenile detention facility (appointed by the Attorney General)—bringing its total membership to 21. The bill also provides two additional duties for the Oversight Committee: 1) study and create a plan to address the disparate treatment of and availability of resources for juveniles with mental health needs in the juvenile justice system, and 2) review portions of juvenile justice reform that require KDOC and OJA to cooperate and make recommendations when there is no consensus between the two agencies.

2018. The Legislature passed HB 2454, which made further adjustments to the juvenile justice system as reformed by SB 367. Major provisions of this bill include the following.

Detention hearings. The bill amended the statute in the Revised Kansas Juvenile Justice Code (Code) governing detention hearings to expand the permitted use of two-way electronic audio-visual communication between the juvenile and the judge. The bill further amended law related to detention review hearings by adding a provision stating such hearings are not required for a juvenile offender held in detention awaiting case disposition. The bill amended the Code statute governing post-adjudication orders and hearings to require, if a juvenile offender is being held in detention, that a dispositional hearing for

sentencing take place within 45 days after the juvenile has been adjudicated.

Tolling of probation term and case length limits. The bill amended the statute governing probation term limits and overall case length limits in the Code to clarify that when such limits are tolled due to the offender absconding from supervision while on probation, the limits shall not begin to run again until the offender is located and brought back to the jurisdiction. The bill also clarified, if the juvenile fails to appear for the dispositional hearing, such limits shall not apply until the juvenile is brought before the court for disposition.

Duties of Oversight Committee. The bill amended one of the statutory duties of the Kansas Juvenile Justice Oversight Committee to require the Oversight Committee to “monitor,” rather than “calculate,” any state expenditures that have been avoided by reductions in the number of youth placed in out-of-home placements. A corresponding requirement that a summary of such averted costs be included in the Oversight Committee’s annual report was changed from “calculated by the committee” to “determined.”

Juvenile Crisis Intervention Centers

The 2018 Legislature also passed House Sub. for SB 179, establishing a framework for juvenile crisis intervention centers, which will provide short term observation, assessment, treatment, and case planning, in addition to referral, for juveniles experiencing a mental health crisis who are likely to cause harm to self or others. The bill provides intervention center requirements in several areas, including access to various services, construction and environmental features, and policies and procedures for operation and staff monitoring of entrances and exits. The bill also outlines circumstances for admission, prohibits admission for more than 30 days, and allows a parent with legal custody or a legal guardian of a juvenile to remove the juvenile from the center at any time.

The bill allows the Secretary of Corrections to enter into a memorandum of agreement with other cabinet agencies to provide funding for juvenile crisis intervention services of up to \$2.0 million

annually from the Evidence-Based Programs Account created by SB 367.

2019. In House Sub. for SB 25, (the Appropriations Bill), the Legislature added language in fiscal year (FY 2019) to require DCF to establish a working group that will 1) gather data and issue a report on the impact of 2016 SB 367 on youth with offender behaviors entering into foster care placement or in a foster care placement; 2) evaluate services being offered and identify services needed; and 3) include representatives from DCF, child welfare organizations, mental health organizations, the Judicial Branch, law enforcement, and any other organizations with information on services as determined by the Secretary for Children and Families.

The Legislature added additional language for FY 2020 to require DCF to study the impact of 2016 SB 367 on crossover youth, who are defined as youth in foster care or at risk of being in foster care due to conduct that resulted in, or could result in, juvenile offender allegations. The agency submitted its findings November 1, 2019, to the relevant enumerated legislative committees. The topics the study was required to cover include comparing crossover youth with the broader juvenile offender population, a qualitative and quantitative analysis of what happens after crossover youth are taken into custody by public safety agencies or placed into the foster care system, and gaps in intervention services for crossover youth. A working group of 11 members, consisting of the Secretary of Corrections and Secretary for Children and Families, or their designees, as well as appointees by enumerated health, public safety, judicial, and religious organizations, assisted with the study.

In its final report, available at http://www.dcf.ks.gov/Agency/Documents/Crossover_Youth_Working_Group_Final_Report_to_Legislature_2020.pdf, the working group made a number of findings related to crossover youth demographics; the number and nature of offender behaviors among crossover youth; juvenile intake and assessment outcomes for crossover youth; child welfare placements for crossover youth; and services offered to crossover youth.

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Judiciary, Corrections, and Juvenile Justice

H-3 Kansas Prison Population, Capacity, and Related Facility Issues

Historically, the Kansas Department of Corrections (KDOC) and state policymakers have had to address the issue of providing adequate correctional capacity for steady and prolonged growth in the inmate population. In 2020, however, the inmate population experienced a significant decrease, primarily due to the effects of the COVID-19 pandemic. However, the trend of growth is projected to resume. Currently, KDOC administers eight adult correctional facilities identified in the table below.

Facility	Year Opened	Capacity as of FY 2020
El Dorado Correctional Facility	1991	2,068
Ellsworth Correctional Facility	1987	899
Hutchinson Correctional Facility	1895	1,918
Lansing Correctional Facility	1863	2,432
Larned Correctional Mental Health Facility	1996	598
Norton Correctional Facility	1987	977
Topeka Correctional Facility	1961	948
Winfield Correctional Facility	1984	978

In 1863, the Kansas State Penitentiary, later known as Lansing Correctional Facility (Lansing CF), opened as Kansas' first correctional facility. The State gained control of its second correctional facility in 1911 when the Board of Penal Institutions took control of the Kansas State Industrial Reformatory, later known as Hutchinson Correctional Facility (Hutchinson CF), which had originally opened in 1895. In 1961, the State opened the Kansas State Reception and Diagnostic Center, followed by the Kansas Correctional Vocational Training Center in 1972. These two facilities were combined in 1990 to create the Topeka Correctional Facility.

In the 1980s, capacity at the correctional facilities did not keep pace with populations, which led to the Legislature establishing Winfield Correctional Facility (Winfield CF) in 1984 and Ellsworth, Norton, Osawatomie, and Stockton Correctional Facilities in 1987. A 1989 federal court order limited inmate populations at Lansing and

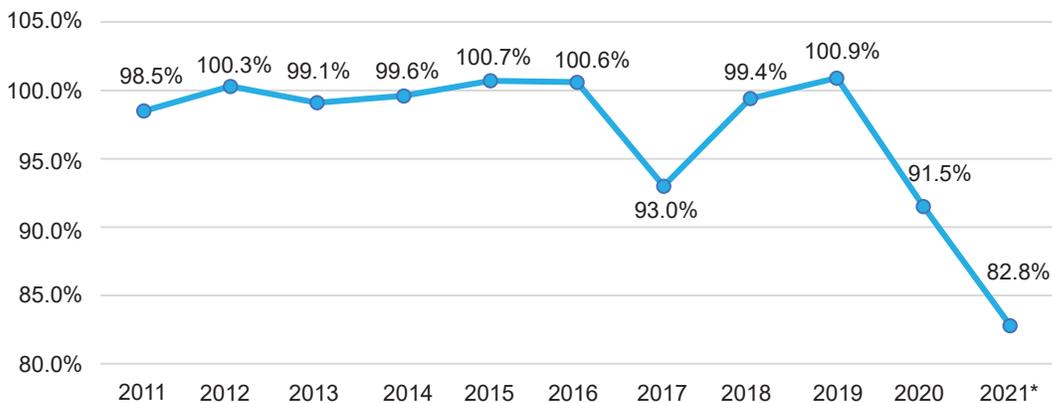
Hutchinson and required improved conditions for inmates with mental health issues.

The direct result of this order was construction of the El Dorado Correctional Facility (El Dorado CF) in 1991. The court order was terminated in 1996 following numerous changes to the correctional system, including the construction of Larned Correctional Mental Health Facility (Larned CMHF).

Budget reductions in fiscal year (FY) 2009 prompted KDOC to suspend operations at three smaller minimum-custody facilities (Osawatomie, Stockton, and Toronto) and close conservation camps in Labette County.

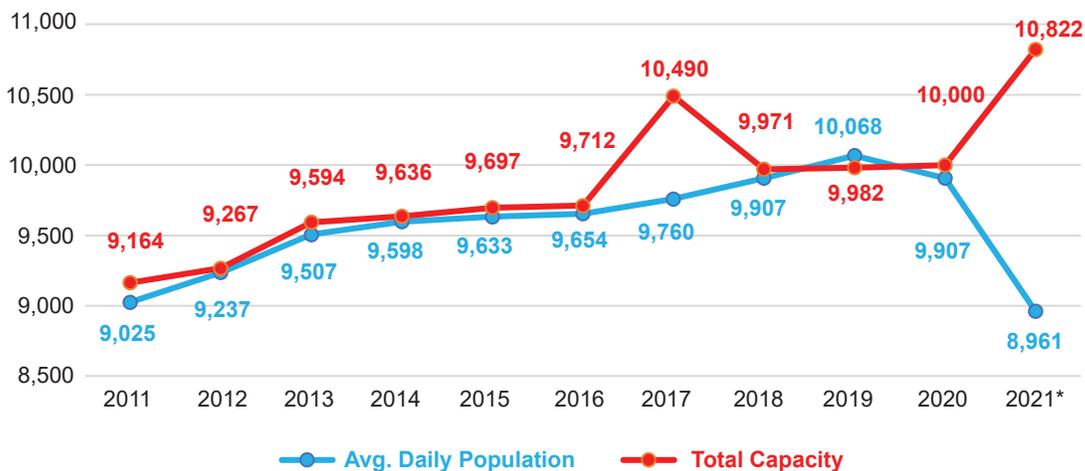
Additionally, the Kansas Department for Aging and Disability Services took control of the Osawatomie facility. Due to the increasing inmate population, the 2010 Legislature included a State General Fund appropriation for FY 2011, which allowed the reopening of Stockton Correctional Facility as a satellite unit of Norton Correctional Facility on September 1, 2010. Larned CMHF traditionally provided mental health services to inmates in need, but in May 2017, KDOC announced its intention to convert Larned CMHF into a prison for 18- to 25-year-old inmates. Inmates receiving mental health services were moved to El Dorado CF, which now serves as the system’s primary mental health facility with 192 high-acuity behavioral beds.

Capacity Utilization Rate for Kansas Correctional Facilities
(By Fiscal Year)



*FY 2021 data as of August 31, 2020

Total Inmate Capacity and Average Daily Population
(By Fiscal Year)



*FY 2021 data as of August 31, 2020

Calculating Capacity; Illustrations

KDOC calculates the capacity utilization rate by dividing the average daily population (ADP) by total capacity in order to analyze the percentage of beds that are in use on an average day during a given fiscal year. In the past ten years, ADP rose steadily until FY 2020, and total capacity generally followed a similar trend. The capacity utilization rate saw a peak of 100.6 percent in both FY 2015 and FY 2016, which was then followed by a decrease to 93.0 percent in FY 2017. This 7.6 percent decline was due to the expansion of 800 double-bunked cells at El Dorado CF, Larned CMHF, and Norton Correctional Facility during FY 2017. However, the double bunking did not continue to the end of FY 2018, when the total capacity fell by 519 beds from its highest point in FY 2017. On August 31, 2020, the ADP in FY 2020 was 9,907 inmates, and the capacity utilization rate was 91.5 percent, which are decreases from FY 2019 of 162 inmates and 9.4 percent. The decreased capacity utilization rate is partially related to increased capacity resulting from the opening of new units at Lansing CF, but also because of the establishment of temporary COVID-19 isolation sites at various facilities.

KDOC has a limited number of prison beds that are not counted in the official capacity, such as infirmary beds, which allows the population to exceed the official capacity. The August 31, 2020,

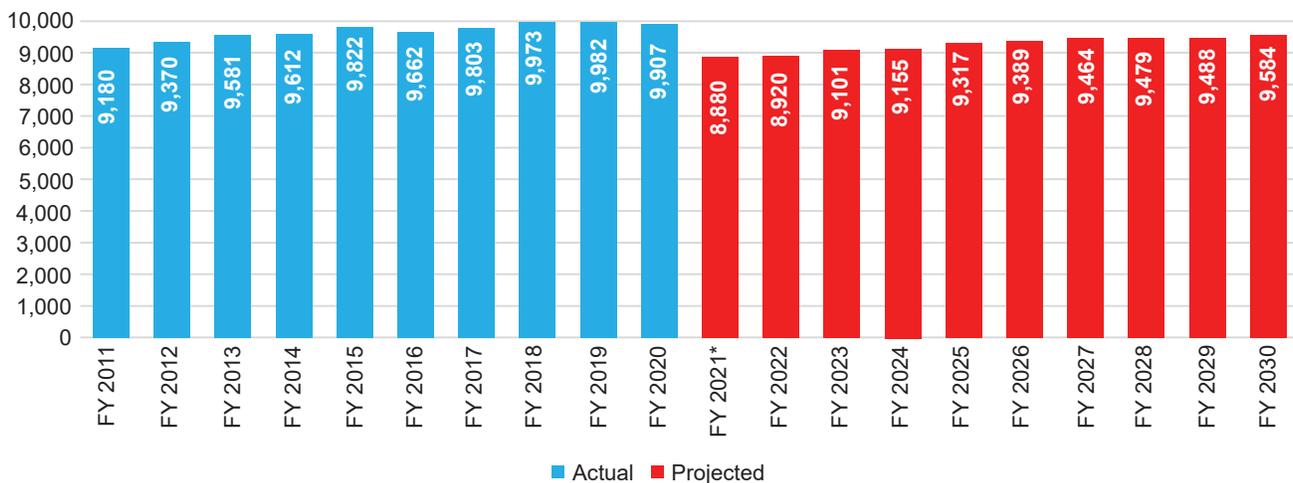
inmate ADP included 183 inmates held in non-KDOC facilities, which were primarily county jails and Larned State Hospital.

Actual and Projected Populations

The FY 2021 prison population projections released by the Kansas Sentencing Commission (KSC) anticipate the inmate population will be 1,179 less than the total capacity by the end of FY 2020 and will remain below capacity by 784 inmates by the end of FY 2030.

In addition to total capacity, gender and custody classifications are tracked by KDOC. 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 security inmates cannot be placed in medium or minimum security cells). That is not the case for the lower custody level inmates, who can be placed in higher custody level cells. In addition, capacity in all-male or all-female facilities is not available for housing inmates of the opposite gender. The Population by Gender and Custody Classification chart on the following page displays the total inmate population by gender and custody classification for FY 2020, as of August 31, 2020.

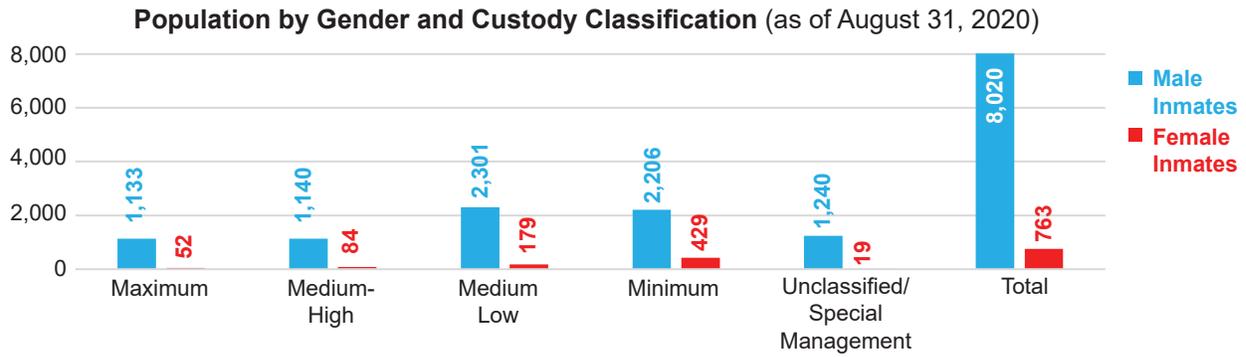
Actual and Projected Inmate Population



*FY 2021 data as of August 31, 2020

The FY 2021 prison population projections released by the KSC anticipate the male inmate population will be under capacity by 1,016 inmates in FY 2020, but will increase for every year in its ten-year projection, when there will be 8,807 inmates, or 613 below capacity, in FY 2030.

The FY 2021 prison population projections show the female inmate population remaining below capacity by 165 inmates in FY 2020. The KSC projects that over ten years, the female population will steadily decrease to 738 in 2024, then increase to 777, or 171 below capacity, in FY 2030.



Consequences of Operating Close to Capacity

According to KDOC, the consequences of operating close to capacity include:

- Excessive inmate movement;
- More emergencies and separate inmates with conflicts (e.g., gangs, grudges);
- Greater reliance on segregation and contract jail beds; and
- Inability to keep inmates near their families, which creates more problematic releases.

Increasing Capacity through New Construction

During the 2017 Legislative Session, KDOC brought plans before the Legislature to demolish an existing medium-security unit at Lansing CF and construct a new facility in its place. KDOC asserted the new facility will reduce the need for staff, generating savings over time. On November 30, 2020, the agency indicated that due to adjusted staffing requirements, savings would be \$4.5 million less than projected.

Provisions in 2017 Senate Sub. for HB 2002 allow KDOC to enter into a lease-purchase agreement for the demolition, design, and construction of a new facility at Lansing CF or, if more cost effective, allow the agency to bond with the Kansas Development Finance Authority to demolish, design, and construct a correctional institution at Lansing CF, capping expenditures related to the project at \$155.0 million. The provisions also require the Secretary of Corrections to advise and consult the State Building Advisory Commission for the use of an alternative project delivery procurement process and require KDOC to appear before the State Finance Council for approval of the decision.

On January 24, 2018, the State Finance Council approved a lease-to-own plan in which a private company would build the 2,432-bed facility, and the State would purchase the facility through a 20-year lease for a total of \$362.0 million. Construction of the two units began in April 2018 and inmates were occupying the new minimum security unit by December 2019. As a result of the COVID-19 pandemic, plans to migrate to the new medium/maximum security unit were accelerated due to facility’s public health advantages of individualized cells, modern air circulation systems, and infirmary. Inmate occupation of the new medium/maximum security unit was completed in April 2020.

The 2020 Legislature included State General Fund appropriations of \$6.1 million in FY 2020 and \$7.2 million for FY 2021 for expansion projects at Lansing CF and Winfield CF. The recently closed X Unit site at Lansing CF would be converted to 200-bed substance abuse treatment center, and the former Funston and Triplett buildings, on the grounds of the nearby Kansas Veterans' Home, would be converted to a 241-bed nursing care facility at Winfield CF for elderly adult male inmates.

Inmate Outsourcing

In order to reduce inmate overcrowding and eliminate mandatory 12-hour staff shifts at El Dorado CF, KDOC has contracted 130 beds in county jails.

KDOC also submitted a request for proposal at the end of March 2019 regarding out-of-state beds. In August 2019, the agency entered into a contract with CoreCivic for the use of medium and maximum security beds and related services at the Saguaro Correctional Center in Eloy, Arizona. This is a one-year contract with two one-year renewal options. There were 240 beds available in August 2019, with an additional 120 beds available by December 2019, at a cost of \$74.76 per inmate per day. As of December 3, 2020, there were 118 inmates housed at the Arizona facility. On December 16, 2020, KDOC officials indicated that all inmates had been returned to Kansas.

KDOC's inmate cost per day was \$72.35 in FY 2018. The 2018 Legislature passed SB 328, which requires prior legislative authorization if any agency wants to outsource the security operations of any state-run correctional facility. The bill further defined security operations as the supervision of inmates at a correctional facility by a correctional officer or warden.

Effects of the COVID-19 Pandemic

Due to the vulnerable nature of a congregated inmate population, the COVID-19 pandemic continues to have a significant impact on the

Kansas correctional system. On March 31, 2020, the first staff member with COVID-19 was reported at Lansing CF, followed shortly by an inmate on April 4, 2020. As of December 10, 2020, over 6,000 cases of COVID-19 have occurred among staff and inmates, with 14 resulting in fatality. Outbreaks occurred at all eight facilities, which led the establishment of temporary isolation sites at El Dorado CF, Hutchinson CF, and Winfield CF, suspension of operations at the Wichita Work Release Program, and temporary reactivation of the former Larned Juvenile Correctional Facility, as well as delays in expansion projects at Lansing CF and Winfield CF. Public health mitigation measures involved limiting the use of dormitory-style units, face mask protocols, and implementation of a systemwide COVID-19 testing regime.

Early in the pandemic, staff capacity approached exhaustion as increasing cases required isolation. Members of the Kansas National Guard were activated to provide medical and logistical support. By December 4, 2020, the virus reached Kansas inmates housed at Saguaro Correctional Center in Eloy, Arizona, where a majority tested positive.

The pandemic resulted in a significant unforeseen decrease to the inmate population, both male and female. This is primarily attributed to a decrease in new admissions to the correctional system resulting from a delay in court proceedings that occurred in response to the pandemic.

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Judiciary, Corrections, and Juvenile Justice

H-4 Mental Health and the Criminal Justice System

Considerations for incarcerated and detained persons with mental health issues have become increasingly common in the criminal justice system in Kansas. An overview of recent legislation and available services, including crisis intervention, mental health courts, and Kansas Department of Corrections (KDOC) mental health services follows.

Kansas Youth Suicide Prevention Coordinator and Criminal Justice Reform Commission—2019 HB 2290

The 2019 Legislature passed HB 2290, which created and amended several laws related to public agencies. Among these provisions, the bill created a position of Kansas Youth Suicide Prevention Coordinator within the Office of the Attorney General and created the Kansas Criminal Justice Reform Commission (KCJRC) to study and make recommendations on various aspects of the criminal justice system, including several topics related to mental health.

Kansas Youth Suicide Prevention Coordinator

The bill required the Attorney General to appoint a Kansas Youth Suicide Prevention Coordinator (Coordinator) and additional support staff, as appropriations allow, to identify, create, and coordinate and support youth suicide awareness and prevention efforts throughout the state.

The Attorney General appointed a Coordinator in August 2019.

Kansas Criminal Justice Reform Commission (KCJRC)

The KCJRC is comprised of 19 voting members and 3 non-voting members, and is required to, in relevant part:

- Analyze diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of statewide diversion standards;
- Study specialty courts and make recommendations for the use of specialty courts throughout the state;

- Survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming; and
- Study the policies of KDOC for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, health care, and substance abuse facilities.

The bill required one member of the KCJRC to be a mental health professional appointed by the Kansas Community Mental Health Association. At its first meeting, the KCJRC voted to establish five subcommittees, including one related to mental health and drug treatment.

The bill required the KCJRC to prepare and submit its preliminary report (www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2019CommitteeReports/KS-CriminalJustRefmComm-cr.pdf) to the Legislature, which was submitted in November 2019, and a final report and recommendations due to the Legislature on or before December 1, 2020.

Preliminary Report Recommendations Related to Mental Health

The Mental Health and Drug Treatment Subcommittee made recommendations relating to requesting an inventory of major mental illness or abuse disorders, allowing 2003 SB 123 drug treatment prior to conviction, and funding regional treatment beds. It also recommended that the Legislature adopt the recommendations of the Mental Health Task Force Report, as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.

Final Report Recommendations Related to Mental Health

The Mental Health and Drug Treatment Subcommittee made recommendations relating to SB 123 treatment; access to mental health services; co-occurring disorders; co-responder programs; behavioral health in jails and correctional facilities; and mental health and substance abuse workforce development, among other recommendations. For a complete list of adopted recommendations, please refer to the 2020 Final Report (http://www.kslegresearch.org/KLRD-web/Publications/Resources/Documents/Justice-Reform/Report_KCJRC_2021.pdf).

Juvenile Crisis Intervention Centers—2018 House Sub. for SB 179

The 2018 Legislature created and amended law to establish juvenile crisis intervention centers and procedures for admission of juveniles to such centers. For more information on 2018 House Sub. for SB 179, see article H-2 Juvenile Services, available at <http://www.kslegresearch.org/KLRD-web/Briefing-Book-2021.html>.

Crisis Intervention Act—2017 Senate Sub. for HB 2053

The 2017 Legislature passed legislation related to the care and treatment of persons with mental illness and problems with substance abuse through Senate Sub. for HB 2053, also known as the Crisis Intervention Act (Act). The Act outlines requirements for the use of emergency observation and treatment in a “crisis intervention center,” defined as an entity licensed by the Kansas Department for Aging and Disability Services that is open 24 hours a day, 365 days a year; equipped to serve voluntary and involuntary individuals in crisis due to mental illness, substance abuse, or a co-occurring condition; and uses certified peer specialists.

KDOC Mental Health and Behavioral Health Services

KDOC facilities provide comprehensive health care through private companies under contract with KDOC. Each facility provides 24-hour mental health care for inmates, including on-site crisis intervention, use of designated hospital rooms or appropriate health facilities, and emergency on-call mental health professional services when the emergency health facility is not located nearby. Mental health services are provided to inmates based upon psychiatric assessments.

Larned Correctional Mental Health Facility

Historically, Larned Correctional Mental Health Facility has housed the most severely mentally ill adult male inmates within KDOC, along with a significant number of inmates with behavioral disorders that make them an unacceptable risk for housing in another facility. The Central Unit served as a transitional unit for inmates who are not able to function in the general population of a traditional correctional institution for mental health reasons, but are not in need of psychiatric hospitalization. Inmates were assigned to this facility by mental health staff at other correctional institutions. In May 2017, KDOC announced plans to convert the 150-bed maximum-security Central Unit to a medium-security unit to house certain offenders ages 18-25 years old with high recidivism potential. The 150 inmates with mental health issues previously housed in the Central Unit were subsequently transferred to the behavioral health unit at El Dorado Correctional Facility in summer 2017.

Larned State Hospital

At Larned State Hospital, 115 beds are reserved for KDOC offenders who need a higher level of psychiatric care. There, inmates are provided mental health care and treatment in either the acute care or the residential rehabilitation program (RRP). The purpose of RRP is to provide psychiatric rehabilitation and vocational services to adult males referred from KDOC, with the intent of preparing these individuals for successful reintegration into the community or

back into KDOC services as determined on an individual basis.

Alternative Sentencing Courts

Alternative sentencing courts, or specialty courts, are established as an alternative to incarceration for persons with mental health issues, substance abuse issues, or both, who are convicted of misdemeanors. These courts offer treatment, support, and counseling. Many times, those who suffer from mental health disorders also suffer from addiction to drugs, such as opioids. For some mental health courts, diagnosis of a major mental health disorder is required for participation. However, if the participant is also addicted to drugs, treatment for that addiction will coincide with treatment for the underlying mental health disorder. Kansas has not established a statewide specialty courts program, but several judicial districts and a few municipalities have established programs.

KCJRC Preliminary Report

Recommendations Related to Specialty Courts

The KCJRC Specialty Courts Work Group, organized to study and make recommendations on specialty courts in the state, included in its report to the 2020 Legislature that it identified 24 specialty courts in Kansas, which include truancy courts, behavioral health courts, youth courts, mental health courts, tribal healing to wellness courts, veterans' courts, and drug courts. These courts were initiated at the local level and operate with no special funding by the Legislature. Kansas Supreme Court Rules 109A and 109B govern the conduct of the courts and require compliance with the Best Practices Standards published by the National Association of Drug Court Professionals and other organizations.

KCJRC Final Report Recommendations Related to Specialty Courts

For the KCJRC Final Report to the 2021 Legislature, the Specialty Courts Work Group recommended that the Legislature adopt

legislation to require the Kansas Supreme Court to adopt rules for the establishment and operation of one or more specialty court programs within the state. The recommendation was adopted by the KCJRC and included in the 2020 Final Report.

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Judiciary, Corrections, and Juvenile Justice

H-5 Sentencing Overview and Criminal Justice Reform Issues

The Kansas Sentencing Guidelines Act (KSGA) became effective July 1, 1993. Two grids containing the sentencing range for drug crimes and nondrug crimes were developed for use as a tool in sentencing. [Note: The source for the attached sentencing range grids for drug offenses and nondrug offenses is the Kansas Sentencing Commission Guidelines, Desk Reference Manual, 2020, accessible at <https://sentencing.ks.gov/document-center/publications/lists/kansas-sentencing-guidelines-desk-reference-manuals/2020-desk-reference-manual>. These sentencing grids are provided at the end of this article.]

The sentencing guidelines grids provide practitioners 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, murder in the first degree, terrorism, illegal use of weapons of mass destruction, and treason are designated as off-grid person crimes. [Note: Statutory references for off-grid crimes are provided in a chart following this article.]

Kansas law provides for the imposition of the death penalty, under certain circumstances, for a conviction of capital murder. Where the death penalty is not imposed, a conviction of capital murder carries a life sentence without possibility of parole.

The remaining off-grid person crimes require life sentences with varying parole eligibility periods. Persons convicted of premeditated first-degree murder committed prior to July 1, 2014, 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 premeditated first-degree murder committed on or after July 1, 2014, are eligible for parole after serving 50 years of the life sentence, unless the sentencing judge, after a review of mitigating circumstances, finds substantial and compelling reasons to impose the Hard 25 sentence instead.

Persons convicted of felony murder committed prior to July 1, 2014, are parole eligible after serving 20 years of the life sentence. Persons convicted of felony murder convicted on or after July 1, 2014, are parole eligible after serving 25 years of the life sentence.

Persons convicted of terrorism, illegal use of weapons of mass destruction, or treason are parole eligible after serving 20 years of the life sentence. Also included in the off-grid group are certain sex offenses against victims under the age of 14: aggravated human trafficking, rape, aggravated indecent liberties, aggravated criminal sodomy, commercial sexual exploitation of a child, and sexual exploitation of a child. 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.

The 2020 Drug Grid can be found on page 6, and the 2020 Nondrug Grid can be found on page 7.

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 2019 Supp. 21-6804 and KSA 2019 Supp. 21-6805.]

Grid Boxes

Within each grid box are three numbers, which represent 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 sentence for typical cases. The upper and lower numbers should be used for cases involving aggravating or mitigating factors sufficient to warrant a departure, as explained in the next paragraph. [See KSA 2019 Supp. 21-6804 and KSA 2019 Supp. 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 2019 Supp. 21-6815, 21-6816, and 21-6817.] The court also may impose a dispositional departure, from prison to probation or from probation to prison (KSA 2019 Supp. 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*. This change became effective 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 (KSA 2019 Supp. 21-6817).

Probation

Probation is a procedure by which a convicted defendant is released after sentencing, subject to conditions imposed by the court and supervision by the probation service of the court or community corrections, generally without serving a period of imprisonment (although a felony offender may be sentenced to up to 60 days in county jail as a condition of probation). As noted above, a number of boxes on the sentencing grids are designated “presumptive probation,” which means probation will be granted unless a departure sentence is imposed. An underlying prison sentence is still imposed in felony cases where probation is granted, and if the defendant is subsequently found to have violated a condition of probation, probation may be revoked and the defendant required to serve the underlying prison term.

Other possible actions a court may take upon a violation of probation include continuation of probation, modification of probation conditions, or various periods of confinement in a county jail. In some cases, where a defendant has waived the right to a hearing on a probation condition violation, court services or community corrections may impose two- or three-day “quick dip” periods of confinement in a county jail.

Recommended probation terms range from under 12 to 36 months, depending on the severity level of the crime of conviction.

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 (KSA 2019 Supp. 21-6604).

Good Time and Program Credits

While incarcerated, offenders may earn (and forfeit) “good time” credits based upon factors like program and work participation, conduct, and the inmate’s willingness to examine and confront past behavioral patterns that resulted in the commission of crimes. Depending on the severity level of the offender’s crime, the offender may earn up to 15 percent or 20 percent of the prison part of the sentence in good time credits. Additionally, offenders serving only a sentence for a nondrug severity level 4 or lower crime or a drug severity level 3 or lower crime may earn up to 120 days of credit that may be earned by inmates “for the successful completion of requirements for a general education diploma, a technical or vocational training program, a substance abuse treatment program or any other program designated by the secretary which has been shown to reduce offender’s risk after release.”

With a few exceptions for certain sex-related offenses, any good time or program credits earned and subtracted from an offender’s prison sentence are not added to the postrelease supervision term (KSA 2019 Supp. 21-6821).

Postrelease Supervision

Once offenders have served the prison portion of a sentence, most must serve a term of postrelease supervision. For certain sex-related offenses, the postrelease supervision term is increased by the amount of any good time or program credits earned and subtracted from the prison portion of the offender’s sentence. 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 (KSA 2019 Supp. 22-3717(d)(1)).

While on postrelease supervision, an offender must comply with the conditions of postrelease 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 postrelease 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 or 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 (KSA 2019 Supp. 75-5217).

Recent Notable Sentencing Guidelines Legislation

For information on recently enacted sentencing guidelines legislation, please refer to the "Recent Notable Sentencing Guidelines Legislation" memorandum, which will be available on KLRD's website at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.

Criminal Justice Reform Issues

During the 2018 and 2019 Legislative Sessions, several bills addressing criminal justice reform issues have been enacted.

Wrongful Conviction Compensation

In 2018, the Legislature passed HB 2579, concerning wrongful conviction compensation. The bill creates a civil cause of action entitling claimants to recover damages from the State for wrongful conviction if the claimants can establish, by a preponderance of the evidence, several elements specified in the bill. Claimants must bring suit within two years of the criminal charges' dismissal, finding of not guilty on retrial, or pardon of a claimant. Claimants convicted, imprisoned, and released from custody before July 1, 2018, are required to commence an action no later than July 1, 2020.

Claimants entitled to damages will receive \$65,000 for each year of imprisonment and not less than \$25,000 for each additional year a claimant served on parole or postrelease supervision or was required to register as an offender under the Kansas Offender Registration Act, whichever is greater. The court must order the award be paid as a combination of an initial payment not to exceed \$100,000 or 25 percent of the award, whichever is greater, and the remainder as an annuity not to exceed \$80,000 per year. (Claimants may designate a beneficiary for the annuity.) Alternatively, the court may order one lump-sum payment if it is in the claimant's best interests.

The court may also award other non-monetary relief, including counseling, housing assistance, and personal financial literacy assistance. Further, claimants are entitled to reasonable attorney fees and costs incurred in an action brought under the bill of not more than \$25,000, unless the court authorizes a greater reasonable total upon a showing of good cause; tuition assistance; and participation in the state health care benefits program.

The bill outlines additional details regarding procedure, claim payment, tuition assistance, and health care benefits. It also provided for a certificate of innocence for the claimant, an expungement order, and destruction of biological samples held by the Kansas Bureau of Investigation.

During the 2019 Legislative Session, the Governor added \$50,000 of State General Fund money to the Kansas Board of Regents budget to fund tuition under the bill.

As of November, 2020, the State has agreed to pay compensation to four exonerated persons under the provisions of the bill. The State agreed to pay \$1.10 million to Richard Jones, who was incarcerated for nearly 17 years; \$1.03 million to Floyd Bledsoe, who was incarcerated for 16 years; \$1.5 million to Lamonte McIntyre, who was incarcerated for 23 years, and \$238,779 to Bobby Harper who was incarcerated for nearly 2 years.

Kansas Criminal Justice Reform Commission

In 2019, the Legislature passed HB 2290, which, among other provisions, established the Kansas Criminal Justice Reform Commission.

The bill established the 19-member Kansas Criminal Justice Reform Commission (Commission), composed of legislators, Judicial Branch personnel, prosecutors and defense attorneys, and other stakeholders, and required the Commission to analyze, review, and study various criminal justice topics specified by the bill. The Commission submitted an interim report (<http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2019CommitteeReports/KS-CriminalJustRefmComm-cr>

[pdf](#)) to the Legislature in November 2019 and a final report and recommendations (http://www.kslegresearch.org/KLRD-web/Publications/Resources/Documents/Justice-Reform/Report_KCJRC_2021.pdf) in December 2020.

Kansas Closed Case Task Force

HB 2290 also established a 15-member Kansas Closed Case Task Force, composed of legislators, executive branch officials, and stakeholders, and requires the Task Force to develop a plan to ensure uniform statewide policies and procedures related to the handling, reporting, investigation, and sharing of information regarding hits to the state-combined DNA index system (CODIS) related to solved and unsolved cases. The Task Force is required to submit a report by December 1, 2020. The Task Force will expire December 30, 2020.

Additional Information

For more information regarding these and other criminal justice reform efforts in the Kansas government, please refer to the “Recent Legislative and other Governmental Committees and Commissions Studying Criminal Justice and Juvenile Justice Issues in Kansas” memorandum, which can be found at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.

Off-Grid Crimes	
Crime	Reference
Capital Murder	KSA 2019 Supp. 21-5401
Murder in the First Degree	KSA 2019 Supp. 21-5402
Terrorism	KSA 2019 Supp. 21-5421
Illegal Use of Weapons of Mass Destruction	KSA 2019 Supp. 21-5422
Treason	KSA 2019 Supp. 21-5901
Off-Grid Crimes Sentences	
Capital Murder-Death Penalty	KSA 2019 Supp. 21-5401 and KSA 2019 Supp. 21-6617
Capital Murder-Life without Parole	KSA 2019 Supp. 21-6620(a)
Premeditated First Degree Murder-After July 1, 2014	KSA 2019 Supp. 21-6620(c)
Terrorism, Illegal Use of Weapons of Mass Destruction, or Treason	KSA 2019 Supp. 22-3717(b)(2)
Aggravated Human Trafficking	KSA 2019 Supp. 21-5426(b)
Rape	KSA 2019 Supp. 21-5503
Aggravated Indecent Liberties	KSA 2019 Supp. 21-5506(b)
Aggravated Criminal Sodomy	KSA 2019 Supp. 21-5504(b)
Commercial Sexual Exploitation of a Child	KSA 2019 Supp. 21-6422
Sexual Exploitation of a Child	KSA 2019 Supp. 21-5510

SENTENCING RANGE- DRUG OFFENSES

Categories→ Severity Level ↓	A 3 + Person Felony	B 2 Person Felony	C 1 Person & 1 Nonperson Felony	D 1 Person Felony	E 3 + Nonperson Felony	F 2 Nonperson Felony	G 1 Nonperson Felony	H 2 + Misdemeanors	I 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.

Levels	Distribute or Possess w/ intent to Distribute							Probation	Postrelease	Good Time
	Cocaine	Meth & Heroin	Marijuana	Manufacture (all)	Cultivate	Dosage Units	Manufacture (all)			
I	≥ 1 kg	≥ 100 g	≥ 30 kg	2nd or Meth	>100 plants	>1000	2nd or Meth	36	36	15%
II	100 g - 1 kg	3.5 g - 100 g	450 g - 30 kg	1st	50-99 plants	100-999	1st	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	**20%
IV	< 3.5 g	< 1 g	< 25 g			<10		*≤ 18	*≤ 18	20%
V	Possession	Possession	Possession-3rd offense					*≤12	*≤12	20%

* ≤ 18 months for 2003 SB123 offenders

** Retroactive application for offense committed on or after July 1, 2012

*** Severity Level increases one level if on or w/in 1000 ft of any school property

SENTENCING RANGE – NONDRUG OFFENSES

Category → Severity Level ↓	A 3+ Person Felonies	B 2 Person Felonies	C 1 Person & 1 Nonperson Felonies	D 1 Person Felony	E 3+ Nonperson Felonies	F 2 Nonperson Felonies	G 1 Nonperson Felony	H 2+ Misdemeanor	I 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

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

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

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Judiciary, Corrections, and Juvenile Justice

H-6 Uniform Laws

A uniform law or act (uniform law) seeks to establish the same law on a subject among various jurisdictions (usually states). Uniform laws are usually drafted by the Uniform Law Commission (ULC) and must be considered and enacted by each state or other jurisdiction that wishes to incorporate the uniform law's provisions in its statutes. Uniformity of provisions among various states is a principal objective of uniform laws, and the ULC strives to "provide states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law."

In addition to drafting uniform laws, the ULC also drafts model acts, where uniformity of provisions among states is not a principal objective, but uniformity may still be promoted even though many jurisdictions may not adopt the act in its entirety.

Uniform Law Commission

The ULC (also known as the National Conference of Commissioners on Uniform State Laws) was founded in 1892. It is a nonprofit unincorporated association of state commissions on uniform laws from each state, as well as the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Members (commissioners) must be lawyers, and include practicing attorneys, judges, legislators, legislative staff, and law professors.

The ULC states its purpose "is to promote uniformity in state law when uniformity is desirable and practicable." The ULC has produced over 300 uniform and model acts on subjects including commerce, family and domestic relations, real estate transactions, trusts and estates, alternative dispute resolution, and other topics.

Kansas joined the ULC in 1893. According to the ULC, Kansas has adopted 118 uniform or model acts drafted by the ULC through 2020. [Note: This number includes uniform or model acts that may have been revised versions, as well as statutes that have since been repealed, so the number of uniform laws currently in effect in Kansas is lower, as discussed below.]

Kansas statute (KSA 46-407a) provides for five representatives to the ULC, as follows:

- Three representatives who are members of the Kansas bar, appointed by the Kansas Commission on Interstate Cooperation, with the advice of the president of the Kansas Bar Association;
- The chairperson of the House Committee on Judiciary; and
- The chairperson of the Senate Committee on Judiciary.

Because ULC members must be lawyers, the statute provides that, if the chairperson of either judiciary committee is not a member of the Kansas bar, then the chairperson may designate another member of the committee who is a member of the Kansas bar to serve instead. If no member of the committee is a member of the Kansas bar, then the Revisor of Statutes may be designated to serve instead, and the Revisor may designate an assistant revisor to serve.

Current Uniform Laws in Kansas

The *2019 General Index to the Kansas Statutes Annotated* lists 48 different uniform laws in Kansas statutes.

Some of the more widely adopted uniform acts that have been adopted in Kansas include the following:

- *Uniform Commercial Code* (KSA Chapter 84). A comprehensive set of laws governing all commercial transactions in the United States, including sales of goods, leases, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, investment securities, and secured transactions;
- *Uniform Anatomical Gift Act* (KSA 65-3220, *et seq.*). Governs organ donation;
- *Uniform Trade Secrets Act* (KSA 60-3320, *et seq.*). Governs trade secret protection;

- *Uniform Interstate Family Support Act* (KSA 23-36,101, *et seq.*). Allows enforcement of child support orders issued by an out-of-state court;
- *Uniform Child Custody Jurisdiction and Enforcement Act* (KSA 23-37,101, *et seq.*). Limits the state with jurisdiction over child custody to one, in order to avoid competing orders;
- *Uniform Electronic Transactions Act* (KSA 16-1601, *et seq.*). Removes barriers to electronic commerce by establishing the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures; and
- *Uniform Prudent Management of Institutional Funds Act* (KSA 58-3611, *et seq.*). Governs management of funds donated to charitable institutions in accordance with modern investment and expenditure practice.

Recent Legislation

2017 – 2018 Biennium

SB 329, enacting the Uniform Partition of Heirs Property Act, was introduced in 2018 and was recommended favorably by the Senate Committee on Judiciary. It was rereferred to that committee and no further action was taken.

HB 2186, enacting the Uniform Arbitration Act of 2000, was introduced in 2017 and was passed by the House. The Senate Select Committee on Education Finance recommended a substitute bill regarding school finance. The Uniform Arbitration Act of 2000 was subsequently enacted through 2018 HB 2571.

HB 2472, amending the Uniform Anatomical Gift Act, was introduced and enacted in 2018.

2019 – 2020 Biennium

SB 55, enacting the Uniform Partition of Heirs Property Act, was introduced in 2019 and heard

in the Senate Committee on Judiciary. No further action was taken.

SB 194, amending provisions related to the Revised Uniform Anatomical Gift Act, was introduced in 2019 and was recommended favorably by the Senate Committee on Public Health and Welfare. It was rereferred to that committee in February 2020 and no further action was taken.

HB 2521, enacting the Revised Uniform Athlete Agents Act, was introduced in 2020 and was passed by the House. It was heard by the Senate Committee on Judiciary. No further action was taken.

HB 2533, enacting the Uniform Family Law Arbitration Act, was introduced in 2020 and was

recommended favorably by the House Committee on Judiciary. No further action was taken.

HB 2554, enacting the Uniform Fiduciary Income and Principal Act (UFIPA), was introduced in 2020 and was passed by the House. It was heard by the Senate Committee on Judiciary. No further action was taken.

HB 2713, enacting the Revised Uniform Law on Notarial Acts, was introduced in 2020 and was passed by the House. It was recommended favorably by the Senate Committee on Judiciary. No further action was taken.

[*Note:* The shortening of the 2020 Legislative Session due to the COVID-19 pandemic likely impacted the progress of many bills.]

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COVID-19

Judiciary, Corrections, and Juvenile Justice

H-7 Kansas Emergency Management Act

History of the Kansas Emergency Management Act

The Kansas Emergency Management Act (KEMA), codified at KSA 48-920 *et. seq.*, contains provisions governing the state's response to disasters occurring within the state. This article will provide a brief history of KEMA, recent changes to the act, and its application in the State's response to the COVID-19 pandemic.

Civil Defense Acts of 1951 and 1955

The first modern statutes related to emergency management were enacted by the Civil Defense Act of 1951, and later amended by the Civil Defense Act of 1955. The 1951 enactment created a state civil defense advisory council and allowed each city and county to establish local councils of defense to carry out all state emergency functions. Notable provisions in the 1955 enactment included granting authority to cities to purchase accident insurance to protect volunteer civil defense workers (currently found in KSA 48-922) and the creation of a Civil Defense Division within the Office of the Adjutant General.

Kansas Emergency Preparedness Act (1975)

In 1975, the Legislature enacted the Kansas Emergency Preparedness Act (Act), which would later become KEMA. Under this Act, the Civil Defense Division was abolished and replaced with the Division of Emergency Preparedness within the Office of the Adjutant General. The process of the governor declaring a state of disaster emergency by proclamation with possible ratification by the Legislature and extension by the State Finance Council was established in this Act.

1994 HB 3055

In 1994, the Legislature abolished the Division of Emergency Preparedness and replaced it with the Division of Emergency Management (KDEM). This legislation also provided designation of disaster agency roles for cities located in more than one county

and succession of duties pursuant to KEMA when the Governor is unavailable.

2001 Senate Sub. for Sub. for HB 2468 and 2002 SB 395

In 2001, the Legislature added to the Governor's authority to issue a state of disaster emergency proclamation upon a finding or when notified that a quarantine or other regulations are necessary to prevent the spread of any contagious or infectious disease among domestic animals, and provided a different timeline and extension process for such emergencies. In 2002, the Legislature expanded the Governor's authority to proclaim a state of disaster emergency to prevent the spread of contagious or infectious disease among plants, raw agricultural commodities, animal feed, or processed food.

2020 Senate Sub. for HB 2054

On May 21, 2020, the Legislature convened for its *Sine Die* Session and passed Senate Sub. for HB 2054, a response to the 2020 COVID-19 pandemic in Kansas providing certain relief related to health, welfare, property, and economic security during the public health emergency. The bill also created new provisions related to emergency management and amended several provisions in KEMA. The Governor vetoed HB 2054 on May 26, 2020.

2020 HB 2016 (Special Session)

The 2020 Special Session was convened June 3, 2020, pursuant to a proclamation issued by the Governor on May 26 following her veto of HB 2054. The Legislature passed, and the Governor approved, HB 2016 on June 4, 2020. The bill contains many modified provisions of HB 2054. Among other provisions, the bill creates and amends law related to state of disaster emergencies and KEMA.

New Sections of Law Created

The bill ratifies, continues, and extends the current state of disaster emergency related to COVID-19 through September 15, 2020, and prohibits the

Governor from declaring a new state of disaster emergency unless approved by an affirmative vote of at least six legislative members of the State Finance Council (Council).

The bill also provides on and after September 15, 2020, the Governor may not order the closure or cessation of any business or commercial activity for more than 15 days during any state of disaster emergency declared under KEMA. At least 24 hours prior to the issuance of such order, the Governor must call a meeting of the Council to consult with the Council regarding the conditions necessitating the issuance of the order. After an order or orders have resulted in 15 days of such closures, the Governor may not order such closure, except upon specific application by the Governor to the Council and an affirmative vote of at least six legislative members of the Council. The Governor may order such closure, as approved by the Council, for specified periods not to exceed 30 days each. This section expires January 26, 2021.

The bill creates a section of law providing that the Governor may not issue an executive order pursuant to KEMA that has the effect of closing public or private schools unless affirmed by the Kansas State Board of Education.

Amendments to KEMA

The bill makes several amendments to the statute governing the powers of the Governor during a state of disaster emergency (KSA 48-925), all of which expire January 26, 2021.

The bill also amends a statute governing states of local disaster emergency to allow any state of local disaster emergency declaration to be reviewed, amended, or revoked by the Board of County Commissioners or the governing body of the city, respectively, at a meeting of the governing body.

The bill also amends the section governing violations of KEMA to change the penalty from a class A misdemeanor to a civil penalty of up to \$2,500 per violation, enforced through an action brought under Chapter 60 of the *Kansas Statutes Annotated*, by the Attorney General

or the county or district attorney in the county in which the violation took place. The bill also allows the Attorney General or any county or district attorney to bring an action to enjoin, or to obtain a restraining order, against a person who has violated, is violating, or is otherwise likely to violate KEMA.

Special Committee on the Kansas Emergency Management Act

On June 18, 2020, the Legislative Coordinating Council approved the creation of a 13-member Special Committee to review KEMA, 2020 Special Session HB 2016, and oversight and emergency management approaches utilized in other states, and to make recommendations to the Legislature on any improvements or changes that should be considered.

The Special Committee met on August 24-26, 2020, and September 22-24, 2020. At the August meeting, the Special Committee heard presentations from the Office of Revisor of Statutes, a presentation on legislative oversight of emergency management in other states from representatives of the National Conference of State Legislatures, and a briefing on the Wolf Creek Generating Station operations from a representative of Evergy. In addition, the Special Committee heard testimony from the Adjutant General, the Secretary of Health and Environment, the Attorney General, the Commissioner of Education, the Chairperson of the House Committee on K-12 Education Budget, and the Kansas State Fire Marshal. Representatives of Kansas Association of Counties, Kansas Chamber of Commerce, National Federation of Independent Businesses, Kansas Department

of Agriculture, League of Kansas Municipalities, and Kansas Medical Society also testified before the committee, offering their thoughts and suggestions on KEMA and HB 2016.

At the September meeting, the Special Committee heard presentations from the Office of Revisor of Statutes, the Kansas Legislative Research Department, and the Legislative Division of Post Audit. The Governor's Chief of Staff, the Special Counsel to the Chief Justice, the Jefferson County Attorney, the Sedgwick County District Attorney, and the city manager of Dodge City testified before the Special Committee, offering thoughts and suggestions on KEMA and changes made in HB 2016. Representatives of Kansas Hospital Association, Americans for Prosperity, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, Kansas Peace Officers Association, Johnson County Sheriff's Office, Kansas Emergency Management Association, Kansas Advocates for Better Care, and Kansas Health Care Association also testified at this meeting.

Following testimony at the September meeting, the Special Committee discussed a list of 37 topics raised by conferees and members during the Special Committee's 6 days of meetings. While the Special Committee did not propose any specific legislation for the 2021 Legislative Session, it recommended several items be studied further by the appropriate standing committees of the 2021 Legislature. Those items are included in the Special Committee's Interim Report to the 2021 Legislature, which can be found at http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2020CommitteeReports/ctte_spc_2020_ks_emerg_manage_act_1_complete_report.pdf.

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Redistricting

I-1 Introduction to Redistricting

Redistricting is the process of drawing electoral district boundaries in the United States. The Kansas Legislature is responsible for drawing the boundaries of the four congressional districts of the state, the state legislative districts (House and Senate), and the State Board of Education (SBOE) districts.

Why Does the Legislature Redistrict?

The *U.S. Constitution* and federal law require a Census to be conducted every ten years and congressional districts to be reapportioned based on the population information obtained in the Census. [See *U.S. Constitution* Art. I, §2, cl. 3 and 2 USC §2a(a).] Similarly, the *Kansas Constitution* requires boundaries for the State's House and Senate districts to be redrawn every ten years in coordination with, and using population information provided by, the federal Census. [See *Kansas Constitution* Art. 10, §1.] The *Kansas Constitution* also requires the Legislature to determine the boundaries for the ten SBOE districts. SBOE districts are each composed of four contiguous Senate districts. [See *Kansas Constitution* Art. 6, §3(a).]

When Does the Legislature Redistrict?

The redistricting process begins with and centers on the Census. Official Census information will be provided to all states by April 1, 2021. However, the Census is an ongoing project, and the groundwork for the 2020 Census began in 2012 after the most recent redistricting process was completed. Preparations for the Census are being made through a program called the 2020 Census Redistricting Data Program (Program). Kansas has participated in the Program since the mid-1980s and has used the resulting information to build congressional, state legislative, and SBOE districts using election precincts and census blocks. Federal law requires all state participation in the Program to be through a nonpartisan liaison. The Kansas Legislative Research Department serves as this nonpartisan liaison for the State of Kansas. The phases and timeline for the Program are outlined as follows.

**Phase 1: Block Boundary Suggestion
Project June 2015 – May 2017**

The Block Boundary Suggestion Project was an optional phase of the redistricting process, and the State of Kansas chose to participate in the project. Its goal is to allow the State to provide input into and verify where block boundaries are drawn to produce more meaningful and useful information to the State during the 2020 redistricting process. Block boundaries are important in redistricting because blocks are the smallest unit of geography for which the Census collects population and demographic information, rather than providing statistical samples. Blocks are formed by visible features, such as streets, roads, railroads, streams and other bodies of water, and legal boundaries. In urban areas, census blocks frequently align with traditional city blocks, but are often more expansive in rural areas. Voting districts (VTDs), or precincts, are made up of groups of census blocks. Additionally, district lines cannot break block boundaries when drawing new lines during redistricting, so verifying the location of and population in blocks is important to the redistricting effort.

**Phase 2: Voting District Project June 2017
– April 2020**

The second phase of the Program is also optional, and Kansas again chose to participate. The Voting District Project (VTDP) allows states to provide the U.S. Census Bureau (Bureau) with the location of current voting district (precinct) boundaries by updating precinct boundary information provided to the Bureau during the 2010 redistricting cycle. During the 2010 redistricting cycle, precincts were the basis for legislative and congressional districts proposed by the Kansas Legislature. If Kansas chose not to participate in VTDP, the State would not receive precinct-level population data at any time during the upcoming redistricting cycle.

**Phase 3: Delivery of 2020 Census
Redistricting Data Files and
Geographic Products**

The official Census Day was April 1, 2020, while national and state population information is scheduled to be released to the President by December 31, 2020. Information for all census tabulation areas (state, congressional district, state legislative districts, American Indian areas, counties, cities, towns, census tracts, census block groups, and census blocks) will be provided to the Governor and state legislative leaders of all states by April 1, 2021.

Kansas Population Adjustments

In 2019, the *Kansas Constitution* was amended to remove the requirement that the Office of the Secretary of State adjust the population information provided by the Bureau to count members of the military and college students.

The 2019 Legislature passed SCR 1605, which proposed an amendment to the *Kansas Constitution* removing the language requiring the population adjustments. The amendment was ratified by voters at the election held on November 6, 2019. As a result, the population adjustments are no longer required, and the redistricting process will use total population, as certified by the Bureau, to establish the boundaries of political districts.

**Phase 4: Collection of Post-2020
Redistricting Plans**

The Bureau is scheduled to collect final redistricting plans from the states through April 2022.

**Phase 5: Evaluation and
Recommendations**

The Bureau will provide several opportunities for feedback on and evaluation of the Program.

A report discussing the Program is set to be published in 2025.

By the time the Bureau's final report is published, preparation for the 2030 redistricting cycle will be underway. Redistricting is truly an ongoing process.

How Does the Legislature Redistrict?

The process of redistricting in Kansas involves all three branches of state government. The Legislature proposes maps, drawing lines for congressional districts, state legislative districts, and SBOE districts. By passing the bills that contain the maps, the Legislature provides initial approval of those maps. The Governor then signs the bills, vetoes the bills, or allows them to become law without a signature, just like any other bill. Finally, the Kansas Supreme Court reviews the maps and gives final approval.

Each of these steps is discussed in more detail below. For comparison purposes, the processes used during the 2010 redistricting cycle are discussed. However, it must be noted legislative committees and procedures used during the 2010 cycle will not necessarily be the same during the 2020 cycle.

Legislature

During the 2010 redistricting cycle, the Legislative Coordinating Council created a Redistricting Advisory Group (Group) made up of three senators and three representatives. The Group was formed in 2009 and assisted with preparations for the legislative portion of the redistricting process.

In 2011, the Joint Special Committee on Redistricting held public meetings in 14 different locations across Kansas. The Special Committee was made up of the members of the House Redistricting Committee and Senate Apportionment Committee and sought public input on what the citizens of Kansas wanted from the redistricting process. Public meetings were held in Chanute, Colby, Dodge City, Garden City, Hays, Hutchinson, Kansas City, Lawrence, Leavenworth, Manhattan, Overland Park, Pittsburg, Salina, and Wichita.

As specified in the *Kansas Constitution*, Kansas draws redistricting maps during the legislative session of the year ending in "2," which for this cycle will be the 2022 Legislative Session.

The maps go through the legislative process like any other bill and are subject to the same rules. During the 2010 redistricting cycle, the Legislature did not successfully pass redistricting bills in both chambers. Redistricting maps were ultimately drawn by the U.S. District Court for the District of Kansas in 2012.

Governor

Just like any other bill, redistricting maps require the approval of the Governor or a vote to override a Governor's veto to be passed into law and become effective.

Kansas Supreme Court

The *Kansas Constitution* provides a procedure for final approval of state legislative maps by the Kansas Supreme Court:

- The redistricting bills are published in the *Kansas Register* immediately upon passage;
- The Attorney General must petition the Kansas Supreme Court to determine the maps' validity within 15 days of the publication of an act reapportioning state legislative districts; and
- The Kansas Supreme Court has 30 days from the filing of that petition to enter a judgment. [See *Kansas Constitution* Art. 10, §1.]

If the Court determines the maps are valid, the redistricting process is complete. If, on the other hand, the Court says the maps are invalid:

- The Attorney General must petition the Court to determine the validity of maps enacted in an attempt to conform with the Court's previous judgment; and
- The Court has ten days from the date of the Attorney General's filing to enter

a judgment. If the Court says the new maps are valid, redistricting is complete.

If the Court says the new maps are invalid, the Legislature has 15 days to pass new maps.

This process repeats until the Legislature presents maps the Court determines are valid. [See *Kansas Constitution* Art. 10, §1.]

2012 Redistricting

During the 2012 redistricting process, the Kansas Legislature did not successfully pass redistricting maps into law. As a result, the maps currently in place were drawn by the U.S. District Court for the District of Kansas.

Additional Resources

Kansas Redistricting

- <http://www.kslegresearch.org/KLRD-web/Redistricting.html>

2020 Federal Census

- <https://www.census.gov/programs-surveys/decennial-census/2020-census.html>
- <https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html>

Redistricting Data Program, U.S. Census Bureau

- <https://www.census.gov/programs-surveys/decennial-census/about/rdo.html>

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Redistricting

I-2 Redistricting Legislation Across the Country

The U.S. Census, which provides the population information used as the basis for redistricting congressional and state legislative districts, began enumeration activities on April 1, 2020 and concluded on October 15, 2020. As the time for the Census and the subsequent redistricting process drew near, redistricting was discussed in state legislatures with increasing frequency. The chart included in this article provides information about the status of redistricting legislation, as of November 10, 2020, including legislation pending before the United States Congress and state legislatures, legislation recently enacted by state legislatures, and 2020 state ballot initiatives.

Pending Legislation

Currently, there are ten redistricting bills or resolutions pending in the U.S. Congress. Of those ten bills, five concern independent redistricting commissions. Other topics include Congressional district requirements, prohibiting states from redistricting more than once per ten-year cycle, and public participation.

As of November 10, 2020, eight state legislatures are still in session. Of those states, 3 legislatures have a total of 14 pending bills related to redistricting. Of those bills, four concern independent redistricting commissions and two concern the enumeration of incarcerated persons. The other pending bills concern standards for congressional and state legislative districts.

Enacted State Legislation

Nine bills have been recently enacted by six states. The bills concern a wide variety of redistricting topics, including:

- Independent redistricting commissions;
- Modification of precinct boundaries;
- Addressing late delivery of Census data;
- Enumeration of incarcerated persons; and
- Whether written descriptions of Congressional and state legislative districts should be provided.

Ballot Questions

During the November 3, 2020, general election, three states posed ballot questions related to redistricting.

Missouri

Missouri Amendment 3 was a ballot question that was the result of legislation (Missouri SJR 14 and SJR 9 in the attached chart). Amendment 3 was approved by voters and changed the redistricting process approved by voters in 2018 by:

- Transferring responsibility for drawing state legislative districts from the Nonpartisan State Demographer to Governor-appointed bipartisan commissions; and
- Modifying and reordering the redistricting criteria.

The amendment also made changes related to lobbyist gifts and campaign contribution limits.

New Jersey

New Jersey Question 3 was a ballot question that was the result of legislation (New Jersey

ACR 188 in the attached chart). Question 3 was approved by voters, and made the following changes through a constitutional amendment:

- Postponing the state legislative redistricting process until after the election on November 2, 2021, if the state receives federal census data after February 15, 2021;
- Keeping the current legislative districts in place until 2023; and
- Using the delayed timeline in future redistricting cycles if the census data is received after February 15 of the year ending in 1.

Virginia

Virginia Question 1 was a ballot question that was the result of legislation (Virginia HB 784 in the attached chart). Question 1 was approved by voters, and through a constitutional amendment, transferred the power to draw both congressional and state legislative districts to a 16-member redistricting commission composed of 8 legislators and 8 citizens.

Bill Number	Status	Summary
Pending Legislation		
U.S. Congress HR 1	Senate Legislative Calendar	Would require states to establish independent, nonpartisan redistricting commissions.
U.S. Congress HR 44	House Judiciary Committee	Would prohibit states from carrying out more than one congressional redistricting after a decennial census and apportionment.
U.S. Congress HR 124 & HR 130	House Judiciary Committee	Would prohibit states from carrying out more than one congressional redistricting after a decennial census and apportionment, and requires states to conduct such redistricting through independent commissions.
U.S. Congress HB 131	House Judiciary Committee	Would require states to carry out congressional redistricting in accordance with a process under which members of the public are informed of redistricting proposals and have the opportunity to participate in the development of such proposals prior to their adoption, including use of an Internet website.

Bill Number	Status	Summary
Pending Legislation, continued		
U.S. Congress HR 163	House Judiciary Committee	Would require the use of independent, nonpartisan commissions to carry out congressional redistricting and to require states to hold open primaries for elections for federal office.
U.S. Congress HR 1612	House Judiciary Committee	Would require states to establish independent, nonpartisan redistricting commissions.
U.S. Congress S 1972	Senate Judiciary Committee	Would prohibit partisan gerrymandering to ensure any redistricting of congressional district boundaries results in fair, effective, and accountable representation for all people.
U.S. Congress HR 2057	House Judiciary Committee	Would direct the Attorney General to enter into an agreement with the National Academies to conduct a study to develop guidelines, best practices, and examples for congressional redistricting.
U.S. Congress S 2226 & HR 3572	Senate Judiciary Committee (S 2226), House Judiciary Committee (H 3572)	Would require states to carry out congressional redistricting in accordance with plans developed and enacted into law by independent redistricting commissions.
U.S. Congress HR 4000	House Judiciary Committee	Would require that congressional redistricting be conducted in accordance with a plan developed by (1) a state-established independent commission; or (2) if such a commission fails to enact a plan, a three-judge panel from a U.S. District Court.
NY A6461; S 2047	In Committee	Would provide that each senate district shall be comprised of one county in its entirety.
NY S8790	To Attorney General for opinion	Would relate to the enumeration of incarcerated persons, and would enumerate such persons at their permanent address.
PA HB22; SB1022	In Committee	Would propose a constitutional amendment to provide for an independent redistricting commission.
PA HB401	In Committee	Would establish a redistricting commission.
PA HB402	In Committee	Would provide for congressional and legislative redistricting.
PA HB1535	In Committee	Would relate to the enumeration of incarcerated persons.
PA HB2606	In Committee	Would set congressional district standards.
PA SB22	Tabled	Would propose a constitutional amendment to establish a redistricting commission.
PA SB122	In Committee	Would propose a constitutional amendment to provide for a redistricting commission.

Bill Number	Status	Summary
Pending Legislation, continued		
PA SB558	In Committee	Would propose a constitutional amendment to provide for the designation of legislative and congressional districts.
RI H7260; S2077	In Committee	Would propose a constitutional amendment to adopt a constitutional procedure for redistricting.
Enacted Legislation		
Colorado SB186	Signed by Governor on July 11, 2020	The bill establishes provisions for independent redistricting commissions, including: establishing who should receive copies of proposed and final maps; making provisions for plan correction, requires the Secretary of State to provide map copies to candidates; establishing nonstatutory provisions to provide staffing, process for selecting commission members, and budget provisions for the commissions.
Kentucky HB457	Signed by the Governor on April 7, 2020	The bill freezes modification of election precincts by counties and changes the date for precinct modification in subsequent redistricting cycles.
Missouri SJR 9, SJR 14	Adopted on May 17, 2019	The resolution proposed a constitutional amendment to transfer redistricting duties to a Governor-appointed commission, modify redistricting criteria, and make changes to lobbyist and campaign finance laws.
New Jersey ACR188	Adopted on July 30, 2020	The resolution proposed a constitutional amendment to address the scenario in which the Governor receives Census Bureau population data later than February 15, 2021, and would set new deadlines for adoption of new legislative districts.
New York S08833	Adopted on July 23, 2020	The resolution proposed a constitutional amendment to require state entities to provide information such that incarcerated persons could be enumerated at their last place of residence; and it would also make provisions for an independent redistricting commission.
Virginia HB 105	Signed by the Governor on April 8, 2020	The bill removed the requirement that written descriptions of the boundaries of congressional and state legislative districts be provided.
Virginia HB 784. SB236, SJR18	Signed by the Governor on April 10, 2020	The bill provided for a voter referendum at the November 3, 2020, election to approve or reject amendments to the <i>Constitution of Virginia</i> establishing the Virginia Redistricting Commission and providing for the reapportionment of the Commonwealth to be done by such Commission.

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State and Local Government

J-1 Administrative 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 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 submission, the Legislature could act to modify and approve or reject any of the regulations submitted. In 1984, the Kansas Supreme Court, in *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 687 P.2d 622 (1984), held 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 *Kansas 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 enacted several amendments to the Rules and Regulations Filing Act (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 of Statutes. The law was later changed to require proposed agency rules and regulations to be reviewed as outlined below. A 1977 law created the Joint Committee on Administrative Rules and Regulations (Joint Committee). In 1988, responsibility for filing and publishing all rules and regulations was statutorily assigned to the Secretary of State. *The Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* of the Kansas Department of Administration provides guidance to agencies on development of and procedures for promulgating rules and regulations.

Rule and Regulation Authority—Examples

Regulations implement or interpret legal responsibilities of a state agency. The statutory authority for the agency to adopt these rules

and regulations is found in enabling legislation, as illustrated in the example language found below.

**Commercial Industrial Hemp Program
(2019 Session)**

The Kansas Department of Agriculture (KDA), in consultation with the Governor and Attorney General, shall submit a plan to the U.S. Department of Agriculture under which the KDA will monitor and regulate the commercial production of industrial hemp within the state . . . The Secretary of Agriculture shall promulgate rules and regulations to implement the plan submitted . . .

AO-K to Work Program (2019 Session)

The State Board of Regents may adopt rules and regulations to implement and administer the provisions of this act.

Powers of the Secretary (KSA 32-807)

The Secretary [of Wildlife, Parks and Tourism] shall have the power to: (a) Adopt, in accordance with KSA 32-805 and amendments thereto [approval, modification and approval, or rejection of proposed rules and regulations by the Wildlife, Parks and Tourism Commission], such rules and regulations as necessary to implement, administer and enforce the provisions of wildlife, parks and tourism laws of this state; . . .

Rules and regulations of the Kansas Lottery are exempt from the Act (KSA 74-8710).

The Rules and Regulations Filing Act (KSA 77-415 through 77-438, and amendments thereto) 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

Administrative rules and regulations may be temporary or permanent. A temporary rule and regulation, as defined in KSA 77-422, may be adopted by an agency if the State Rules and Regulations Board (Board) finds preservation of the health, safety, welfare, or public peace makes it necessary or desirable to put the regulation into effect before a permanent regulation would take effect. Temporary rules and regulations take effect after approval by the Director of the Budget, the Secretary of Administration, the Attorney General, and the Board and may remain effective for no more than 120 days, beginning with the date of approval by the 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.

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

1. Obtain approval of the proposed rules and regulations from the Director of the Budget (Director). KSA 77-420 requires the Director to review the economic impact statement submitted with the rules and regulations and conduct an independent analysis to determine whether the costs incurred by businesses, local government, or individuals would be \$3.0 million or less over a two-year period. If the impact does not exceed that threshold, the Director will approve the proposed rule and regulation for submission to the Secretary of Administration and Attorney General. If the impact exceeds \$3.0 million, the Director may either disapprove the proposed rule and regulation or approve it, provided the agency had conducted a public hearing prior to submitting the proposed rule and regulation, and the agency found the costs to be accurately determined and necessary for achieving legislative intent, and the Director independently

- concurs with the agency's findings and analysis;
2. Obtain approval of the organization, style, orthography, and grammar of the proposed rules and regulations from the Secretary of Administration;
3. 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;
4. Submit the notice of hearing, copies of the proposed rules and regulations as approved, the economic impact statement, and the environmental benefit statement, if required by KSA 77-416, to the Secretary of State, and submit a copy of the notice of hearing to the chairperson, vice-chairperson, and ranking minority member of the Joint Committee and to the Kansas Legislative Research Department (KLRD); the notice also must be published in the *Kansas Register*;
5. Review the proposed rules and regulations with the Joint Committee during the public comment period, which is at least 60 days for all rules and regulations, except for certain hunting and fishing activities and for permanent prior authorization on a prescription-only drug (KSA 2019 Supp. 39-7,120), for which the public comment period is at least 30 days;
6. Hold the public hearing and cause minutes or other records of the meeting to be made;
7. Prepare a statement of the principal reason for adopting the rules and regulations, including reasons for not accepting substantial arguments made in comments and reasons for any substantial change from the proposal;
8. Initiate new rulemaking proceedings if the final rule and regulation would differ in subject matter or effect in any material respect from the rule and regulation as originally proposed or the rule and

regulation is not the logical outgrowth of the rule and regulation as originally proposed;

9. Adopt the rules and regulations; and
10. File the rules and regulations and associated documents with the Secretary of State.

A permanent rule and regulation takes effect 15 days after publication in the *Kansas Register* (KSA 77-426). The Secretary of State, as directed by KSA 77-417, endorses on each rule and regulation filed at 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 Office of the Secretary of State publishes new, amended, or revoked regulations in the *Kansas Register* and compiles the adopted regulations in the KAR Volumes and Supplements and on the Office's website. The Secretary of State is authorized to return to the state agency or otherwise dispose of any document that had been adopted previously by reference and filed with the Secretary of State.

Legislative Review

The 12-member Joint Committee is required by KSA 77-436 to review proposed rules and regulations during the public comment period prior to the required public hearing on the proposed regulations. Recent legislative changes to the Act have not changed this review process.

The Joint Committee may introduce legislation it deems necessary in the performance of its review functions. Provisions of KSA 77-426 authorize the Legislature to adopt a concurrent resolution expressing its concern with any temporary or permanent rule and regulation filed during the preceding year and requesting revocation or amendment of such rule and regulation.

The Joint Committee provides comments reflecting its concerns or recommendations to the agency for consideration at the time of the agency's public hearing on the proposed rules and regulations. KSA 77-436 also requires the Joint

Committee to issue a report of those comments to the Legislature following each meeting. The Joint Committee requests the agency reply to it in writing to respond directly to each comment made, and to detail any amendments in the proposed rules and regulations made after the Joint Committee hearing and any delays in the adoption or the withdrawal of the rules and regulations. KLRD maintains a database of responses to Joint Committee comments and reports on those responses to the Joint Committee.

As part of its review process, the Joint Committee examines economic impact statements that are prepared by agencies, as required by law, and accompany the proposed rules and regulations.

Each year, KLRD prepares a report on the oversight activities of the Joint Committee; the 2020 electronic report is available on the KLRD website at <http://www.kslegresearch.org/KLRD-web/Committees/Committees-JCARR.html>. The report also includes a summary of provisions in legislation enacted in that year that authorize, require, or clarify authority for rules and regulations.

Amendments to Rule and Regulation Procedures

Few bills since 2000 have changed the basic procedures for agency adoption of rules and regulations and legislative review of them.

2008

SB 579 (L. 2008, ch. 25) required state agencies to consider the impact of proposed rules and regulations on small employers. (These provisions were expanded in 2018.) The bill defined “small employer” as any person, firm, corporation, partnership, or association with 50 or fewer employees, the majority of whom are employed in Kansas.

2010

House Sub. for SB 213 (L. 2010, ch. 95) revised the Act by removing obsolete language and

authorized publication of the KAR in paper or electronic form by the Secretary of State. In addition, the bill amended 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 were also revised. One provision requires state agencies to begin new rulemaking procedures when the adopted rules and regulations differ in subject matter or effect in a material respect from those reviewed by the Joint Committee.

2011

HB 2027 (L. 2011, ch. 14) named the Act and simplified the definitions of terms such as “rule and regulation” and removed certain obsolete exclusions. It also expanded the definition of “person” to include individuals and legal or commercial entities that previously had not been included.

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 provided that agency-issued forms, the contents of which 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.

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; and
- 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, to which other procedures apply.

The bill authorized state agencies to issue guidance documents without following the procedures set forth in the Act. Under the terms of this section (KSA 77-438), guidance documents may contain binding instructions to state agency staff members, except presiding officers, concerning their duties. Presiding officers and agency heads may 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 required 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.

2012

SB 252 (L. 2012, ch. 61) changed notice requirements from 30 days to 60 days for new rulemaking 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.

2018

HB 2280 (L. 2018, ch. 117) made several changes to the Act:

- Granted new authority to the Director of the Budget to review and approve proposed rules and regulations;
- Added a member of the minority party and a representative of an appropriations committee to the State Rules and Regulations Board;
- Added a ranking minority member to the Joint Committee;
- Requires reports to the Legislature from the Joint Committee after each meeting; and
- Requires the Legislative Post Audit Committee, in 2021, to direct the Legislative Division of Post Audit to evaluate the implementation of the new provisions contained in the bill.

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State and Local Government

J-2 Board of Indigents' Defense Services

The *U.S. Constitution* grants certain rights and protections to criminal defendants, including the right to be represented by an attorney. This right has been interpreted by the U.S. Supreme Court and the Kansas Supreme Court to require the State to pay for attorneys to represent indigent defendants at most key stages in the criminal justice process.

In Kansas, this requirement is met by the Board of Indigents' Defense Services (BIDS). BIDS provides criminal defense services through:

- Public defender offices in certain parts of the state;
- Contract attorneys (attorneys in private practice contracted by BIDS); and
- Assigned counsel (court-appointed attorneys compensated by BIDS).

In addition to providing trial-level public defenders and assigned counsel, BIDS operates offices tasked with handling defense of capital cases, cases in which conflicts of interest prevent local public defenders from representing a particular defendant, and post-conviction appeals. BIDS is also responsible for paying the other costs associated with criminal defense, such as for expert witnesses and transcription fees. Finally, Legal Services for Prisoners, Inc., a nonprofit corporation, is statutorily authorized to submit its annual budget to BIDS and provides legal assistance to indigent inmates in Kansas correctional institutions.

Public Defender Offices

BIDS operates nine trial-level public defender offices throughout the state:

- 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 Kansas Regional Public Defender (Garden City);

- Southeast Kansas Public Defender (Chanute); and
- Southeast Kansas Public Defender Satellite Office (Independence).

BIDS also operates the following offices in Topeka:

- Appellate Defender;
- Death Penalty Defense Unit;
- Capital Appeals;
- Capital Appeals and Conflicts;
- Northeast Kansas Conflict Office; and
- State *Habeas* Office.

Finally, BIDS operates two other special offices outside of Topeka:

- Wichita Conflicts Office; and
- Death Penalty Defense Unit—Sedgwick County Satellite Office.

BIDS officials monitor the cost per case for each of its offices quarterly to determine the most cost-effective system to deliver constitutionally required defense services and make changes as needed to maintain cost-effectiveness.

BIDS Staffing Report to Legislative Budget Committee

The 2020 Legislature required BIDS to submit a report to the Legislative Budget Committee (LBC) detailing the issues relating to staff vacancies and retention as well as provide a detailed strategy to address staffing concerns. The report, which was presented to the LBC on October 6, 2020, laid out a three-phase plan to address the issues.

According to the report, the core issues relate to excessively high caseloads relative to industry standards, low compensation, and a lack of resources. As a solution, BIDS proposed a three-phase plan with a focus on a client-centered, holistic defense model that would impact the whole of the state's judicial and correctional systems. The plan would address immediate needs *via* the fiscal year (FY) 2022 budget request, with the remaining phases to be implemented in FY 2023 and subsequent years.

Assigned and Contract Counsel

It is not possible for state public defender offices to represent all criminal defendants who need services. For example, if two individuals are co-defendants in a particular matter, it would present a conflict of interest for a single public defender's office to represent both individuals. Additionally, BIDS has determined it is not cost-effective to operate public defender offices in all parts of the state, based on factors such as cost per case and caseload in these particular areas. Instead, BIDS contracts with private attorneys in those areas to provide these services and compensates willing attorneys appointed as assigned counsel by local judges.

BIDS has been directed to monitor assigned counsel expenditures and to open additional public defender offices where it would be cost-effective to do so.

Compensation Rates and Fees

Effective January 18, 2010, assigned counsel were compensated at a rate of \$62 per hour as the result of a BIDS effort to reduce costs and respond to budget cuts. For FY 2016, the rate was increased to \$65 per hour, and for FY 2017, the rate was increased to \$70 per hour. During the summer of 2018, the Board voted to increase the rate for FY 2019 to \$75 per hour.

For FY 2019, the Board increased the rate to the statutory \$80-per-hour cap.

Total fees for defense in felony cases are capped at various levels depending on the classification of the felony and the disposition of the case.

However, if there is a judicial finding that a case is "exceptional" and requires the assigned attorney to work more hours than the cap allows, BIDS is required to exceed these caps. These exceptional fees are included in BIDS' overall budget for assigned counsel payments.

The 2007 Legislature changed the language of the assigned counsel compensation statute to allow BIDS to negotiate rates below the mandated

(at that time) \$80-per-hour rate as an alternative cost-savings strategy. BIDS conducted public hearings in 11 counties, where it was determined it was not cost-effective to utilize assigned counsel at \$80 per hour. BIDS responded to local requests to maintain the assigned counsel system in these counties by negotiating reduced compensation rates. The negotiation was successful, and rates of \$62 per hour and \$69 per hour were implemented. BIDS has determined these rates are more cost-effective than opening additional public defender offices.

The 2006 Legislature approved an increase in compensation rates from \$50 per hour to \$80 per hour for assigned counsel beginning in FY 2007.

This rate had previously been raised from \$30 per hour to \$50 per hour by 1988 legislation in response to a Kansas Supreme Court ruling.

Prior to FY 2006, BIDS paid assigned counsel expenditures from the operating expenditures account in its State General Fund appropriation.

All professional services were treated as assigned counsel costs, including attorney fees, transcription fees, and expert witness fees. The FY 2006 budget added a separate line item for these other expenditures to more accurately account for assigned counsel costs.

Other Costs Affecting BIDS

BIDS is required to pay the fees for expert witnesses and transcription. Most experts utilized by the agency have agreements to work at a reduced rate. However, the agency reported these costs have risen steadily since FY 2008 due to higher transcription costs mandated by the Kansas Supreme Court, new legal requirements for expert testimony, and the expansion of what is effective assistance of defense counsel and defense services.

Death Penalty Cases

Kansas reinstated the death penalty in 1994, following the end of a national moratorium

imposed by the U.S. Supreme Court. (More information about the death penalty in Kansas can be found in the Kansas Legislative Research Department memorandum titled “Death Penalty in Kansas,” located at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.)

As a result, the Death Penalty Defense Unit was established to handle the defense of cases in which the death penalty could be sought. As with all cases handled by public defenders, conflicts of interest and other circumstances raise the possibility that outside counsel will have to be contracted to represent defendants.

Capital cases are more costly than other matters handled by BIDS. Not only do these cases take more time for trial, but they also require defense counsel to be qualified to handle the complexities and special rules of death penalty litigation. According to a report issued by the Kansas Judicial Council Death Penalty Advisory Committee (Advisory Committee) in 2004, a “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.” On average, BIDS pays outside counsel \$150 per hour for capital cases, almost twice the statutory rate of \$80 per hour.

A study conducted by the Advisory Committee was released on February 13, 2014, and updated cost data for the costs first reported in the Legislative Division of Post Audit’s 2003 report.

The Advisory Committee found BIDS spent an average of \$395,762 on capital cases that went to trial in which prosecutors sought the death penalty, compared to an average of \$98,963 on other death penalty-eligible cases that went to trial without the prosecutor seeking the death penalty.

Other Offices Administered by BIDS

Appellate Defender Office

The Appellate Defender Office is located in Topeka and provides representation to indigent felony defendants with cases on appeal.

Northeast Kansas Conflict Office

The Northeast Kansas Conflict Office, located in Topeka, was established to deal with a large number of conflict cases in Shawnee County. This office also handles off-grid homicide cases in Lyon County.

Sedgwick County Conflict Office

The Sedgwick County Conflict Office was established to defend conflict cases that cannot be handled by the Sedgwick County Public Defender Office and is located in Wichita.

Death Penalty Defense Unit

The Death Penalty Defense Unit was established after the reinstatement of the death penalty. BIDS determined it was more cost-effective to establish an office with attorneys specially qualified to handle defense in capital cases rather than relying on contract or assigned counsel.

Capital Appeals and Conflicts Office

The primary function of the Capital Appeals and Conflicts Office is to handle representation throughout the long and complex appellate

process that follows the imposition of a death sentence. This office also handles some cases from 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 appeals of Reginald and Jonathan Carr, who were both convicted of murder in Sedgwick County and sentenced to death. Due to conflict of interest rules, the existing Capital Appeals and Conflicts Office could only represent one of the two men. The establishment of the Capital Appeals Office resolved that conflict and doubled BIDS' capacity for handling death penalty appeals.

State Habeas Office

The State *Habeas* Office was established in FY 2015 to handle death penalty defense after a death sentence is upheld by the Kansas Supreme Court and petition for a *writ of certiorari* has been unsuccessful for the defense.

Legal Services for Prisoners

Legal Services for Prisoners, Inc., provides legal services to inmates in Kansas correctional facilities. The goal of the program is to ensure that prisoners' right to access the courts and pursue non-frivolous claims is met. Legal Services for Prisoners submits its annual budget to BIDS. Although Legal Services for Prisoners is not a state agency, its funding is administered through BIDS.

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State and Local Government

J-3 Home Rule

Adopted by voters in the 1960 general election and taking effect July 1, 1961, Article 12, Section 5 of the *Kansas Constitution* authorized cities to be “empowered to determine their local affairs and government,” thus significantly altering the relationship between the State and its municipal governments. This article will briefly examine what is meant by the “home rule” so granted, its history in Kansas, and its variations within the state.

What Is Home Rule?

“Home rule” is defined as limited autonomy or self-government granted by a central or regional government to its dependent political units. It has been a feature of state and municipal government in the United States since 1875, where state constitutions frequently have been amended to confer general or specifically enumerated self-governing powers on cities and towns, and sometimes on counties and townships.

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 in their state constitutions, most notably home rule provisions. In an opinion in 1868, the Iowa Supreme Court expressed this philosophy of statutory construction to reflect this rule of dependency in what became known as “Dillon’s Rule” or the Dillon Rule (named for the justice who wrote the decision). The U.S. Supreme Court also expressed this philosophy in *Hunter v. Pittsburgh*, 207 U.S. 161 (1907).

Dillon’s Rule states 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.

In contrast, under home rule, local governments have all powers except for those expressly prohibited by the State or those which

conflict with state statute. This difference in the source of a local government's powers is the central difference between Dillon's Rule states and home rule states.

City, County, and School District Home Rule—A Brief History of Kansas Home Rule Provisions

Constitutional Home Rule Grant for Cities

After July 1, 1961, cities were no longer dependent upon specific enabling acts of the Legislature. 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, reads in part 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.

Although the Home Rule Amendment grants cities the power to levy taxes and fees, the Legislature may restrict this power by establishing not more than four classes of cities; cities of the first, second, and third class have been defined in law. These classes exist for purposes of imposing revenue limitations or prohibitions. The 2006 Legislature reduced the number of classes of cities to one for the purpose of restoring uniformity of local retailers' sales taxes (KSA 2019 Supp. 12-187).

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 a nonuniform law 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, cities may enact additional non-conflicting local regulations compatible with the uniform state law.

Statutory Home Rule Grant for Counties

Home rule for counties was enacted by statute in 1974. The county statutory grant is patterned after the Home Rule Amendment.

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 2019 Supp. 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 2019 Supp. 19-101c).

County home rule is self-executing in the same manner as city home rule. The power is there for all 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. The 2020 Legislature considered a bill that would have provided for a similar charter commission for Sedgwick County. The bill passed the Senate but died in the House.

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 Act, which now contains 38 limitations on county home rule. The Act, with regards to limits, restrictions, and limitations on the counties, was last amended in 2019.

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.

City and County Home Rule Differences

The major distinction between county home rule and city home rule is that 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 more authority to restrict or repeal statutory county

home rule. Finally, the other factor distinguishing city and county home rule is the existence of numerous exceptions to county home rule powers found in the County Home Rule Act.

Unified Governments

An added complexity to the issue of home rule is the establishment of unified governments that merge county and city governments within a county. This has occurred twice in Kansas: Wyandotte County in 1997 and Greeley County in 2009. Statutes creating these unified governments specify they will have the powers, functions, and duties of cities of the first class for Wyandotte County (KSA 2019 Supp. 12-345) and of the third class for Greeley County (KSA 2019 Supp. 12-365). As noted above, statutorily granted powers can be altered more easily than provisions of the *Kansas Constitution*.

Statutory Expansion of School District Powers

In 2003, school boards were granted expanded administrative powers referred to by some as limited home rule powers. The statute enumerating the powers of boards of education (KSA 2019 Supp. 72-1138) was amended to expand the powers of those boards as follows:

- The board may transact all school district business and adopt policies 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 or to relieve any other unit of government of its duties and responsibilities prescribed by law, nor to create any responsibility on the part of a school district to assume the duties or responsibilities are required of another unit of government; and
- The board shall exercise the power granted by this subsection by resolution of the board of education.

“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 voter approval 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 that 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 in which 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 allows cities or counties to 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 that is nonuniform in its application to cities and that 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 procedure.

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 2 percent or 100 electors (whichever is greater) protest petition and election procedure.

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State and Local Government

J-4 Kansas Public Employees Retirement System's Retirement Plans and History

KPERS Overview—Brief History of State Retirement and Other Employee Benefit Plans

The primary purpose of the Kansas Public Employees Retirement System (known generally as KPERS and referenced in this article as the Retirement System) is to accumulate sufficient resources to pay benefits. The Retirement System administers three statewide plans:

- **KPERS.** The largest plan, usually referred to as the regular KPERS plan or as KPERS, includes state, school, and local groups composed of regular state and local public employees; school district, vocational school, and community college employees; Board of Regents (Regents) classified employees and certain Regents unclassified staff with pre-1962 service; and state correctional officers. As of October 2020, this plan has 148,199 active members;
- **Kansas Police and Firemen's Retirement System (KP&F).** A second plan is known as the KP&F Retirement System for certain designated state and local public safety employees. As of October 2020, this plan has 7,797 active members; and
- **Kansas Retirement System for Judges.** A third plan is known as the Kansas Retirement System for Judges that includes the state judicial system's judges and justices. As of October 2020, this plan has 257 active members.

All coverage groups are defined benefit, contributory retirement plans and have as members most public employees in Kansas. Retirement and death benefits paid by the Retirement System are considered off-budget expenses. Starting in fiscal year (FY) 2000, retirement benefit payments, as proposed by the Governor and approved by the Legislature, were classified as off-budget, non-reportable expenditures. As 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.

The Retirement System also administers several other employee benefit and retirement plans: 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 State Treasurer's Unclaimed Property Fund.

The Retirement System is governed by a nine-member Board of Trustees (Board). Four members are appointed by the Governor and confirmed by the Senate, one member is appointed by the President of the Senate, one is appointed by the Speaker of the House, two are elected by Retirement System members, and one member is the State Treasurer. The Board appoints the Executive Director, who administers the agency operations for the Board.

The Retirement System manages approximately \$20.0 billion in actuarially-valued assets. Annually, the Retirement System pays out more in 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, which is the relationship between the promised benefits and the resources available to pay those promised benefits. In the most recent actuarial valuation on December 31, 2019, the funded ratio for the Retirement System was 70.0 percent, and the unfunded actuarial liability (UAL) was \$9.007 billion. This is the amount of financing shortfall when comparing the Retirement System assets with promised retirement benefits.

The Legislature in 2015 passed SB 228, authorizing the issuance of \$1.0 billion in taxable bonds. In August 2015, the Kansas Development Finance Authority issued the bonds with an effective interest rate of 4.69 percent. The bonds, with interest paid semi-annually over a 30-year period, will be paid off in 2045. The bonds' proceeds became part of the Retirement

System's valuation on December 31, 2015. Debt service for the bonds is subject to appropriation and is not an obligation of KPERS.

A Brief History of KPERS

KPERS was created under law passed 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. As of October 2020, there are 60,995 active members in the KPERS Tier 1 plan. Another KPERS tier was created in 2007 for state, school, and local public employees becoming members on and after July 1, 2009. KPERS Tier 2 has many characteristics of the original plan, but with certain modifications to ensure employees and employers will share in the total cost of providing benefits. A third tier was implemented January 1, 2015, for all new employees.

Tier 1 of the KPERS plan is closed to new membership and Tier 2 closed to most new membership on December 31, 2014; certain state correctional personnel are eligible for membership. Tier 3 of the KPERS plan became effective for new employees hired after January 1, 2015. The cash balance plan is a defined benefit, contributory plan according to the Internal Revenue Service (IRS).

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 that had affiliated with KPERS were dissolved by the Legislature as of 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 that 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 exclusively governmental. Amendments to KSA 74-4901 also broadened the definition of which governmental officials and officers were eligible for KPERS membership.

KPERS Tier 1

The Legislature in 2012 modified the KPERS Tier 1 plan design components and the participating employer funding requirements for contributions. Several 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 from the Expanded Lottery Act Revenues Fund (ELARF) to the KPERS Trust Fund after other statutory expenses have been met.

KPERS Tier 2

The Legislature in 2007 established a Tier 2 plan for KPERS state, school, and local employees effective July 1, 2009, and made the existing KPERS members 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, until 2014 when it increased from 4.0 percent to 5.0 percent, and in 2015 when it increased from 5.0 percent to 6.0 percent. The contribution rate remains at 6.0 percent today.

The Tier 2 plan for employees hired on or after July 1, 2009, continued the 1.75 percent multiplier; allowed normal retirement at age 65 with 5 years of service, or at age 60 with at least 30 years of service; provided for early retirement at age 55 with at least 10 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.

The Legislature in 2012 established a Tier 3 plan for KPERS state, school, and local employees effective January 1, 2015, and made the existing KPERS members, hired between July 1, 2009, and December 31, 2014, 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. As of October 2020, there are 29,542 active members in the KPERS Tier 2 plan.

KPERS Tier 3

The Legislature in 2012 implemented a third tier of the KPERS plan, enacting three major changes: higher employer contributions, higher member contributions, and a cash balance plan for new members beginning January 1, 2015. As of October 2020, there are 57,662 active members in the KPERS Tier 3 plan. KPERS Tier 3 has the following plan design components:

- Normal retirement age—age 65 and 5 years of service, or age 60 and 30 years of service;
- Minimum interest crediting rate during active years—4.0 percent;
- Discretionary Tier 3 dividends—modified formula based on KPERS funded ratio for awarding discretionary credits and capped for early years;
- Employee contribution—6.0 percent;
- Employer service credit—3.0 percent for less than 5 years of service; 4.0 percent for at least 5, but less than 12, years of service; 5.0 percent for at least 12, but less than 24, years of service; and 6.0 percent for 24 or more years of service;

- Vesting (the period of employment necessary for benefits to accrue)—5 years;
- Termination before vesting—interest would be paid for the first 2 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—5-year service requirement and if spouse had been named primary beneficiary, provide retirement benefit for spouse when eligible;
- Early retirement—age 55 with 10 years of service;
- Default form of retirement distribution—single life with 10-year certain annuity;
- Annuity conversion factor—2.0 percent less than the actuarial assumed investment rate of return;
- 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—the Board shall provide information specified. Certain quarterly reporting is required; and
- Powers reserved to adjust plan design—the Legislature may prospectively change interest credits, employer credits, and annuity interest rates.

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 equal to 0.5 percent of defined salary for each year. In 1965, the Legislature raised the prior service multiplier to 0.75 percent. In 1968, the prior service multiplier was raised to 1.0 percent, and the participating service multiplier was increased to 1.25 percent for all years of service.

In 1970, legislation set the participating service for school employees to be the same as other regular KPERS members, which was 1.25 percent at that time. The prior service multiplier for education employees was set at 1.00 percent for years under the SSRS and 0.75 percent for years of school service not credited under the SSRS. In 1982, legislation increased the participating service credit for state, school, and local KPERS members from 1.25 percent to 1.40 percent of final average salary for all participating service credited after July 1, 1982.

In 1993, legislation raised the multiplier 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).

Legislation enacted in 2012, as subsequently clarified during the 2013 Legislative Session, applied a multiplier of 1.85 percent to Tier 2 members retiring under early retirement provisions, as well as to those retiring at the normal retirement dates.

Contribution Rates for KPERS

KPERS Tiers 1, 2, and 3 are participatory plans in which both the employee and employer make contributions. In 1961, 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 were set at 6.0 percent by statute beginning July 1, 2009. Tier 1

employee contribution rates increased from 4.0 percent to 5.0 percent in 2014, and to 6.0 percent on January 1, 2015.

In 1961, initial employer contributions were set at 4.35 percent (3.75 percent for retirement benefits and 0.60 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 Board, assisted by an actuary and following statutory guidelines.

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 Board. In 1981, 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 4.30 percent for state and local units of government (KPERS non-school) and to 3.30 percent for education units of government (KPERS school).

Actuarially recommended employer contribution amounts for the state and school group are determined by assessing the unfunded actuarial liability (UAL) of both groups and combining the separate amounts to determine one amount.

During the 1980s, the Legislature capped the actuarial contribution rates for employers on numerous occasions in statutory provisions. In 1988, 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 non-school 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. In 1993, legislation introduced the statutory budget caps that would limit the amount of annual increase for employer contributions and 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 Legislature reduced the statutory rate for participating employer contributions for FY 2016 and FY 2017 to 10.91 percent and 10.81 percent, respectively. In FY 2018 and subsequent fiscal years, the contribution rate may increase by no more than 1.20 percent above the previous year's contribution rate. According to the most recent actuarial analysis provided to KPERS, the statutory rate for the state-school group will equal the actuarial contribution rate in FY 2022 at 14.09 percent. In calendar year 2029, the funded ratio is estimated to reach 80.0 percent, which is the minimum ratio for which pension plans are considered by retirement experts to be adequately funded. The state-school "legacy" UAL, which is estimated to be \$6.242 billion, is projected to be eliminated sometime after calendar year 2040. The failure of employers participating in KPERS to contribute at the actuarial rate since 1993 has contributed to the long-term funding problem.

The long-term solvency can also be affected by market performance, changes to benefits, and actuarial assumptions, especially the assumed rate of return. Historically, the assumed rate of investment return was 8.0 percent; in 2017, the Board reduced the rate to 7.75 percent, resulting in an increase in the UAL of approximately \$500.0 million.

Retirement Benefits and Adjustments

The original 1961 KPERS legislation provided for the non-alienation of benefits. The KPERS Act stated, "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." (KSA 74-4923)

The 1961 legislation exempted the KPERS retirement benefits 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.

An automatic COLA was not included in the original 1961 legislation. Over the years, the Legislature provided additional *ad hoc* post-retirement benefit adjustments for retirees and their beneficiaries.

Other Recent Revisions

Working after retirement. With regard to substantive policy, the Legislature enacted a new working-after-retirement provision, which took effect on January 1, 2018. For retirees under the age of 62, there is a 180-day waiting period before returning to work. If the retiree is 62 or older, the current 60-day waiting period applies. There must be no prearranged employment agreement between the retiree and the public employer that is affiliated with KPERS. For covered positions, the employer pays the statutory contribution rate on the first \$25,000 of compensation and for that portion of compensation greater than \$25,000, the contribution rate is equal to 30.0 percent.

Covered positions for non-school employees are those that are not seasonal or temporary and whose employment requires at least 1,000 hours of work per year; covered positions for school employees are those that are not seasonal or temporary and whose employment requires at least 630 hours of work per year or at least 3.5 hours a day for at least 180 days. For non-covered positions, the employer makes no contributions.

None of the above provisions sunset.

Starting on January 1, 2018, all retirees who had retired prior to that date in state, local, and licensed or unlicensed school positions are not subject to an earnings limitation. Employers will pay the statutory contribution rate on the first \$25,000 of compensation and for that portion of compensation greater than \$25,000, the

contribution rate will be equal to 30.0 percent for retirees employed in covered positions.

Employer contributions. With regard to fiscal policy, the aforementioned 2012 legislation also modified the rate of increase in the annual caps on participating employer contributions. The 0.6 percent cap increased 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 UAL of the state and school group reaches an 80.0 percent funded ratio.

Legislation in 2016 provided the Governor with enhanced allotment authority and specifically allowed for the reduction of FY 2016 employer contributions to KPERS. In total, \$97.4 million in previously approved FY 2016 employer contributions to the state-school group were delayed.

Legislation in 2017 froze FY 2017 employer contributions at FY 2016 levels, reducing approved contributions by approximately \$64.1 million. FY 2018 employer contributions remained at their statutory level, and FY 2019 employer contributions were reduced by approximately \$194.0 million from their statutory amount. Repayment of the FY 2017 and FY 2019 reductions were approved *via* layered amortization of a level dollar amount over 20 years.

Legislation in 2018 transferred \$56.0 million from the State General Fund (SGF) to the KPERS Trust Fund in FY 2018, which was due to receipts exceeding consensus revenue estimates for the fiscal year by at least that amount. An additional \$82.0 million was transferred from the SGF to the KPERS Trust Fund in FY 2019.

Legislation in 2019 repaid the total reduction in FY 2016 employer contributions authorized in 2016. Additional interest was included for a total amount repaid of \$115.0 million from the SGF to the KPERS Trust Fund in FY 2019. Separate legislation transferred an additional \$51.0 million from the SGF to the KPERS Trust Fund in FY 2020.

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State and Local Government

J-5 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 the 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, the Senate Committee on Confirmation Oversight (Committee) reviews appointments and makes recommendations related to the appointments to the full Senate.

The Committee has six members with proportional representation from the two major political parties (KSA 2019 Supp. 46-2601). One of the members of the Committee is the Majority Leader of the Senate, 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 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 is included on the following pages, along with tables outlining the confirmation process for gubernatorial appointees and non-gubernatorial appointees.

Acting State Officers

State law provides that the Governor and other appointing authorities may appoint an acting state officer to certain positions (including department secretaries) to serve for a period not greater than six months, during which time the acting state officer shall have and exercise all of the powers, duties, and functions of the office in which he or she is acting (KSA 75-4315a).

**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
- Board of Tax Appeals, Members and Chief Hearing Office
- Central Interstate Low-Level Radioactive Waste Commission
- Children and Families, Secretary
- Civil Service Board
- Commerce, Secretary
- Corporation Commission
- Corrections, Secretary
- Court of Appeals, Judge
- Credit Union Administrator
- Crime Victims Compensation Board
- 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 Members and Executive Director
- Mo-Kan Metropolitan Development District and Agency Compact
- Pooled Money Investment Board
- Property Valuation, Director
- Public Employee Relations Board
- Public Employees Retirement System Board of Trustees
- Racing and Gaming Commission Members and Executive Director
- Regents, State Board
- Revenue, Secretary
- Securities Commissioner
- Transportation, Secretary
- Veterans' Affairs Office, Commission on, Director
- Water Authority, Chairperson
- Water Office, Director
- Wildlife, Parks and Tourism, Secretary

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 and statement of substantial interest to the Kansas Legislative Research Department (KLRD) <i>via</i> the chairperson of the Committee.
Step 4	KLRD and Revisor of Statutes staff review the file for completeness.
Step 5	If the file is complete, KLRD staff informs the chairperson of the Committee that the file is available for review.
Step 6	The appointment is considered by the Committee (during Session, the appointment may be considered by an appropriate subject-matter committee).
Step 7	If the Committee votes to recommend and authorize the appointee, the appointee may exercise the powers, duties, and functions of the office until the full Senate votes on confirmation.
Step 8	The full Senate votes on confirmation during the next Session (or current if Session is underway).

Senate Confirmation Process: Non-gubernatorial Appointments	
Step 1	The chairperson of the 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 KLRD <i>via</i> the chairperson of the Committee.
Step 3	The Director of Legislative Research 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 Department of Revenue officials complete the background and tax investigations. The information is sent to KLRD.
Step 5	The Director of Legislative Research informs the appointing authority and appointee the file is complete and available for review.
Step 6	The appointing authority and appointee 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 Legislative Research informs the chairperson and vice-chairperson of the Committee the file is available for review.
Step 8	The appointment is considered by the Committee.
Step 9	If the Committee votes to recommend and authorize the appointee, the appointee may exercise the powers, duties, and functions of the office until the full Senate votes on confirmation.
Step 10	The full Senate votes on confirmation during the next Session (or current if Session is underway).

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State and Local Government

J-6 State Employee Issues

Classified and Unclassified Employees

The state workforce is composed of classified and unclassified employees. HB 2391 (2015) revised the Kansas Civil Service Act to direct all persons in newly hired positions, including any rehired employee and any current employee who voluntarily transfers, or is voluntarily promoted or demoted, into an unclassified position. If federal law requires a state agency to maintain personnel standards on a merit basis and that agency has converted classified positions to unclassified positions, the state agency must adopt a binding statement of agency policy to meet the federal requirements.

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. These safeguards are as follows:

- 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;
 - 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; and
 - Employees are to be retained based on their ability to manage the duties of their position.

Characteristics of State Employees

In fiscal year (FY) 2019, a profile of classified state employees reflected the following.

The “average” classified employee	The “average” unclassified employee
Is 46 years of age	Is 45 years of age
Has 14 years of service	Has 10 years of service
Earns \$43,941 per year	Earns \$50,119 per year
Source: SHARP (Statewide Human Resource and Payroll System) (June 2019)—Includes classified and unclassified, benefit-eligible employees, including full- and part-time employees. Excludes Regents universities, legislators, student employees, classified temporary, and unclassified non-benefit-eligible temporary employees.	

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 contribute 6.0 percent of earnings bi-weekly based on salary. 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 Board of Regents unclassified employees. Contributions from both the employee and the State differ from plan to plan.

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 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, 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, 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 authorized a four-year appropriation totaling \$68.0 million from all funds, including \$34.0 million from the State General Fund (SGF), 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 SGF, for FY 2013.

Finally, the legislation codified a compensation philosophy for state employees, which was crafted by the State Employee Pay Philosophy Task Force. This philosophy was endorsed by the State Employee Compensation Oversight Commission during the 2007 Interim. 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

Fiscal Year	Salary Adjustment
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
2014	Step Movement: None Base Adjustment: None Employee Bonus: \$250 Bonus
2015	Step Movement: None Base Adjustment: None
2016	Step Movement: None Base Adjustment: None
2017	Step Movement: None Base Adjustment: None
2018	Step Movement: None Base Adjustment: 2.5 percent < 5 years; 5.0 percent > 5 years with no adjustment; 2.5 percent Judicial
2019	Step Movement: None Base Adjustment: 5.0 percent if not included in 2017 Legislative Pay Plan; 2.5 percent if included at 2.5 percent in 2017 Legislative Pay Plan; 5.0 percent uniformed corrections officers; 5.0 percent nonjudicial; 2.0 percent judicial
2020	Step Movement: None Base Adjustment: 2.5 percent if not otherwise receiving an increase for FY 2020; 15.9 percent for uniformed corrections officers; 5.0 percent for other correctional employees who routinely work with offenders
2021	Step Movement: None Base Adjustment: None

FY 2021. The 2020 Legislature authorized 40,719.9 full-time equivalent (FTE) positions for FY 2021, which is a net decrease of 67.4 positions below the FY 2020 approved number of FTE positions. Included among the adjustments are the following:

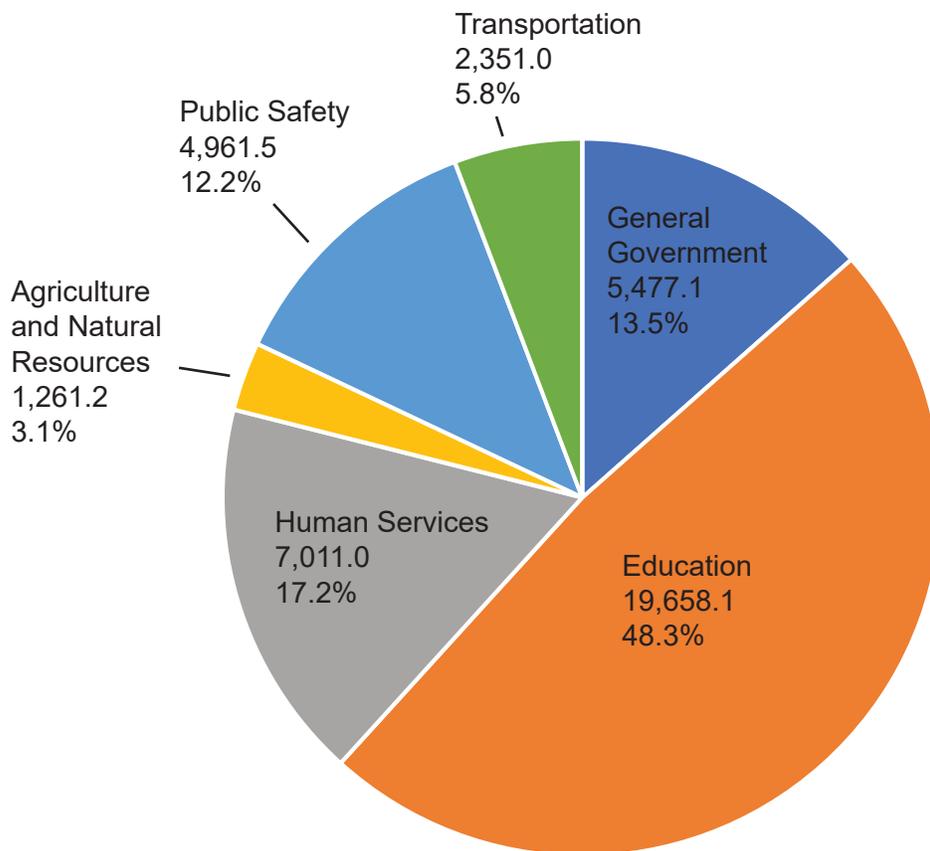
- Added 24.0 FTE positions in the Topeka Correctional Facility for correctional officers in the Security program for FY 2021;
- Added 10.0 FTE positions in the Department for Children and Families (DCF) to increase staff for the Prevention and Protection Services program located at the DCF Service Centers for FY 2021;
- Added 8.0 FTE positions in DCF for regional case management positions for the Family First Prevention Services program for FY 2021;

- Added 7.0 FTE positions in the Office of the Attorney General to expand the Medicaid Fraud Control Unit for FY 2021. This addition allows the unit to meet current needs for law enforcement, analytical, and prosecution capacity to combat provider fraud and abuse of patients; and
- Deleted 119.5 FTE positions in the Lansing Correctional Facility for a continued staff reduction plan as operations migrate to the new facility for FY 2021. The position decrease is primarily in both the Security and Support Services programs.

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. For purposes of this article, FTE position totals also include unclassified temporary positions that are considered “permanent” because they are authorized to participate in the state retirement system.

The following chart reflects approved FY 2021 FTE positions by function of government.

FY 2021 FTE Positions by Function of Government



Total: 40,719.9 FTE

Note: Numbers may not add due to rounding.

Largest employers. The following table lists the ten largest state employers and their number of FTE positions.

Agency	FTE Positions
University of Kansas	5,340.5
Kansas State University	3,754.0
University of Kansas Medical Center	3,333.9
Department for Children and Families	2,545.9
Department of Transportation	2,351.0
Wichita State University	2,188.9
Judicial Branch	1,868.0
Kansas State University – ESARP	1,159.2
Department of Revenue	1,078.7
Department of Health and Environment – Health	1,058.5
* Source: 2020 IBARS (Kansas Internet Budgeting and Reporting System) Approved	

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State Budget

K-1 District Court Docket Fees

Kansas established a uniform system of district court docket fees in 1974. These original docket fees were \$35 for civil cases and varying amounts for criminal cases, depending upon the nature of the crime.

From 1984 to 1995, local law libraries were allowed to charge differing library fees in addition to statutorily set docket fees, which caused docket fees to be non-uniform.

In 1996, the Legislature passed legislation that returned docket fees to a uniform level and also added docket fees for filing post-divorce motions for changes in child custody, child support orders, or visitation. The 2006 Legislature passed legislation specifying 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 branch 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 \$186,239 increase to the Prosecuting Attorneys' Training Fund.

The 2014 Legislature redirected docket fees from state agencies to the Judicial Branch starting in fiscal year (FY) 2014. Starting in FY 2015, docket fees were deposited in three places: the Judicial Council, the Electronic Filing Management Fund, and the Judicial Branch Docket Fee Fund. Through FY 2021, the Electronic Filing Management Fund will receive the first \$3.1 million in clerk's fees. From FY 2022 forward, that amount will be reduced to \$1.5 million for annual maintenance and upkeep.

The Office of Judicial Administration collected \$26.8 million in district court docket fees, surcharges, and miscellaneous revenue for the State Treasury in FY 2020.

Fines, penalties, and forfeitures. In FY 2020, the Judicial Branch collected \$15.5 million in fines, penalties, and forfeitures. A portion of funds collected, 33.6 percent, is 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 use the judicial system. The Judicial Branch collected \$7.7 million in other fees and assessments in FY 2020. 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 Kansas Department of Corrections.

The 2009 Legislature authorized the Supreme Court to enact a new surcharge in FY 2009. The surcharge is approved annually by the Legislature. The 2011 Legislature increased the surcharge by 25.0 percent. The 2014 Legislature abolished the Surcharge Fund and directed all docket fees generated by the surcharge be deposited in the Docket Fee Fund. The 2019 Legislature extended the surcharge through FY 2025.

Name of Fund	Administering Authority	Percent of Fees	FY 2020 Actual Revenue to Fund	FY 2021 Estimate Revenue to Fund	FY 2022 Estimate Revenue to Fund
DOCKET FEE DISTRIBUTION					
Judicial Branch Docket Fee Fund	Chief Justice, Kansas Supreme Court	99.01%	\$23,525,805	\$23,779,116	\$25,379,116
Judicial Council Fund	Judicial Council	0.99	183,372	185,684	185,684
Electronic Filing Management Fund	Chief Justice, Kansas Supreme Court	N/A	3,100,000	3,100,000	1,500,000
<i>Subtotal – Docket Fee Distribution</i>		100.00%	\$26,809,177	\$27,064,800	\$27,064,800
FINES, PENALTIES, AND FORFEITURES					
Crime Victim’s Compensation Fund	Attorney General	10.94%	\$1,697,857	\$1,697,857	\$1,697,857
Crime Victim’s Assistance Fund	Attorney General	2.24	347,642	347,642	347,642
Community Alcoholism and Intoxication Programs Fund	Aging and Disability Services	2.75	426,792	426,792	426,792
Dept. of Corrections Alcohol and Drug Abuse Treatment Fund	Department of Corrections	7.65	1,187,258	1,187,258	1,187,258
Boating Fee Fund	Wildlife, Parks and Tourism	0.16	24,832	24,832	24,832
Children’s Advocacy Center Fund	Attorney General	0.11	17,072	17,072	17,072
EMS Revolving Fund	Emergency Medical Services Board	2.28	353,850	353,850	353,850
Trauma Fund	Secretary of Health and Environment	2.28	353,850	353,850	353,850
Traffic Records Enhancement Fund	Department of Transportation	2.28	353,850	353,850	353,850
Criminal Justice Information Systems Line Fund	Kansas Bureau of Investigation	2.91	451,624	451,624	451,624
State General Fund	Kansas State Legislature	66.40%	\$10,305,091	\$10,305,091	\$10,305,091
<i>Subtotal – Fines, Penalties, and Forfeitures</i>		100.00%	\$15,519,715	\$15,519,715	\$15,519,715

Name of Fund	Administering Authority	Percent of Fees	FY 2020 Actual Revenue to Fund	FY 2021 Estimate Revenue to Fund	FY 2022 Estimate Revenue to Fund
OTHER FEES AND ASSESSMENTS					
State General Fund	Various	Fee	\$227,187	\$227,187	\$227,187
Law Enforcement Training Center Fund	Various	Fee	1,980,977	1,980,977	1,980,977
Marriage License Fees	Various	Fee	792,990	792,990	792,990
Correctional Supervision Fund	Various	Fee	985,094	985,094	985,094
Drivers License Reinstatement Fees	Various	Fee	1,068,796	1,068,796	1,068,796
KBI-DNA Database Fees	Various	Fee	744,579	744,579	744,579
Community Corrections Supervision Fee Fund	Various	Fee	433,065	433,065	433,065
Indigent Defense Services Application Fee	Various	Fee	593,825	593,825	593,825
Indigent Defense Services Bond Forfeiture Fees	Various	Fee	580,164	580,164	580,164
Other (e.g., Law Library, Court Reporter, Interest)	Various	Fee	279,591	279,591	279,591
<i>Subtotal – Other Fees and Assessments</i>			\$7,686,268	\$7,686,268	\$7,686,268
Total of All Docket Fees, Fines, Penalties, and Forfeitures Assessed			\$50,015,160	\$50,270,783	\$50,270,783

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District Court Docket Fees

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Introduction to State Budget

K-3
Kansas Laws to Eliminate Deficit Spending

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State Budget

K-2 Introduction to State Budget

Budget Overview

This report provides background information on the state budget process, including definitions of classifications of expenditures by function of government and by major purpose of expenditure.

Information about the approved fiscal year (FY) 2020 and FY 2021 budgets also are included, as well as general information on the status of the State General Fund (SGF).

The Budget Process

The Kansas budget is an executive budget in that the budgetary recommendations of the Governor are embodied in the appropriation bills, which are introduced and considered by the Legislature.

- Most state agencies are required by law to submit their budget requests no later than October 1 of each year (customarily, the deadline specified by the Director of the Budget is September 15). Agency budget requests are submitted to the Division of the Budget and the Kansas Legislative Research Department (KLRD) at the same time.
 - Nineteen state agencies, most of them occupational and professional licensing boards and financial institution regulatory agencies, are “biennial budget agencies” and are authorized to file budget adjustment requests every other year.
- The Director of the Budget (Director), an appointee of the Governor, is directed by law to review the detailed requests submitted by the various state agencies and to make initial recommendations that are transmitted to agencies in November. Agencies are then authorized to appeal those initial recommendations to the Governor. By law, judicial branch agency budgets are exempt from review by the Director. By practice, legislative branch agency budgets are not reviewed.
- The Governor then makes budgetary recommendations, which are provided to the Legislature at the beginning of each legislative session. The Governor’s recommendations

also are included in appropriations bills, which become the Legislature's base for approving the budget each year.

- At the discretion of the Governor, a budget cycle may include two budget years. In the first year of a two-year cycle, the agency requests and the Governor recommends a current year budget and two budget years. In the second year, the Governor's recommendation includes the current year and a budget year with the approved amount from the first year's legislation. In this case, the Governor's recommendation reflects only changes from the previously approved budget year amount. This distinction changes the comparison made in the *Budget Analysis* and the changes made to the appropriations bill(s).
- KLRD prepares an analysis of both the budget request made by each agency and the Governor's recommendations, which is submitted to the Legislature approximately three weeks after the Director submits the *Governor's Budget Report*.
- Agencies' budgets receive simultaneous consideration in the House Committee on Appropriations and the Senate Committee on Ways and Means. Identical appropriation bills reflecting the Governor's recommendation are introduced in both chambers.
 - **Consideration by the first chamber.** The chairpersons of the House Committee on Appropriations and the Senate Committee on Ways and Means appoint budget committees (House) or subcommittees (Senate) to consider appropriations for various agencies.
- After reviewing the budget requests, the budget committees and subcommittees draft a report that details all budgetary adjustments to the Governor's recommendations the budget committee or subcommittee supports. Once the report is prepared, it is presented to the corresponding full committee.
- The committee may adjust the recommendations or it may adopt the report as submitted. The recommendations of the committee are considered by the full chamber, which also may adjust (through floor amendments) or adopt the recommendations.
 - **Consideration by the second chamber.** The process for review of an appropriations bill in the second chamber repeats the steps followed in the chamber of origin.
 - **Conference committee action.** After consideration of an appropriations bill by the second chamber, the bill typically goes to a conference committee to reconcile differences between the House and Senate versions of the bill.
 - **Omnibus Appropriations Bill.** The Legislature usually adjourns its regular session sometime in early April and returns for a wrap-up session that occurs roughly two-and-one-half weeks following the first adjournment. During the wrap-up session, the Legislature takes action on a number of items of unfinished business. One of these is the Omnibus Appropriations Bill. It is designed to make technical adjustments to the appropriations bills passed earlier in the session and to address the fiscal impact of legislation passed during the session. The Omnibus Appropriations Bill is usually one of the last bills passed each session.
- **Classifications of state spending.** The State of Kansas classifies state spending by major purpose of expenditure and by function of government.

FY 2020 and FY 2021 Approved Budget

The 2020 Legislature approved:

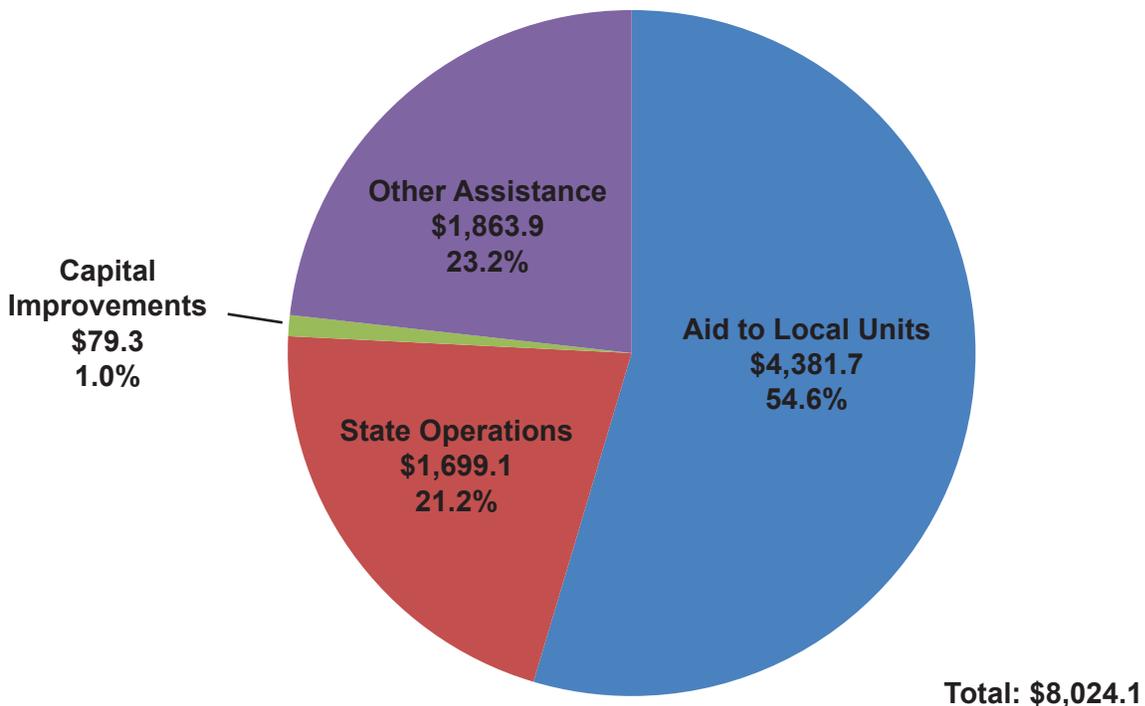
- An FY 2020 budget totaling \$18.7 billion from all funding sources, which is an increase of \$1.8 billion (10.4 percent) above FY 2019 actual expenditures.
- An FY 2020 SGF budget totaling \$7.8 billion, which is an increase of \$798.3 million (11.4 percent) above FY 2019 actual expenditures.
- An FY 2021 budget totaling \$19.9 billion from all funding sources, which is an increase of \$1.2 billion (6.6 percent) above the approved FY 2020 budget.
- An FY 2021 SGF budget totaling \$8.0 billion, which is an increase of \$192.9 million (2.5 percent) above the approved FY 2020 budget.

Major purposes of expenditure include the following:

- **State Operations.** Actual agency operating costs for salaries and wages, contractual services, commodities, and capital outlay.
- **Aid to Local Units.** Aid payments to counties, cities, school districts, and other local government entities.
- **Other Assistance, Grants, and Benefits.** Payments made to or on behalf of individuals as aid, including public assistance benefits, unemployment benefits, and tuition grants.
- **Capital Improvements.** Cash or debt service payments for projects involving new construction, remodeling and additions, rehabilitation and repair, razing, and the principal portion of debt service for a capital expense.

The following illustration reflects approved FY 2021 SGF expenditures by major purpose of expenditure.

FY 2021 SGF Expenditures by Major Purpose
(Dollars in Millions)

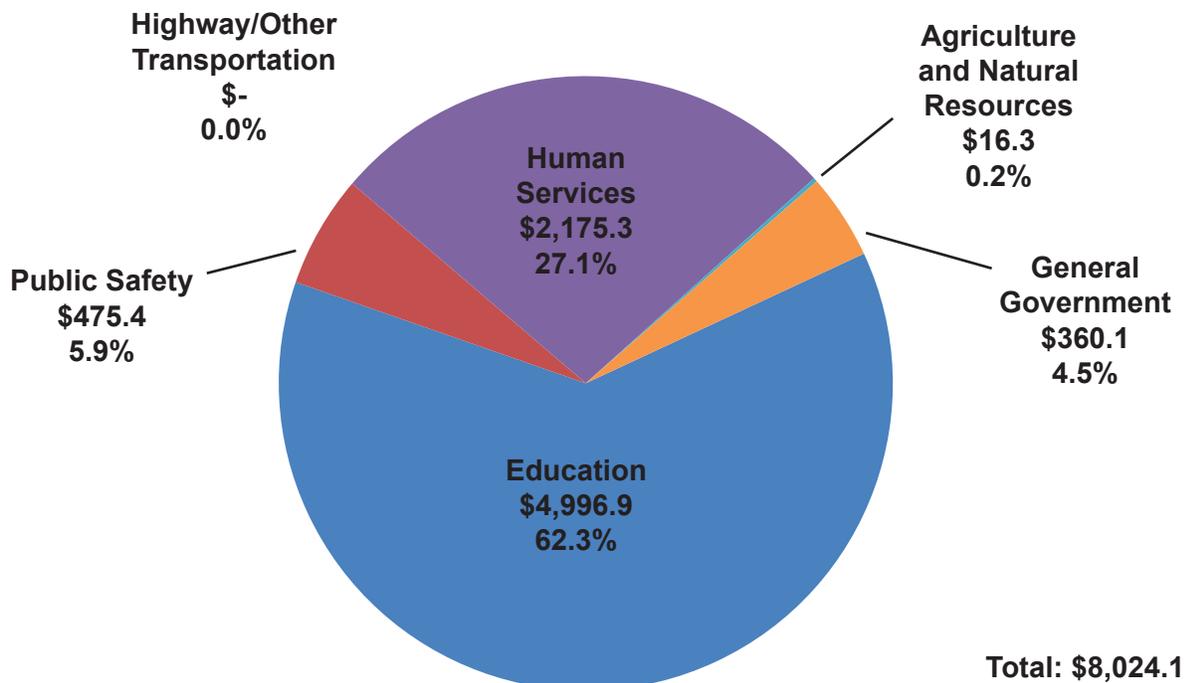


Expenditures by function of government are grouped by agencies that make expenditures for similar programs and purposes. There are six functions of government:

- **General Government.** State agencies with both administrative and regulatory functions, including statewide elected officials, the legislative and judicial branches, and fee-funded professional and regulatory licensing agencies.
- **Human Services.** Agencies that provide services to individuals, including the Department for Aging and Disability Services and state hospitals, the Department for Children and Families, the Department of Labor, the health portions of the Department of Health and Environment, and the Commission on Veterans' Affairs Office.
- **Education.** Agencies that provide various educational services to Kansans, including the Department of Education, the Kansas Board of Regents and the Regents Institutions, the State Library, the State Historical Society, and the Schools for the Blind and the Deaf.
- **Public Safety.** Agencies that ensure the safety and security of citizens, including the Department of Corrections and its facilities, the Highway Patrol, and the Kansas Bureau of Investigation.
- **Agriculture and Natural Resources.** Agencies that protect the natural and physical resources of the state, including the Department of Agriculture, the environment portion of the Department of Health and Environment, and the Department of Wildlife, Parks and Tourism.
- **Transportation.** This function includes only the Department of Transportation.

The following illustration reflects approved FY 2021 SGF expenditures by function of government.

FY 2021 SGF Expenditures by Function of Government
(Dollars in Millions)



Consensus Revenue Estimating Process

Since 1974, a consensus approach involving the legislative and executive branches (Division of the Budget, KLRD, the Department of Revenue, and one consulting economist each from the University of Kansas, Kansas State University, and Wichita State University) has been utilized for estimating revenues to the SGF. These consensus estimates are used by both the Governor and the Legislature to formulate and approve budget requests. The law requires on or before December 4 and April 20, the Director of the Budget and the Director of Legislative Research to prepare a joint estimate of revenue to the SGF for the current and ensuing fiscal year. The following table reflects actual SGF receipts (in millions) for FY 2019 and the April 2020 estimate, as adjusted for legislation, of the Consensus Revenue Estimating Group for FY 2020 and FY 2021.

(Dollars in Millions)			
	Actual FY 2019	Estimated FY 2020	Estimated FY 2021
Income Taxes	\$ 4,241.8	\$ 3,690.0	\$ 4,188.0
Excise Taxes	3,043.3	3,003.3	2,999.1
Other Taxes	186.2	192.1	196.4
Other Revenue	(102.9)	(60.2)	(153.0)
Total	\$ 7,368.4	\$ 6,825.2	\$ 7,230.5

SGF revenue sources include:

- **Income taxes** include individual and corporate income and financial institutions taxes.
- **Excise taxes** include sales and compensating use taxes, alcohol and cigarette taxes, and severance taxes.
- **Other taxes** include motor carrier property taxes, estate and succession taxes, and insurance premium taxes.
- **Other revenue** includes interest earnings, agency earnings, and net transfers to and from the SGF.

The following tables reflect where an SGF dollar is projected to come from in FY 2021 and how it will be spent.

Where Each FY 2021 SGF Dollar Comes From (Dollars in Thousands)			
52	¢	Individual Income Tax	\$ 3,770,000
38	¢	Sales and Compensating Use Tax	2,770,000
5	¢	Corporation Income Tax	370,000
2	¢	Insurance Premium Tax	172,500
1	¢	Alcohol Taxes	106,000
2	¢	Tobacco Taxes	116,000
0	¢	Severance Tax	7,100
(1)	¢	Other Taxes and Revenue	(81,100)
\$ 1.00		Total Receipts	\$ 7,230,500

Note: Totals may not add due to rounding.

Where Each FY 2021 SGF Dollar Will Be Spent (Dollars in Thousands)			
51	¢	Department of Education	\$ 4,102,700
11	¢	Board of Regents/ Postsecondary Education	869,806
0	¢	Other Education	24,422
62	¢	<i>Subtotal – Education</i>	\$ 4,996,927
13	¢	Department for Aging and Disability Services and Hospitals	\$ 1,004,758
10	¢	Department of Health and Environment – Health	812,275
5	¢	Corrections and Facilities	427,074
4	¢	Department for Children and Families	349,523
2	¢	Department of Administration	136,853
1	¢	Judicial Branch	112,057
0	¢	Board of Indigents’ Defense Services	34,994
0	¢	Legislative Agencies	33,223
0	¢	Highway Patrol and KBI	27,633
1	¢	All Other	88,740
\$ 1.00		Total Expenditures	\$ 8,024,057

Note: Totals may not add due to rounding.

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K-1
District Court Docket Fees

K-2
Introduction to State Budget

K-3
Kansas Laws to Eliminate Deficit Spending

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State Budget

K-3 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

Certain provisions of the *Kansas Constitution* are often cited with regard to financial limitations. For instance, Section 24 of Article 2 states, “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 \$1.0 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 pre-audited 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

A portion of 1990 HB 2867 (then KSA 75-6704) provided that the Governor and Legislature must target year-end State General Fund (SGF) balances expressed as a percentage of fiscal year expenditures and demand transfers, as follows: at least 5.0 percent for fiscal year (FY) 1992, 6.0 percent for FY 1993, 7.0 percent for FY 1994, and 7.5 percent for FY 1995 and thereafter (now KSA 2019 Supp. 75-6702).

Beginning in the 1992 Legislative Session, an “Omnibus Reconciliation Spending Limit Bill” has been relied upon to reconcile total SGF 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.

Budget Stabilization Fund

The Legislature in 2016 HB 2739 established the Budget Stabilization Fund. The Budget Stabilization Fund may be expended solely by an act of appropriation by the Legislature or the State Finance Council as an act of legislative delegation. The Budget Stabilization Fund is not considered as part of the ending balance of the SGF for compliance with statutory requirements for allotments, but is included for the unencumbered ending balance requirement.

For FY 2021, 50.0 percent of the amount that SGF receipts exceed the consensus revenue estimates for FY 2021 shall be transferred from the SGF to the Budget Stabilization Fund. Additionally, 10.0 percent of the unencumbered ending balance in the SGF at the end of the fiscal year shall be transferred to the Budget Stabilization Fund without consideration of the previous transfer. Starting in FY 2022, only the amount of excess receipts above the consensus revenue estimates shall be transferred. No transfers are statutorily required subsequent to FY 2022.

The balance of the Budget Stabilization Fund at the beginning of FY 2021 was \$81.9 million.

Allotment System

The allotment system statutes (KSA 2019 Supp. 75-3722 through 3725) were enacted in 1953 as part of the law that 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 actions that can or cannot be taken 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 in which expenditures in a fiscal year would exceed the resources of the SGF or a special revenue fund.
- Allotments need not be applied equally or on a *pro rata* basis to all appropriations from, for example, the SGF. Thus, the Governor may pick and choose “as long as such discretion is not abused.”
- Demand transfers from the SGF to another fund are not subject to the allotment system because, technically, appropriations are made from the other fund and not the SGF. Such transfers include those to the Local *Ad Valorem* Tax Reduction Fund, Special County and City Revenue Sharing Fund, Special City and County Highway Fund, State Highway Fund, State Water Plan Fund, and Capital Outlay State Aid Fund. Three transfers that were traditionally considered demand transfers are converted to revenue transfers *via* the appropriations bill, including the Faculty of Distinction Fund, the School District Capital Improvements Fund, and the Local *Ad Valorem* Tax Reduction fund.
- In addition to funds exempt from allotment as demand transfers, the following funds are exempt by statute: the Evidence Based Programs Fund, the Environmental Stewardship Fund, the Dry Cleaning Facility Release Trust Fund, the State School District Finance

Fund, the Water Program Management Fund, the Hazardous Waste Management Fund, the Aboveground Petroleum Storage Tank Release Trust Fund, the Medical Assistance Fee Fund, the Underground Petroleum Storage Tank Release Trust Fund, the Health Care Stabilization Fund, and the Solid Waste Management 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 SGF balance to zero.

The Legislature and the courts and their officers and employees are exempt from the allotment system under KSA 2019 Supp. 75-3722. Expenditures from the Juvenile Justice Improvement Fund established in KSA 75-52, 164 are also exempt from allotment under KSA 2019 Supp. 75-3722. That fund has subsequently been converted to the Evidence Based Juvenile Programs Account of the SGF, which has been treated as exempt from allotment as well.

The \$100.0 Million Balance Provision

A provision in 1990 HB 2867 (KSA 2019 Supp. 75-6704) authorized the Governor to issue an executive order or orders, with approval of the State Finance Council, to reduce SGF expenditures and demand transfers if the estimated year-end balance in the SGF is less than \$100.0 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 \$100.0 million.

Debt service costs, the SGF 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 transfer (*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 SGF expenditures (except debt service and the KPERs-School employer contributions) by 1.0 percent. At the time of the State Finance Council action, the SGF ending balance was projected at approximately \$76.0 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 SGF will be sufficient to meet in full the authorized expenditures and obligations of the SGF 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 SGF 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 SGF. However, to whatever extent the amount of a certificate results in greater spending from the SGF than would occur if expenditures had to be delayed, there may be some reductions in interest earnings that otherwise would accrue to the SGF.

To cover cash flow issues, the State Finance Council authorized issuance of certificates of indebtedness as follows:

- \$65.0 million in December FY 1983;
- \$30.0 million in October FY 1984;
- \$75.0 million in April FY 1986;

- \$75.0 million in July FY 1987;
- \$140.0 million in December FY 1987 (replaced the July certificate);
- \$75.0 million in November FY 1992;
- \$150.0 million in January FY 2000;
- \$150.0 million in January FY 2001;
- \$150.0 million in September FY 2002;
- \$200.0 million in December FY 2002;
- \$450.0 million in July FY 2003;
- \$450.0 million in July FY 2004;
- \$450.0 million in July FY 2005;
- \$450.0 million in July FY 2006 ;
- \$200.0 million in December FY 2007;
- \$350.0 million in December FY 2008;
- \$300.0 million in June FY 2009;
- \$250.0 million in December FY 2009;
- \$225.0 million in February FY 2009;
- \$700.0 million in July FY 2010;
- \$700.0 million in July FY 2011;
- \$600.0 million in July FY 2012;
- \$400.0 million in July FY 2013;
- \$300.0 million in July FY 2014;
- \$675.0 million in July FY 2015;

- \$840.0 million in July FY 2016;
- \$900.0 million in July FY 2017;
- \$900.0 million in July FY 2018;
- \$600.0 million in July FY 2019;
- \$275.0 million in July FY 2020; and
- \$900.0 million in July FY 2021.

The amount of a certificate is not “borrowed” from any particular fund or group of funds. Rather, it is a paper transaction by which the SGF is temporarily credited with the amount of the certificate and state moneys available for investment that are managed by the PMIB.

The PMIB is responsible 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 Employees Retirement System (KPERs) 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 \$100.0 million balance provision or if neither such action was taken.

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Taxation

L-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. This 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.

Thirty states, including Kansas, currently have some form of circuit-breaker program.

Eligibility Requirements

- Household income of \$35,700 or less; and
- Someone in the household is:
 - Age 55 or above;
 - A dependent under age 18;
 - Blind; or
 - Otherwise permanently disabled.

Renters were eligible (15 percent of rent was considered equivalent to property tax paid) until tax year 2013.

Program Structure

The current Kansas Homestead Refund Program is an entitlement for eligible taxpayers based upon their household income and their property tax liability that provides a refund of a percentage of the property taxes actually and timely paid on real or personal property used as their personal residence. The maximum available refund is \$700, and the minimum refund is \$30.

Legislative History

A 2006 change to the Homestead Refund Program expanded it by approximately \$4.5 million. The 2007 Legislature passed an

even more significant expansion of the program, which increased the size of the program by an additional \$9.9 million.

Among the key features of the 2007 expansion law are:

- The maximum refund available under the program was increased from \$600 to \$700;
- 50.0 percent of Social Security benefits were excluded from the definition of income for purposes of qualifying for the program; and
- A residential valuation ceiling was added, prohibiting any homeowner with a residence valued at \$350,000 or more from participating in the program.

Program Claims and Refunds			
	Eligible Claims Filed	Amount	Average Refund
FY 2013	115,719	\$37.586 million	\$325
FY 2014	86,082	\$29.415 million	\$342
FY 2015	70,343	\$23.032 million	\$327
FY 2016	76,202	\$25.968 million	\$341
FY 2017	79,737	\$24.649 million	\$309
FY 2018	83,155	\$24.948 million	\$324
FY 2019	73,302	\$23.994 million	\$327
FY 2020	63,526	\$20.853 million	\$328

Hypothetical Taxpayers

The impact of the 2006 and 2007 program expansion legislation is demonstrated on the following hypothetical taxpayers:

Homestead Refund			
	Pre-2006 Law	2006 Law	2007 Law
Elderly couple with \$1,000 in property tax liability and \$23,000 in household income, \$11,000 of which comes from Social Security benefits	\$72	\$150	\$385
Single mother with two young children, \$750 in property tax liability, and \$16,000 in household income	\$240	\$360	\$420
Disabled renter paying \$450 per month in rent, with \$9,000 of household income from sources other than disability income (no longer eligible, as of tax year 2014)	\$480	\$528	\$616

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L-1
Homestead Program

L-2
Selected Tax Rate
Comparisons

L-3
Kansas Property Tax
Cycle

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Taxation

L-2 Selected Tax Rate Comparisons

The following tables compare selected tax rates and tax bases with those of nearby states.

SALES TAX			
	Rate	Food	Non-prescription Drugs
Kansas	6.50%	6.50%	Non-exempt
Missouri	4.225%	1.225%	Non-exempt
Nebraska	5.50%	Exempt	Non-exempt
Colorado	2.90%	Exempt	Non-exempt
Iowa	6.00%	Exempt	Non-exempt
Arkansas	6.50%	0.125%	Non-exempt
Texas	6.25%	Exempt	Exempt

Source: Federation of Tax Administrators, as of January 1, 2020.

MOTOR FUEL TAX ¹ (cents per gallon)		
	Gasoline	Diesel Fuel
Kansas	24.03	26.03
Missouri	17.42	17.42
Nebraska	30.20	29.60
Colorado	22.00	20.50
Iowa	30.50	32.50
Arkansas	24.80	28.80
Texas	20.00	20.00

¹ Includes fees such as environmental and inspection fees.
Source: Federation of Tax Administrators, as of January 1, 2020.

CIGARETTE TAX	
	Excise Tax (cents per pack)
Kansas	129
Missouri	17
Nebraska	64
Oklahoma	203
Colorado	84
Iowa	136
Arkansas	115
Texas	141

Source: Federation of Tax Administrators, as of January 1, 2020.

CORPORATE INCOME TAX				
	Tax Rate	Number of Brackets	Bracket Range	Apportionment Method
Kansas ¹	4.00%	1	Flat Rate	Three factor
Missouri	4.00%	1	Flat Rate	Sales
Nebraska	5.58%-7.81%	2	\$100,000	Sales
Oklahoma	6.00%	1	Flat Rate	Three factor
Colorado	4.63%	1	Flat Rate	Sales
Iowa	6.00%-12.00%	4	\$25,000-\$250,001	Sales
Arkansas	1.00%-6.50%	6	\$3,000-\$100,001	Double Weighted Sales
Texas ²	N/A	N/A	N/A	Sales

¹ Kansas levies a 3.0 percent surtax on taxable income over \$50,000.

² Texas imposes a franchise tax on entities with more than \$1,130,000 total revenues at a rate of 0.75 percent, or 0.375 percent for entities primarily engaged in retail or wholesale trade, on lesser of 70.0 percent of total revenues or 100.0 percent of gross receipts after deductions for either compensation or cost of goods sold.

Source: Federation of Tax Administrators, as of February 2020.

INDIVIDUAL INCOME TAX							
	Federal IRC Starting Point	Tax Rate Range	Number of Brackets	Bracket Range	Personal Exemption Single	Personal Exemption Married	Personal Exemption Dependent
Kansas	Adjusted Gross Income	3.10%-5.70%	3	\$15,000-\$30,000	\$2,250	\$4,500	\$2,250
Missouri	Adjusted Gross Income	1.50%-5.40%	9	\$1,053-\$8,424	-. ¹	-. ¹	-. ¹
Nebraska	Adjusted Gross Income	2.46%-6.84%	4	\$3,290-\$31,750	\$140 (credit)	\$280 (credit)	\$140 (credit)
Oklahoma	Adjusted Gross Income	0.50%-5.00%	6	\$1,000-\$7,200	\$1,000	\$2,000	\$1,000
Colorado	Taxable Income	4.63%	1	Flat Rate	-. ¹	-. ¹	-. ¹
Iowa	Adjusted Gross Income	0.33%-8.53%	9	\$15,666-\$74,970	\$40 (credit)	\$80 (credit)	\$40 (credit)
Arkansas	No Relation to Federal IRC	2.00%-6.60%	6	\$4,600-\$80,801	\$26 (credit)	\$52 (credit)	\$26 (credit)
Texas	N/A	N/A	N/A	N/A	N/A	N/A	N/A

¹ Colorado and Missouri use the personal exemption amounts provided in the current version of the Internal Revenue Code. The Tax Cuts and Jobs Act of 2017 set the IRC personal exemption amounts at \$0.

Source: Federation of Tax Administrators, as of February 2020.

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Taxation

L-3 Kansas Property Tax Cycle

The *ad valorem* property tax is the single largest revenue source for Kansas state and local governments, with over \$5 billion in taxes levied in both fiscal years 2019 and 2020. While the State receives relatively little direct property tax revenue, this tax makes up more than half of the tax receipts for counties, school districts, cities, and townships. Additionally, the statewide uniform general fund levy for schools is remitted to the State from school districts and serves as a major component of state school finance payments.

This article reviews the 17-month property tax cycle and key dates in Kansas, including appraisal, budgeting and rate setting, and payment of property taxes.

Appraisal and Assessment

The *Kansas Constitution* provides for a classified property tax system, wherein property is generally appraised at fair market value and then assessed at the ratio of appraised value specified for that class of property. Residential property is assessed at 11.5 percent of appraised value, and commercial property is assessed at 25.0 percent of appraised value.

Appraisal Day – January 1

January 1 marks the beginning of the tax cycle and is the date on which all property is considered to be appraised. If a piece of property's value increases or decreases after January 1, that change will not affect the tax associated with that property until the following tax year.

Valuation Notification and Equalization Appeal – March 1

For real estate, if the value of a piece of property changes, the county is required to notify the taxpayer by March 1. The mailing of the valuation notice commences a 30-day window in which taxpayers may appeal the valuation of their property. This equalization appeal opportunity is only for the valuation of the property and not for the actual tax owed. This appeal may be resolved through an informal meeting with the county appraiser or through an appeal process with the State Board of Tax Appeals. Ultimately, appeals may be resolved in the court system.

Municipal Budgeting and Mill Levies

County appraisers are required to notify county clerks of property values on or before June 1, and county clerks are required to notify taxing districts of their aggregate assessed value within the county on or before June 15.

Budget Certification – August 25

Generally, municipalities are required to certify their budgets to county clerks on or before August 25. An additional certification date of October 1 may exist for cities or counties required to hold an election to increase their budget authority beyond that provided for by a property tax lid. Completion of the budgeting process allows the calculation of the tax rate, or mill levy, for each taxing district. The mill levy is determined by dividing the total dollars needed for the budget by the assessed valuation of the taxing district, expressed in mills. One mill is \$1 of tax per \$1,000 of assessed valuation.

Tax Statements Delivered – December 15

County clerks are required to certify the tax rolls for each taxing district to county treasurers by November 1, and treasurers are responsible for sending tax statements to taxpayers on or before December 15 each year.

Tax Payment and Protests

Tax Payment, First Half – December 20

While a lien attaches to property by operation of law each November 1 for that year's property taxes, the first half of property taxes are not due until December 20. If a tax bill is less than \$10, the entire amount is due on December 20. Property taxes are paid to county treasurers, who then distribute the proceeds of the tax to the taxing entities.

While only the first half of the property tax is due on December 20, if the tax is unpaid after that date, interest immediately begins accruing on the entire amount of the property tax.

Payment Under Protest

The payment of the first half of property tax affords a taxpayer a second option for appeal of the property tax, in the form of a payment under protest. To appeal by protest, a taxpayer must pay the disputed amount of property tax and indicate, using a form provided by the county treasurer, that the payment is being made under protest. Generally, the protest form must be filed at or before the time of payment of the first half of property taxes.

The protest must include the specific grounds of the protest. If the grounds of protest are based upon the valuation of the property, the protest must state which portion of the valuation is admitted to be valid. If the protest is based upon inappropriate assessment of tax, the protest must state the portion of the assessment admitted to be valid. A taxpayer who appealed the valuation of their property pursuant to an equalization appeal generally will not be permitted to protest the valuation of their property for the same tax year.

Tax Payment, Second Half – May 10 of following year

The final step of the property tax cycle occurs on May 10 of the following year, when the second half of the property tax is due from the taxpayer to the county treasurer. The treasurer then distributes the proceeds of the tax to the taxing entities.

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M-1
The Relationship
between KTA and
KDOT

M-2
State Highway
Fund Receipts and
Transfers

M-3
State Motor Fuels
Taxes and Fuel Use

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Transportation

M-1 The Relationship between KTA and KDOT

The Kansas Turnpike Authority (KTA) is an entity separate from the Kansas Department of Transportation (KDOT), but the two entities work together to serve the transportation needs of Kansas. This article discusses the statutory relationship between the KTA and KDOT.

KTA and KDOT

In 1953, the Kansas Legislature created the KTA as a separate, quasi-public organization. The KTA was tasked with constructing, operating, and maintaining Kansas Turnpike (Turnpike) projects. To pay for the projects, the KTA is authorized to issue bonds payable solely or partly from KTA revenues. The proceeds of those bonds are to be used only to pay for costs of the project or projects for which the bonds are issued, and the bonds are not a debt of the State or of any of its political subdivisions. The KTA has a statutory relationship with KDOT in terms of governance, contracts, and potentially adding Turnpike projects to the state highway system.

The KTA Board

A five-member board oversees KTA operations. Two of these members are appointed by the Governor for four-year terms.

The Governor's appointees must be residents of Kansas and be owners of revenue bonds issued by the KTA. Additionally, one member must be the Secretary of Transportation (Secretary), and another must be the chairperson of the Senate Committee on Transportation.

The fifth member must be a member of the House Committee on Transportation and is appointed by the Speaker of the House of Representatives. The KTA elects one member as chairperson and another as vice-chairperson. The KTA also must elect a secretary-treasurer who need not be a member of the KTA (KSA 68-2003).

Thus, the KTA has always had a relationship with KDOT by virtue of the Secretary serving on the KTA board.

The Secretary's role as a member of the KTA significantly expanded with enactment of 2013 HB 2234. Beginning July 1, 2013, the

Secretary became the director of operations of the KTA. The provision was set to sunset July 1, 2016, but enactment of 2015 HB 2085 removed the sunset and changed the title to “director” (KSA 68-2003). As director of the KTA, the Secretary is responsible for the daily administration of the toll roads, bridges, structures, and facilities constructed, maintained, or operated by the KTA. The director or the director’s designee has such powers as necessary to carry out these responsibilities. The KTA’s chief executive officer (CEO) directs daily operations.

Contracts between the Secretary and the KTA

The KTA and KDOT may solidify their partnership by forming contracts with each other. The Secretary and KTA are authorized and empowered to contract with one another to provide personnel and equipment for preliminary project studies and investigations (KSA 68-2021). Generally, KSA 68-2021 allows the KTA to contract with KDOT for use of KDOT resources for certain types of work related to KTA projects. These provisions have remained essentially unchanged since 1955.

A statute added in 2013 authorizes the Secretary and KTA to contract with each other to provide personnel and equipment and other resources for recordkeeping, reporting, administrative, planning, engineering, legal, and clerical functions and for construction, operation, and maintenance of Turnpike projects and state highways (KSA 68-2021a). Additionally, KSA 68-2021a requires the two parties to minimize duplication of effort, facilities, and equipment in operation and maintenance of turnpikes and highways of the state.

KTA and KDOT contract with one another frequently to minimize duplication of efforts and provide cost savings to the State. According to the Secretary’s testimony on 2015 HB 2085, KDOT and KTA have worked together more since the partnership was formalized in 2013. According to testimony provided to legislative committees in 2017 and 2019, KTA and KDOT have partnered on bridge surveys, bridge inspections, and construction. Also, KDOT and KTA partnered

with the City of Wichita on a major construction project on East Kellogg.

Potential for KTA Projects to Become Part of the State Highway System

Although the KTA and KDOT have a formalized partnership, the KTA retains its separate identity, powers, and duties (KSA 68-2021a). KTA maintains the integrity of bonded indebtedness, but when bonds issued under the provisions of KSA 68-2001 to KSA 68-2020 are paid or a sufficient amount for the payment of all bonds and the interest has been set aside for the benefit of bondholders, the project can become a part of the state highway system and therefore be maintained by KDOT (KSA 68-2017).

When a project becomes a part of the state highway system, the Secretary would have the power granted to the KTA under KSA 68-2009 to fix, revise, charge, and collect tolls for the use of such Turnpike project. The tolls, rents, and rates of the charges must be sufficient to maintain, repair, operate, regulate, and police such Turnpike (KSA 68-2017). However, bonds issued for maintenance and rebuilding have meant no Turnpike project has thus far become a part of the state highway system.

Adding Tolloed Highways

KSA 68-2002 states no KTA toll road project shall be undertaken unless and until a project has been thoroughly studied and the study shows public funds for such a project are not available, construction could be financed solely or partly using private funds in toll road revenue bonds, and the project and indebtedness can be financed solely or partly through tolls and other income from operating the project.

Provisions enacted in 2019 Senate Sub. for HB 2007, specifically amendments to KSA 68-20,120, authorize the Secretary to construct a toll or turnpike project separate from the KTA if certain requirements are met. The requirements include a proposal prepared jointly by KDOT and local units of government, the project must

add capacity or be a new bridge or highway, the project has been determined to be feasible, revenues from such a project are used only for the project for which the tolls are collected, and the project must be approved by the KTA and the State Finance Council. In neutral testimony on SB 192 on this topic, the KTA CEO stated the KTA was prepared to be a partner with KDOT, local communities, and other stakeholders on such projects.

Differentiating Between Toll and Taxes

The issue of whether a toll is considered a tax has arisen in the U.S. Supreme Court, in federal district courts, and in several individual states. In the case of *Sands v. Manistee River Imp. Co.*, 123 U.S. 288, 294, 8 S. Ct. 113, 115, 31 L. Ed. 149 (1887), the Supreme Court found there is no analogy between the imposition of taxes and the levying of tolls for improvement of highways. Taxes are levied for the support of government and their amount is regulated by its necessities. Toll, on the other hand, are the compensation for the use of another's property, or of improvements made. The cost of a toll is determined by the cost of the property, improvements of the property, and considerations of the return such values or expenditures should yield.

State supreme courts and federal courts in at least six states agree tolls are not taxes. It is also clear toll revenue cannot be used to fund projects outside of a state's transportation system.

Florida. In *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992), the Florida Supreme Court distinguished taxes imposed by sovereign right to support functions the government is called upon to perform from user fees the user could avoid. In *McGovern v. Lee Cnty.*, 346 So. 2d 58, 64 (Fla. 1977), the Florida Supreme Court found toll revenues can be used for approaches and approach roads if a significant portion of its traffic moves onto the tolled facility.

Illinois. In 1945, the Illinois Supreme Court (in *People ex rel. Curren v. Schommer*, 392 Ill. 17, 20, 63 N.E.2d 744, 746) determined the act creating the Illinois State Superhighway Commission

was constitutional and found a clear distinction between tolls and taxes. Illinois courts have not stated whether toll revenue from one toll facility can be used to fund another toll facility.

Massachusetts. In *Murphy v. Massachusetts Tpk. Auth.*, 462 Mass. 701, 971 N.E.2d 231 (2012), the plaintiffs alleged tolls charged by the Massachusetts Turnpike Authority (MTA) but used on overhead, maintenance, and capital costs of un-tolled Metropolitan Highway System (MHS) facilities were an unconstitutional tax. The Massachusetts Supreme Judicial Court found the Legislature had specifically authorized such use of toll revenues, the tolls were collected to compensate the MTA for expenses incurred in operating the MHS, and this use was not unconstitutional.

Montana. In *Monarch Min. Co. v. State Highway Commn*, 128 Mont. 65, 70, 270 P.2d 738, 740 (1954), the Montana Supreme Court made a clear distinction between taxes and tolls. A tax is a demand of the sovereignty levied for support of the government and its amount is regulated by government necessities. Toll is the demands of proprietorship, exacted as compensation for use of another's property.

Rhode Island. In December 2019, the U.S. Court of Appeals, First Circuit, found that tolls of the state of Rhode Island aimed at commercial trucks and to be used to maintain I-95 bridges were fairly described as tolls and were not taxes under the Tax Injunction Act (TIA). See *American Trucking Associations Inc. v. Alviti*, 944 F.3d 45 (2019). The case was returned to the U.S. District Court for Rhode Island. The U.S. District Court had previously found such fees to be taxes under Rhode Island state law and dismissed the case, finding the federal court did not have jurisdiction under TIA.

Virginia. The Metropolitan Washington Airports Authority (MWAA) was formed in 1986 as an entity independent from Virginia, the District of Columbia, and the federal government. However, it possessed powers delegated to it by the District of Columbia and Virginia, and Congress explicitly granted the MWAA the power to "levy fees or other charges." Virginia had repeatedly authorized

its Commonwealth Transportation Board to use toll revenue to fund mass transit projects within the Dulles Corridor before it transferred control of those assets to the MWAA. The U.S. Court of Appeals for the Fourth Circuit, in *Corr v. Metro. Washington Airports Auth.*, 740 F.3d 295, 297 (2014), found tolls were not taxes and agreed with the MWAA and Virginia that Metrorail expansion

and the Dulles Toll Road are part of a single interdependent transit project, and therefore tolls could be used for Metrorail expansion. In 2019, this view was upheld in the decision of the U.S. District Court for the Eastern District of Virginia in *Schneider v. Metro. Washington Airports Auth.* (WL 1931752).

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M-3
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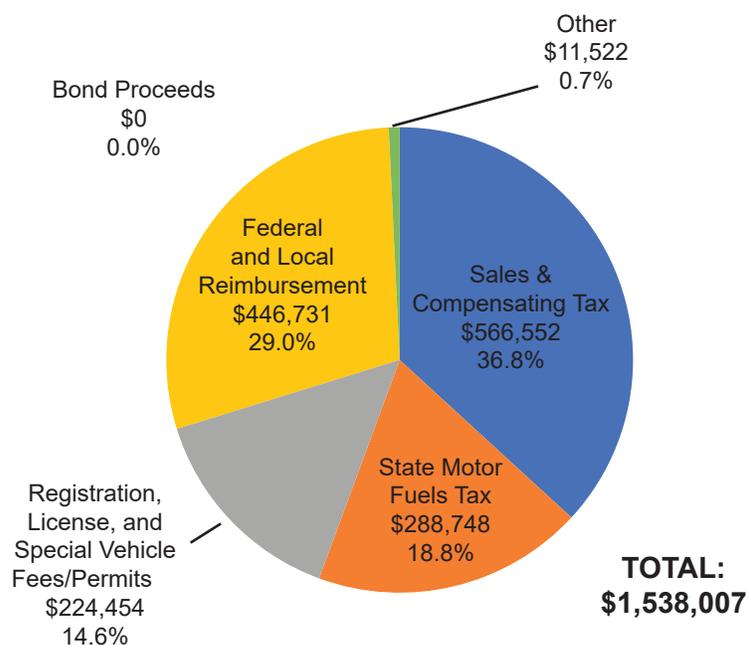
Transportation

M-2 State Highway Fund Receipts and Transfers

Article 11, Section 10 of the *Kansas Constitution* says, “The State shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels.” Projected revenues to the State Highway Fund (SHF) for use by the Kansas Department of Transportation (KDOT) can be described in five categories: state sales tax, state motor fuels tax, federal funding, vehicle registration fees, and “other.” This article discusses the components of those categories and transfers from the SHF.

KDOT estimates detailed in the pie chart below—updated through November 2020—(including November consensus estimates) include the amounts for revenues in fiscal year (FY) 2021.

Projected KDOT FY 2021 Revenues as of November 2020
(Dollars in Thousands)



Note: Other Funds include driver’s license fees, special vehicle permits, interest on funds, and miscellaneous revenues.

Components of State Highway Fund Revenues

The following information summarizes statutes related to major categories of state funding collected in the SHF.

State motor fuels tax. Kansas imposes a tax of 24¢ per gallon on gasoline and 26¢ per gallon on diesel fuel, unchanged since 2003. A separate article on state motor fuel taxes and fuel use is provided as M-3 State Motor Fuels Taxes and Fuel Use, available at <http://www.kslegresearch.org/KLRD-web/Briefing-Book-2021.html>. KSA 79-34,142 directs 66.37 percent of fuels tax revenues to the SHF and 33.63 percent to the Special City and County Highway Fund; the percentages have not changed since 2003.

State sales tax. KSA 79-3620 directs 16.154 percent of the revenues from the state sales tax to the SHF. The sales tax rate on which this is imposed is 6.5 percent. KSA 79-3710 similarly directs 16.154 percent of compensating use tax to the SHF.

Registration fees. Statutes also direct moneys from vehicle registration and title fees (KSA 2019 Supp. 8-145 and others), fees from permits for oversize or overweight vehicles (KSA 2019 Supp. 8-1911), and other registration-related fees to the SHF. For most vehicles, property taxes paid at registration and retained by the counties are the majority of the total amount paid. Examples are provided in the general memorandum “Taxes and Fees Paid at Vehicle Registration,” available at <http://www.kslegresearch.org/KLRD-web/Transportation.html>.

Other fees. Driver’s license exam and reinstatement fees (KSA 8-267 and others) are included in this category, as are smaller items, such as junkyard certificate of compliance fees (KSA 68-2205) and sign permit and license fees (KSA 68-2236).

Anticipated Revenues the State Highway Fund Has Not Realized

Since 2011, actual revenues to the SHF have been reduced by approximately \$3.8 billion when compared with the amounts anticipated. The following table summarizes the categories of those reductions. A detailed spreadsheet, “State Highway Fund Revenue Adjustments, FY 2011-FY 2021 APPROVED,” available at <http://www.kslegresearch.org/KLRD-web/Transportation.html>, shows year-by-year revenue adjustments by categories of Extraordinary Transfer or Ordinary Transfer, listed by the project or agency receiving the transfer.

The following summary tables include current transfers and transfer adjustments approved during the 2020 Session for FY 2020 and FY 2021.

These transfers are broken down by type of transfer as follows.

“Ordinary (or historically routine) transfers” refers to those transfers that have some relationship to transportation projects in other agencies or that have generally occurred over a number of years as part of the appropriations process. KDOT considers these transfers to include any transfers that started prior to the Transportation Works for Kansas (T-Works) program.

“Extraordinary transfers,” a KDOT designation, refers to transfers that have been added since the creation of T-Works in 2010.

SHF Revenue Adjustments (Dollars in Millions)		
Transfer:	FY 2020 Approved	FY 2021 Approved
Ordinary	\$(106.58)	\$(158.45)
Extraordinary	\$(258.22)	\$(106.70)
Total Transfers	\$(364.80)	\$(265.15)

Changes to SHF Revenues FY 2011 Actual to FY 2021 Approved (Dollars in Millions)	
Transfer:	
Ordinary	\$(1,156.06)
Extraordinary	\$(2,831.26)
Total Transfers	\$(3,987.32)

certain moneys related to commercial vehicles in addition to moneys from fuel taxes. Transfers to the SCCHF of commercial motor vehicle *ad valorem* taxes and the commercial vehicle fees that replaced the *ad valorem* taxes as of January 1, 2014 (see KSA 2019 Supp. 8-143m), have been suspended since FY 2010. Appropriations bills, most recently Section 169 of 2020 SB 66, have amended KSA 79-3425i so that no commercial vehicle taxes or fees are transferred from the State General Fund to the SCCHF for FY 2020, FY 2021, and FY 2022. The transfers had been limited to approximately \$5.1 million a year beginning in FY 2001.

Highway-related Transfers to Local Governments

KSA 79-3425i states the Special City and County Highway Fund (SCCHF) will receive

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Transportation

M-3 State Motor Fuels Taxes and Fuel Use

For many years, the state sources that provide the most funding for transportation programs have been motor fuels taxes, sales tax, and registration fees. This article provides information regarding Kansas motor fuels taxes and fuel use.

Per Gallon Motor Fuel Taxes

Kansas' motor fuel taxes are 24¢ per gallon on gasoline and 26¢ per gallon on diesel fuel, unchanged since 2003. The table below 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 Comprehensive Transportation Program enacted in 1999. No increases in fuel taxes are associated with the Transportation Works for Kansas (T-Works) program enacted in 2010 or the Eisenhower Legacy Transportation Program (also referred to as IKE) enacted in 2020.

Motor Fuels Tax Rates Changes—1925-2020		
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¢

A tax of 17¢ per gallon was imposed on E85 fuels beginning in 2006. Certain fuel purchases, including purchases of aviation fuel and fuel used for non-highway purposes, are exempt from fuel tax.

Federal fuel taxes of 18.4¢ per gallon for gasoline, gasohol, and special fuels and 24.4¢ per gallon for diesel fuel also are included in fuel prices. The amount of federal tax per gallon has not increased since 1993, although increases have been proposed in Congress. As of July 1, 2020, combined state, local, and federal gasoline taxes across the country averaged 54.78¢ per gallon and ranged from a low of 32.17¢ per gallon in Alaska to 80.87¢ per gallon in California and 77.10¢ per gallon in Pennsylvania. The equivalent rate for Kansas was 42.43¢ per gallon; for Colorado, 40.40¢; for Missouri, 35.82¢; for Nebraska, 52.50¢; and for Oklahoma, 38.40¢.¹

Recent increases in other states. In 2018, Oklahoma added taxes of 3¢ per gallon on gasoline and 6¢ per gallon on diesel. In November 2018, Missouri voters rejected an increase in gasoline taxes of 2.5¢ each year for four years beginning July 1, 2019. According to the National Conference of State Legislatures, Virginia and the District of Columbia increased gasoline taxes in 2020; Alabama, Arkansas, Illinois, Ohio, and Virginia enacted gasoline tax increases in 2019; California, Indiana, Montana, Oregon, South Carolina, Tennessee, and West Virginia increased gasoline taxes in 2017; and Utah accelerated indexing provisions enacted in 2015. In October 2016, New Jersey enacted a tax bill that, among other tax changes, increased the state's fuel tax by 23¢ per gallon starting November 1, 2016, which was its first fuel tax increase since 1988. In 2015, eight states passed legislation to increase fuel taxes. In 2013, six states and the District of Columbia enacted legislation to increase or allow an increase (generally, by indexing the rate) in gas taxes, followed by three more states in 2014. Laws in 16 of the 31 states that have increased motor fuel taxes since 2013 include indexing provisions to automatically change the amount of the tax.²

Tax Increases and Revenue Projections

In Kansas, during the 2019 Session, HB 2370 and SB 188 (identical as introduced) proposed phased increases of 3¢ a gallon for gasoline and 5¢ a gallon for diesel by fiscal year (FY) 2023.

The fiscal notes prepared by the Division of the Budget projected total increased revenues by FY 2023 of \$40.0 million annually to the State Highway Fund (SHF) and \$20.2 million to the Special City and County Highway Fund (SCCHF).³ Also in 2019, HB 2381 proposed 6¢ increases for all motor fuels, changing the allocations between the SHF and the SCCHF, and reducing the percentage of sales and compensating use taxes statutorily directed to the SHF. In the fiscal note for that bill, the Division of the Budget stated the Department of Revenue estimated the changes would increase motor fuels tax revenues to the SHF by \$104.2 million but reduce sales and compensating use taxes directed to the SHF by the same amount. All three bills died in 2020, at the end of the biennium.

Fuels Usage and Tax Revenues

Kansas fuel tax revenues and gasoline usage fluctuate, as illustrated in the graphics on the following page.⁴

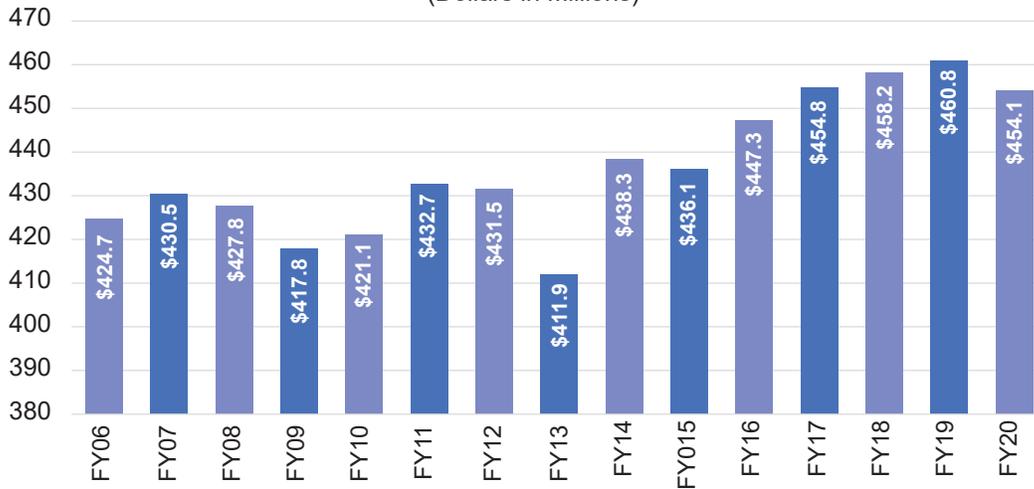
Amounts Households Spend

According to the Bureau of Labor Statistics in the U.S. Department of Labor, U.S. households spent an average of \$10,742 on transportation in 2019, which is an increase from \$8,293 in 2011 and a 10.1 percent increase from 2018, due mostly to insurance costs. In 2019, \$2,094 (19.5 percent) of the transportation total was spent on gasoline.⁵ If fuel prices average \$1.89 per gallon, Kansas state fuel taxes account for 12.7 percent of the amount motorists spend.

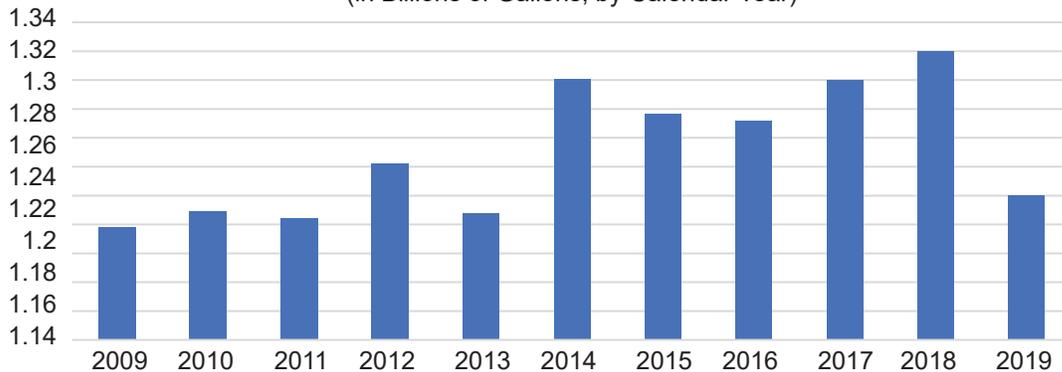
State Gasoline Taxes as Portion of Overall Fuel Cost					
Vehicle, driving	Gallons used	U.S. average		Kansas average	
		Total fuel cost, at \$2.12 per gallon	State tax average, \$0.3638	Total fuel cost, at \$1.89 per gallon	Tax average, \$0.24
12,000 miles, 15 mpg	800	\$1,696	\$291	\$1,512	\$192
12,000 miles, 25 mpg	480	\$1,018	\$175	\$907	\$115
12,000 miles, 35 mpg	343	\$727	\$125	\$648	\$82
30,000 miles, 15 mpg	2,000	\$4,240	\$728	\$3,780	\$481
30,000 miles, 25 mpg	1,200	\$2,544	\$437	\$2,268	\$288
30,000 miles, 35 mpg	857	\$1,817	\$312	\$1,620	\$206
State gasoline tax as percent of overall fuel cost		17.2%		12.7%	

Fuel costs from <https://gasprices.aaa.com/> as of November 6, 2020.
 State tax costs from <https://www.api.org/oil-and-natural-gas/consumer-information/motor-fuel-taxes> and as of July 1, 2020.

Kansas Fuel Tax Receipts
(Dollars in Millions)



Kansas Total Gasoline Sales
(in Billions of Gallons, by Calendar Year)



- 1 American Petroleum Institute, “Combined Local, State and Federal (Cents per Gallon) Rates Effective 7/1/2020,” <http://www.api.org/oil-and-natural-gas/consumer-information/motor-fuel-taxes>, accessed November 6, 2020.
- 2 2018 Oklahoma HB 1010 and 2018 Missouri HB 1460. National Conference of State Legislatures, “Recent Legislative Actions Likely To Change Gas Taxes,” August 12, 2020, <http://www.ncsl.org/research/transportation/2013-and-2014-legislative-actions-likely-to-change-gas-taxes.aspx>, accessed November 6, 2020.
- 3 A very small percentage of the overall revenue increases projected would come from commercial vehicle fuel permit increases included in the bills.
- 4 Reports, Monthly Motor Fuel Reported by States, U.S. Department of Transportation, Federal Highway Administration, Office of Highway Policy Information, Motor Fuel, and the Highway Trust Fund. http://www.fhwa.dot.gov/policyinformation/motorfuelhwy_trustfund.cfm and reports for previous years, accessed November 6, 2020. Motor Fuel Activity Reports, Net After Refunds, <https://ksrevenue.org/mfstats.html>.
- 5 U.S. Department of Labor Bureau of Labor Statistics, news release dated September 9, 2020, “Consumer Expenditures–2019,” <https://www.bls.gov/news.release/pdf/cesan.pdf>, accessed October 13, 2020.

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COVID-19

Utilities and Energy

N-1 Broadband Expansion

The federal government and the state of Kansas have engaged in multiple efforts over the past few decades to determine how to expand broadband access, particularly to rural America. The COVID-19 pandemic spurred the federal government and states to address broadband expansion by increasing funding for grant projects and focusing funds on increasing access to remote learning for children in K-12 schools and students at college universities. The pandemic also increased the need for quality broadband access due to the large shift to telehealth practice during the pandemic. This article provides a summary of some of the recent broadband expansion initiatives at the federal level, initiatives in Kansas, and recent legislative committee work on the topic.

Federal Government

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act created several funding sources for broadband expansion. The Distance Learning, Telemedicine, and Broadband Program, to be administered by the Rural Utilities Service within the U.S. Department of Agriculture, was created to respond to the coronavirus pandemic (COVID-19) domestically and internationally for telemedicine and distance learning services in rural areas. The Program was allocated \$25.0 million for grant awards. States, local government entities, federally-recognized tribes, nonprofits, and for-profit businesses can apply. The grant funds may be used for acquisition of eligible capital assets, such as broadband facilities; audio, video, and interactive video equipment; computer hardware, network components, and software; and inside wiring and similar infrastructure that further distance learning and telemedicine services.

Section 20004 of the CARES Act allows for short-term agreements or contracts with telecommunications providers to expand telemental health services for isolated veterans during the public health emergency. This provision allows the Secretary of Veterans Affairs (Veterans Secretary) to enter into short-term agreements or contracts with telecommunications companies to provide temporary, complimentary or subsidized, fixed, and mobile broadband services for the purposes of providing expanded mental health services to isolated veterans through telehealth or

Veterans Affairs Video Connect during a public health emergency. This provision prioritizes veterans who live in unserved and underserved areas, veterans that reside in rural and highly rural areas, low-income veterans, and any other veterans that the Veterans Secretary considers to be a higher risk for suicide and mental health concerns during isolation periods due to a public health emergency.

Kansas

2020 Legislation

House Sub. for SB 173 authorizes and directs the Secretary of Transportation (Transportation Secretary) to initiate a program called the Eisenhower Legacy Transportation Program (Program). The Program provides for the construction, improvement, reconstruction, and maintenance of the state highway system. As part of preservation plus projects, the bill authorizes adding technology elements in a preservation plus project. This includes laying broadband fiber or the conduit for broadband fiber.

The bill also authorizes the Transportation Secretary, working with the Office of Broadband Development within the Department of Commerce, to make grants for construction projects that expand and improve broadband service in Kansas. The bill requires grants made by the Transportation Secretary to reimburse grant recipients for up to 50 percent of actual construction costs in expanding and improving broadband service.

The bill also establishes the Broadband Infrastructure Construction Grant Fund. This fund is to be used to provide grants for the expansion of broadband service in Kansas. The bill requires \$5.0 million from the State Highway Fund be transferred to the Broadband Infrastructure Construction Grant Fund on July 1, 2020, 2021, and 2022. On July 1, 2023, and each July 1 thereafter, through July 1, 2030, the annual required transfer is \$10.0 million.

SPARK Taskforce

The CARES Act provided \$150.0 billion in direct relief to states from the U.S. Department of the Treasury through the federal Coronavirus Relief Fund (CRF). Kansas was allocated \$1.25 billion in CRF moneys. The Strengthening People and Revitalizing Kansas (SPARK) Taskforce is responsible for distributing the CRF moneys in Kansas. CRF moneys must be expended by December 30, 2020.

The SPARK Taskforce recommended, and the State Finance Council approved, the transfer of \$50.0 million from the CRF to the Kansas Department of Commerce Office of Broadband Initiatives for Connectivity Emergency Response Grant (CEREG) funds. Governor Kelly created the Office of Broadband Initiatives through Executive Order No. 20-67 to oversee the CEREG application process and distribute funds. Internet service providers (ISPs), local governments, nonprofits, and other private entities are eligible to apply for the grants.

For purposes of the grant applications, underserved areas are defined as having Internet speeds lower than 25 megabits per second (download) and 3 megabits per second (upload) [25/3 Mbps]. For areas that are considered served with adequate broadband, an entity could submit an application demonstrating a need. Applicants were required to provide a local match. The state share of the proposed project may not exceed \$10.0 million. Factors considered when evaluating proposals included level of demonstrated need related to the COVID-19 pandemic, project readiness, broad community support, and geographic dispersion.

The State Finance Council also approved \$10.0 million from the CRF to the Department of Commerce for a Provider Partnership Support program that would use existing ISP programs to provide broadband access to low-income households. ISPs would determine household eligibility, which is typically based on qualification for the National School Lunch Program and Supplemental Nutrition Assistance Program (SNAP). In exchange for state funding support in fiscal year (FY) 2020, ISPs would provide

continued support using existing funds for 6 to 12 months in FY 2021.

Statewide Broadband Expansion Task Force (2018)

Prior to the COVID-19 pandemic, the Legislature passed Senate Sub. for HB 2701 (2018), which created the Statewide Broadband Expansion Task Force (Task Force).

The Task Force submitted a progress report to the Legislature in January 2019. At the March 28, 2019, meeting, the Task Force established three subcommittees to address the various aspects of its charge. The three subcommittees were Mapping and Funding, Deployment, and Oversight and Projected Timeline. Each subcommittee met twice and prepared a report to the Task Force on its activities and recommendations. The Task Force submitted a final report to the Legislature in January 2020. In its final report, the Task Force recommended to the Legislature, among other things:

- Create a broadband policy statement goal that considers broadband as not only reliable internet access, but as a tool for attracting and promoting economic development, public safety,

educational opportunities, health care, and agriculture;

- Establish a goal to ensure every Kansan has access to broadband services, and access should be at a speed of, at a minimum, 25/3 Mbps with scalable technology; and
- Request funding to maintain the current Kansas Broadband Map and request Connected Nation create a broadband availability map that includes projects that have been awarded in Connect America Fund—Phase II, Alternative Connect America Cost Model-Phase I and II, and other grant funding for broadband that has been deployed or is planned for development.

Mapping

On July 31, 2019, Connected Nation, a nonprofit organization that helps address broadband and digital technology gaps, in partnership with the Governor's Office, published a statewide broadband map of wire-line and wireless coverage: <https://connectednation.org/kansas/interactivemap>. The map was funded by a \$300,000 grant in 2018 and was created by collecting data in collaboration with Kansas broadband service providers.

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Utilities and Energy

N-2 Electric Utility Rates

The Kansas Legislature has sought to address the issue of increasing electricity rates in recent legislative sessions. An overview of measures undertaken by stakeholders and legislative leaders to study and make recommendations on rising electricity costs follows.

How Electric Utility Rates Are Set

Electric utilities under the jurisdiction of the Kansas Corporation Commission (KCC) must receive KCC approval to change their rates or terms of service. The KCC's role, according to KSA 66-101 *et seq.*, is to ensure utilities establish rates that are just and reasonable while also ensuring efficient and sufficient service from the utility. In determining an appropriate rate for a regulated electric utility, the KCC must first determine the utility's annual revenue requirement considering five factors:

- The cost of capital invested in assets (also called a rate of return) that reflects the actual cost of debt and a reasonable return or profit the utility has an opportunity to earn on shareholders' equity;
- The total investment, or rate base, upon which a return will be earned;
- The accumulated and ongoing depreciation of plant(s) and equipment;
- The company's reasonable and prudent operating expenses; and
- Income taxes.

After determining the revenue requirement, the KCC must design rates that will collect the utility's revenue requirement from the utility's customers in an efficient and equitable manner.

Legislative Activity Affecting Rates

2015 House Sub. for SB 91

The 2015 Legislature passed House Sub. for SB 91, providing that after January 1, 2016, a voluntary goal replaces the renewable energy portfolio standard (RPS) that required affected utilities to

achieve net renewable generation capacity equal to at least 20 percent of the utility's peak demand by the year 2020. The bill continues all rules and regulations of the KCC in effect on June 30, 2015, that allow a utility to recover costs incurred to meet the RPS. In addition, the KCC is required to allow affected utilities to recover reasonable costs that have been committed to be incurred to comply with the RPS prior to its repeal or incurred as a result of meeting the 20 percent goal.

2018 SCR 1612

In the 2018 Legislative Session, the Senate introduced a concurrent resolution (SCR 1612) urging the KCC to lower electric rates to regionally competitive levels. Proponents of the concurrent resolution stated electric rates in Kansas are much higher than those in surrounding states. Opponents stated the resolution was unnecessary as rate reductions would be realized through a pending merger of Westar Energy (Westar) and Kansas City Power & Light (KCP&L). The resolution passed the Senate Committee of the Whole but died in the House Committee on Energy, Utilities and Telecommunications.

2019 Sub. for SB 69

In 2019, the Legislature passed Sub. for SB 69. The bill directs the Legislative Coordinating Council (LCC) to authorize a study conducted by one or more independent organizations that have experience evaluating electric utilities. The purpose of the study is to provide information that may assist future legislative and regulatory efforts in developing electric policy that includes regionally competitive rates and reliable electric service. The study also requires input from residential, commercial, and industrial customers, electric utilities, and other stakeholders. The study was conducted in two parts, with the first portion to be completed by January 8, 2020, and the second portion to be completed by July 1, 2020.

2020 Senate Sub. for HB 2585

The bill exempts certain public utilities subject to rate regulation by the KCC from paying Kansas

income tax. The bill also requires a utility that includes expenses related to income taxes as a component of its retail rates to track and defer into a regulatory asset or liability, as appropriate, any overcollection or undercollection of income tax expenses that is a result of any change to a utility's income tax rate by state or federal law. The bill allows certain utilities to apply for adjusted retail rates due to this change in income tax expenses.

The bill also allows the KCC to approve, for a term of up to ten years, contract rates not based on the cost of service to a facility or on the incremental cost to a facility, if certain conditions are met. The bill also authorizes the KCC to approve, for a period of up to five years, discounts from standard rates for electric service for new or expanded facilities of industrial or commercial customers that are not in the business of selling or providing goods or services directly to the general public, if certain requirements are met.

For both contract rates and discounted rates, the bill requires the KCC to approve a mechanism to track the utility's reductions in revenue as a result of the contract rate or discounted rate from the date the rate becomes effective, and requires such reductions in revenue be deferred to a regulatory asset. The balance of the regulatory asset is included in the rate base and revenue requirement of the utility in each of its general rate proceedings, through an amortization of the balance over a reasonable period, until fully collected from the utility's non-contract rates and discount rate customers.

Other Developments Affecting Rates

Westar/KCP&L Merger

On May 24, 2018, the KCC approved a settlement agreement giving Westar and Great Plains Energy (the parent company of KCP&L) approval to merge as equals. Under the agreement, the two companies will become wholly owned subsidiaries of a new parent company, Evergy, and serve more than 1.5 million customers in Kansas and Missouri. As the regulator of public

utilities in the state, the KCC was charged with determining if the merger is in the public interest. That determination is made largely on the satisfaction of eight merger standards previously established by the KCC. In its review of the standards, the KCC found the merger, as modified by the Settlement Agreement plus one additional condition, was in the public interest. The additional condition requires the companies to develop and submit to the KCC an Integrated Resource Plan (IRP) reporting process within three months of the close of the transaction. The implementation of the IRP will ensure the merger maximizes the use of Kansas energy resources.

Westar/KCC Rate Studies

In order to address the concerns about Westar and KCP&L's rates, the parties to the Settlement Agreement agreed that the utilities and KCC staff would complete separate studies comparing the prices of KCP&L and Westar Energy with other utilities in the region and explain the major differences between surrounding states rates.

In September 2018, the KCC approved a \$66.0 million rate cut for electric customers of Westar, resulting in a decrease of \$3.80 per month for the average residential customer.

In December 2018, the KCC approved a settlement agreement that would cut electric rates for KCP&L customers by \$10.7 million dollars annually, as well as provide \$36.9 million in bill credits.

2019 Sub. for SB 69 Rate Study

Part 1

On July 29, 2019, the LCC approved a bid submitted by the consulting firm London Economics, Inc. (LEI) to conduct Part 1 of the rate study authorized by Sub. for SB 69. This phase of the study addressed the effectiveness of current Kansas ratemaking practices and evaluated options for making retail electricity prices in Kansas regionally competitive.

With respect to the effectiveness of current Kansas ratemaking practices, LEI identified both strengths and areas for improvement, as highlighted below.

Strengths

- Policies for investor-owned utilities (IOUs) attract adequate capital investments;
- Electric cooperatives and municipal utilities are effective at providing reliable electric services at a reasonable cost; and
- Relative to surrounding states, Kansas does not have an unusual institutional framework nor more burdensome requirements.

Areas for Improvement

- Residential rates of IOUs are high compared to similarly regulated utilities in regional states;
- Ratepayers continue to pay for utility investments that are underutilized;
- IOU cost recovery through surcharges and riders without a comprehensive ratemaking process is contributing to rising costs to ratepayers; and
- Kansas lacks a mandated IRP process, as found in other states.

With respect to steps that could be taken to make retail electricity prices in Kansas regionally competitive, LEI identified costs and benefits for each option that they evaluated, noting that each option could target different revenue components, such as generation, transmission, or distribution costs. They advised that implementation would depend on numerous factors that would require careful consideration, indicating that further analysis would be necessary to provide estimates of the costs and benefits of each of the options. Ultimately, LEI concluded that there are no simple means of reducing electricity rates, but that Kansas should adopt a multi-faceted approach.

They offered four near-term recommendations, as follows:

- Adopt a state energy plan;
- Create a competitive procurement framework and require regulated utilities to submit integrated resource plans at regular intervals;
- Allow KCC to explore the development of performance-based regulation mechanisms to incentivize efficiency and alignment with customer benefits and state policy objectives; and
- Establish a framework for the retirement and securitization of assets where cost-benefit analysis demonstrates clear benefits to customers.

Part 2

The LCC entered into a contract with the infrastructure firm AECOM on January 7, 2020, to provide the Kansas Legislature a report on other consequential issues materially affecting Kansas electricity rates. On July 1, 2020, AECOM submitted both a public and confidential report to the KCC. The public version was heavily redacted due to the confidential information provided by the electric public utilities. Subsequently, the KCC entered an order on July 14, 2020, directing staff and AECOM to identify the basis for each redaction and confirm that the information redacted is confidential. On September 29, 2020, a less-redacted version of the study was filed by AECOM. Both versions, along with Part 1 of the study, may be found at <https://kcc.ks.gov/electric/kansas-electric-rate-study>.

As directed by Sub. for SB 69, Part 2 of the study examined 13 topics, which AECOM divided into 9 categories: Electric Vehicle Charging, Advanced Energy Solutions, Transmission, Rates, Economic Development, Cost Causation, Security, Resource Planning, and Fuels.

AECOM broke down its review and assessment into economics, technology, and electric market areas of focus. Economics review included covered areas of service, electricity rate design, and integrated resource planning. The technology

area of focus examined potential benefits of advanced energy solutions, cyber and physical security, and transmission investments. Review of electricity markets analyzed Kansas' regional economy and competitiveness, including regional electricity markets and electric vehicle charging station market trends. Highlights of some key findings are listed below:

Electric Vehicle Charging

- Costs of building and operating electric vehicle (EV) charging stations are not being recovered from ratepayers;
- Deregulation of EV charging stations may increase support services; and
- Kansas' current EV charging service rate is competitive with other states.

Transmission

- Regional transmission costs do not explain the relatively high electric rates in Kansas as compared to other regional states;
- Benefits of transmission investments include job creation and therefore increased earnings and tax revenue; and
- Localized marginal price has been decreasing, which shows the benefit of a regional electricity market.

Economic Development

- Current retail electric rates in Kansas might have a slight impact on Kansas' economic competitiveness as evidenced by some industrial sectors experiencing less growth than in peer states; and
- Although Kansas does offer Economic Development Rates to new and expanding businesses in Kansas, other states also offer such rates at a larger discount and for a longer time period.

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Veterans, Military, and Security

O-1 Cybersecurity

A number of provisions related to cybersecurity have been considered by the Legislature in recent years, while many other states introduced and enacted cybersecurity measures of their own. An overview of these activities follows.

Kansas Legislation

SB 454 (2020)

SB 454, as amended by the Senate Committee on Ethics, Elections and Local Government, would have added cybersecurity assessments, cybersecurity plans, and cybersecurity vulnerabilities to the list of exceptions to disclosure in the Kansas Open Records Act (KORA). The bill also would have defined these three new terms. The bill was passed by the Senate, but no action was taken by the House Committee on Elections. As introduced, the bill contained provisions related to election security that were removed by the Senate Committee.

HB 2209 (2019–enacted)

HB 2209, among other provisions related to insurance, allows the Kansas Board of Regents (KBOR) to purchase cybersecurity insurance. The bill allows KBOR to purchase such insurance as it deems necessary to protect student records, labor information, and other statutorily protected data KBOR maintains, independent of the Committee on Surety Bonds and Insurance, and without complying with purchasing procedures of the Department of Administration. The term “cybersecurity insurance” includes, but is not limited to, first-party coverage against losses such as data destruction, denial of service attacks, theft, hacking, and liability coverage guaranteeing compensation for damages from errors, such as the failure to safeguard data.

House Sub. for SB 56 (2018–enacted)

House Sub. for SB 56 created the Kansas Cybersecurity Act (Act). The legislation established the position of Chief Information Security Officer (CISO) and the Kansas Information Security Office (KISO) within the Office of Information Technology Services (OITS) to

administer the Act and perform various functions related to cybersecurity for executive branch agencies. The definition of “executive branch agency” excludes elected office agencies, the Kansas Public Employees Retirement System, Regents institutions, the State Board of Regents, and the Adjutant General’s Department. Executive branch agency heads are solely responsible for the security of all data and information technology resources under the agency’s purview through various measures and procedures. Executive branch agencies have the discretion to pay for cybersecurity services from existing budgets, from grants or other revenues, or through special assessments to offset costs. Any increase in fees or charges due to the Act, including cybersecurity fees charged by the KISO, are to be fixed by rules and regulations adopted by the agency and can only be used for cybersecurity.

Sub. for HB 2331 (2017)

Sub. for HB 2331 would have enacted the Representative Jim Morrison Cybersecurity Act. The bill was based on the previous year’s HB 2509 in that it would have created the KISO and established the position of CISO in statute.

The bill would have also established the Kansas Information Technology Enterprise (KITE), which would have consolidated functions of OITS and transferred current OITS employees and officers to KITE.

The House Committee on Government, Technology, and Security introduced HB 2331 during the 2017 Legislative Session. The House Committee recommended a substitute bill be passed that would have included various amendments to the original contents of 2017 HB

2331, as well as an amended version of 2017 HB 2359 (relating to the creation of KITE). After passing the House Committee of the Whole, the bill was referred to the Senate Committee on Ways and Means. The Senate Committee heard testimony on the bill, but did not take any further action during the 2017 or 2018 Legislative Sessions.

Other States’ Legislation

In 2020, 38 states and Puerto Rico considered more than 280 bills or resolutions related to cybersecurity. According to the National Conference of State Legislatures, common cybersecurity legislation categories included:

- Requiring implementation of training or specific types of security policies and practices to improve incidence response and preparedness;
- Increasing penalties for digital crime or addressing specific crimes such as the use of ransomware (malicious software that limits computer function until a fee has been paid);
- Regulating cybersecurity within the insurance industry or addressing cybersecurity insurance;
- Creating cybersecurity commissions, task forces, or studies; and
- Supporting programs for cybersecurity training and education.

For more information on other states’ recent cybersecurity legislation, see <https://www.ncsl.org/research/telecommunications-and-information-technology/cybersecurity-legislation-2020.aspx>.

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Veterans, Military, and Security

O-2 Veteran and Military Personnel Benefits

Most benefits for military personnel and veterans are offered by the federal government. However, states can offer additional benefits and resources to veterans and military families. The Kansas Commission on Veterans' Affairs Office (KCVAO) provides Kansas veterans and their families with information and assistance by coordinating programs and services to help them improve their quality of life. The KCVAO's services range from helping veterans file claims for medical, educational, or other benefits to helping veterans obtain earned medals and military awards. KCVAO veterans' services representatives are available, free of charge, to assist veterans and family members.

Education

Tuition. Veterans, their spouses, and their children are considered residents by community colleges and Kansas Board of Regents (KBOR) institutions. When such a person is using federal educational benefits to attend college, resides in or is assigned to a permanent duty station in Kansas, or previously established residence in Kansas prior to service and lives in Kansas at the time of enrollment, the person will be charged in-state tuition and fees regardless of length of residency.

Kansas offers free tuition and waives fees for dependents and unmarried widows and widowers of servicemembers killed in action while serving on or after September 11, 2001; dependents of those who are prisoners of war or missing in action; and dependents of those who died as a result of service-connected disabilities suffered during the Vietnam conflict.

Scholarships. Kansas offers scholarships for veterans, active duty military personnel, and Kansas National Guard members. In some cases, spouses and dependents of veterans also are eligible for scholarship consideration.

The Kansas Military Service Scholarship covers tuition and fees for certain active duty servicemembers and honorably discharged (or generally discharged under honorable conditions) veterans who deployed or received hostile fire pay for at least 90 days after September 11, 2001. The 90-day requirement may be waived if the servicemember was injured during such military service.

The Kansas National Guard Educational Assistance Program provides tuition and fee assistance for enlisted personnel in the Kansas Air or Army National Guard who are not under a suspension of favorable action flag, not currently on the unit unfavorable information file, have a high school diploma or GED, and have not already obtained a bachelor's or higher academic degree.

Kansas offers Reserve Officer Training Corps (ROTC) scholarships at KBOR institutions, Washburn University, and community colleges for students interested in becoming commissioned officers in the armed forces.

More information about educational resources available to veterans and military families can be found at:

- http://myarmybenefits.us.army.mil/Home/Benefit_Library/State_Territory_Benefits/Kansas.html; and
- <http://www.kansasregents.org/students/military>.

Military Interstate Children's Compact Commission. Kansas has been a member of the Military Interstate Children's Compact Commission since 2008. The Compact addresses educational transition issues military families face when relocating to new duty stations. The Compact assists military families with enrollment, placement, attendance, eligibility, and graduation. More information and points of contact are available at <https://mic3.net/state-profiles/>.

Employment

Veterans' preference. Veterans who have been honorably discharged are to be preferred in initial employment and first promotion within city, county, and state government 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." The veterans' preference will also extend to spouses of veterans who have a 100-percent

service-connected disability, surviving spouses (who have not remarried) of veterans killed in action or who died as result of injuries while serving, and the spouses of prisoners of war. Veterans' preference does not apply to certain types of jobs, such as 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.

For more information regarding veterans' preference, visit <https://admin.ks.gov/services/state-employment-center/veterans>.

Private veterans' preference. Private employers may establish a veterans' hiring preference in Kansas. The veterans' preference must be in writing and must be consistently applied. Veterans are required to provide the employer with proof of military service and discharge under honorable conditions.

Pensions. State pension participants absent from state employment 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 credit need not be preceded or followed by state employment.

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 this state, or any other state's reserve component, 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. Statutes direct state agencies issuing professional licenses to accept from an applicant 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. The license may be granted even if the servicemember was discharged under less than honorable conditions. While this rule generally does not apply to the Board of Nursing, the Board of Emergency Medical Services, or the practice of law, there are special provisions for nurses and emergency medical technicians.

Additionally, Kansas has enacted the Interstate Compact for Recognition of Emergency Medical Personnel Licensure allowing Kansas to consider active and former servicemembers, in addition to their spouses, who hold a current valid and unrestricted National Registry of Emergency Medical Technicians (NREMT) certification, as having the minimum training and examination requirements for Emergency Medical Technician (EMT) licensure.

Kansas also allows a person to receive a license to practice barbering if they have been certified in a related industry by any branch of the U.S. military and completed a course of study in a licensed Kansas barber college or school.

Professional licenses—maintaining license while serving. A state license issued to engage in or practice an occupation or profession 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.

Expedited professional licenses—military servicemembers' nonresident military spouses. Kansas professional licensing

bodies are required to grant professional licenses to nonresident military spouses and servicemembers who hold professional licenses in other states, if the licensees meet certain requirements. These licenses must be issued within 60 days after a complete application is submitted.

Probationary licenses—servicemembers and military spouses. A servicemember or military spouse may have a license on a probationary basis for up to six months when the licensing body does not have licensure, registration, or certification by endorsement, reinstatement, or reciprocity, and the servicemember or military spouse meets certain criteria.

Temporary Bar admission for military spouses. Kansas Supreme Court Rule 712A grants applicants temporary admission to the Kansas Bar without a written examination if they are currently married to a military servicemember stationed in Kansas and have been admitted to the practice of law upon a written examination by the highest court of another state or in the District of Columbia.

Military leave for state employees. Benefits-eligible state employees who are members of a reserve component of the military are eligible for 30 working days of military leave with pay for active duty within a 12-month period beginning October 1 and ending on September 30 the following year.

State employee direct payment benefits. Benefits-eligible state employees 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.

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 in Winfield. The KCVAO states priority for admission of veterans will be given on the basis of severity of medical care required. For more information, see:

- <https://kcva.ks.gov/veteran-homes/fort-dodge-home>; and
- <https://kcva.ks.gov/veteran-homes/winfield-home>.

Insurance

Life insurance. 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 such time, the policy may be converted to an individual policy.

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

Property tax—deferral. An active duty servicemember who has orders to deploy, or is currently 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. Certain disabled veterans and surviving spouses who do not remarry are eligible for the Homestead Property Tax Refund Program. Disabled veterans

are those Kansas residents who have been honorably discharged from active duty in the armed forces or Kansas National Guard and who have been certified to have a 50 percent or more permanent service-connected disability. For more information, see article L-1 Homestead Program, available at <http://www.kslegresearch.org/KLRD-web/Briefing-Book-2021.html>.

Motor vehicle tax. Active duty servicemembers who are Kansas residents are not required to pay motor vehicle taxes for their first two vehicles if they maintain vehicles outside of the state and are absent from the state on military orders on the date the registration payment is due.

Vehicle-related Benefits

Driver's license requirements—waiver. The Director of Vehicles and 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 must not have been convicted of any offense (such as driving under the influence of alcohol or a controlled substance) that would disqualify a civilian commercial driver. In addition, 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 U.S. Department of Defense requirements.

License plates. Kansas has several distinctive license plates available for veterans and family members. In some cases, those license plates may be provided at no cost. More information on military-related license plates is available at <https://www.ksrevenue.org/dovplates.html>.

Decals. Several decals depicting medals or combat ribbons are available to display on certain veterans' license plates, and a wheelchair emblem decal may be affixed to a distinctive license plate to indicate the vehicle transports a person with a permanent disability, providing an alternative to the Disabled Veteran distinctive tag.

Parking privileges for disabled veterans.

Veterans with disabled veterans license plates or wheelchair emblem decals may exercise free parking privileges in spaces reserved for disabled persons in public parking facilities and parking lots that employ parking attendants.

Additional Benefits

The U.S. Army's official benefits website provides a general overview of military and veterans' benefits in Kansas, along with contact information for some state agencies at:

- <https://myarmybenefits.us.army.mil/Benefit-Library/State/Territory-Benefits/Kansas>.

The KBOR website lists scholarships available for military personnel, veterans, and spouses, along with the requirements for each scholarship:

- <http://www.kansasregents.org/students/military>.

The KCVAO's website includes several resources for veterans and military personnel. The following links cover federal and state benefits, employment resources, and educational resources:

- <https://kcva.ks.gov/veteran-services/state-benefits>.

The Adjutant General's Department's Kansas Military Bill of Rights website lists benefits and services that Kansas provides to veterans and military personnel:

- <http://kansastag.gov/NGUARD.asp?PageID=346>.

Additional information, including statutory citations when appropriate, is available at:

- <http://www.kslegresearch.org/KLRD-web/VeteransMilitary&Security.html>.

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O-3 Disaster Declarations

This article discusses the issuance of disaster declarations by both the state government of Kansas and by the federal government. For more information on emergency powers, see article H-7 Kansas Emergency Management Act, available at <http://www.kslegresearch.org/KLRD-web/Briefing-Book-2021.html>.

State Declarations

KSA 48-924 provides “the Governor shall be responsible for meeting the dangers to the state and people presented by disasters.” Furthermore, “the Governor, upon finding that a disaster has occurred or that occurrence or the threat thereof is imminent, shall issue a proclamation declaring a state of disaster emergency.”

The justification for a proclamation is based on information provided in a local assessment to the Kansas Division of Emergency Management (KDEM) by local officials, as well as an apparent need to protect the lives and property of the citizens of the state. When the Governor issues a state disaster declaration, all state resources become available to assist local jurisdictions, and the Governor is provided with emergency powers necessary to deal with a disaster for a period of 15 days. An extension period of up to 30 days may be approved if needed. Limited direct assistance to local jurisdictions from area offices of state agencies may be available in the absence of a state disaster declaration.

Declarations expire 15 days from the date the Governor signs the proclamation, unless the Legislature ratifies an extension by concurrent resolution. KSA 48-924 also allows the Legislature to terminate a state disaster declaration by concurrent resolution. Since at least 1987, the period for which this information could be confirmed by KDEM, no state disaster declaration has been terminated by the Legislature.

According to records available from KDEM and the State Library of Kansas, 34 state of disaster emergency proclamations have been issued in Kansas since 1975. Aside from the two proclamations related to the COVID-19 pandemic and the Airosol Company, Inc., explosion that occurred in 2016, all proclamations have been issued pursuant to a natural event such as severe weather, tornado, flood, or fire.

Federal Declarations

Pursuant to the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121-5207 §401, when a Governor believes state and local resources to be inadequate to respond to an emergency or disaster, the governor of a state (or tribal chief executive) may make a request for an emergency declaration, major disaster declaration, fire management assistance declaration, or any combination thereof, to receive assistance from the federal government. The President retains sole discretion over what declarations are made. Since 1955, presidential declarations have been issued for 79 disasters in Kansas.

Requesting a Declaration

When a state or tribal government believes a presidential disaster or emergency declaration may be necessary to assist in the recovery of an impacted area, the state or tribal government contacts the Federal Emergency Management Agency (FEMA) Regional Office to request a joint federal, state, or tribal Preliminary Damage Assessment (PDA). The PDA determines the extent of the disaster or emergency, its impact on individuals and public facilities, and the type of federal assistance that may be needed. This information is included in the request for a federal declaration to illustrate the magnitude and severity of the disaster or emergency.

Emergency Declarations

A federal emergency declaration, made to supplement state and local or tribal governments in providing emergency services or to lessen or avoid the threat of a catastrophe in any part of the United States, may not provide assistance in excess of \$5.0 million.

The request must be made by the governor or tribal chief executive within 30 days of the incident giving rise to the declaration and must be based upon a finding that the situation is beyond the capability of the entity making the request, and supplemental federal assistance is necessary to save lives and protect property, public health,

and safety, or to lessen or avert the threat of a disaster. In addition, the request must include the following:

- Confirmation the governor or tribal chief executive has taken appropriate action under state or tribal law and directed the execution of the state or tribal emergency plan;
- A description of the state, local, or tribal government efforts and resources utilized to alleviate the emergency;
- A description of other federal agency efforts and resources utilized in response to the emergency; and
- A description of the type and extent of additional federal assistance required.

When an emergency exists for which the primary responsibility rests with the federal government, the President may declare an emergency without a request from the governor or tribal chief executive.

Types of Assistance Available Under an Emergency Declaration

Public assistance includes assistance with debris removal and emergency protective measures for state, tribal, and local governments and certain private nonprofit organizations, on a 75 percent federal, 25 percent non-federal cost-sharing basis.

Individual assistance includes housing assistance not covered by insurance or provided by any other source in the form of a rental subsidy for temporary housing or direct temporary housing (100 percent federal share) and financial assistance for necessary expenses and serious needs (75 percent federal, 25 percent non-federal cost share) to individuals affected by an emergency. Authorization of this type of assistance is rare under an emergency declaration.

Major Disaster Declarations

The President can declare a major disaster for any natural event or, regardless of cause, any

fire, flood, or explosion, of which the President determines the damage is of such severity it is beyond the combined capabilities of state and local governments to respond.

Unlike emergency declarations, major disaster declarations do not have a limitation on federal funding. Once the President declares a major disaster, public assistance funding becomes available with 75 percent federal and 25 percent non-federal matching funding. The non-federal funding has historically been split with local governments providing 15 percent and the State providing the remainder (10 percent). Depending on the estimated cost of the disaster, population, and property valuation, the federal match may be raised to 90 percent and up to 100 percent.

The request must be made by the governor or tribal chief executive within 30 days of the incident giving rise to the declaration and must be based upon a finding that the situation is beyond the capability of the entity making the request and supplemental federal assistance is necessary. In addition, the request must include the following:

- Confirmation the governor or tribal chief executive has taken appropriate action under state or tribal law and directed the execution of the state or tribal emergency plan;
- An estimate of the amount and severity of damage to the public and private sector;
- A description of the state, local, or tribal government efforts and resources utilized to alleviate the disaster;
- Preliminary estimates of the type and amount of Stafford Act assistance needed; and
- Certification by the governor or tribal chief executive that the state, local, or tribal government will comply with all applicable cost sharing requirements.

Types of Assistance Available Under a Major Disaster Declaration

Public assistance includes assistance to state, tribal, or local governments and certain private

nonprofit organizations for emergency work and repair or replacement of damaged facilities, debris removal, and emergency protective measures.

Individual assistance includes housing and financial assistance, crisis counseling, case management, unemployment assistance, legal services, and Supplemental Nutrition Assistance Program (SNAP) benefits to individuals affected by a disaster.

Hazard mitigation assistance includes assistance to state, tribal, and local governments and certain private nonprofit organizations for actions taken to prevent or reduce long-term risk to life and property from natural hazards.

Additional factors are considered by FEMA while evaluating requests for major disaster declarations, including:

- Estimated cost of the assistance on a per capita basis;
- Localized impacts at the county, local, or tribal government levels in cases of concentrated damages when the per capita cost does not meet an appropriate threshold;
- Insurance coverage in effect or that should have been in effect as required by law and regulation at the time of the disaster;
- Extent to which mitigation measures contributed to the reduction of damages;
- Disaster history within the last 12-month period, including those declared by the governor or chief tribal executive and to what extent they have expended their own funds; and
- Other federal agency assistance programs when they more appropriately meet the needs created by the disaster.

Fire Management Assistance Declarations

A state, tribe, or locality may make a request for a fire management assistance declaration for the mitigation, management, and control of fires on

publicly or privately owned forests or grasslands if the potential fire destruction would constitute a major disaster. The federal Fire Management Assistance Grant Program, a part of the Stafford Act, provides a 75 percent federal cost share and the state, tribe, or locality pays the remaining 25 percent of the costs.

For more information on state, emergency, major disaster, and fire management assistance

declarations that have been issued in Kansas, see the tables attached to the “Emergency and Disaster Declarations in Kansas” memorandum (http://www.kslegislature.org/li/b2019_20/committees/ctte_spc_2020_ks_emerg_manage_act_1/documents/testimony/20200922_01.pdf)

submitted to the Special Committee on Kansas Emergency Management Act.

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