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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.](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
<b>Total</b>	<b>\$ 66,151,571<sup>1</sup></b>

<sup>1</sup> 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
<b>Total</b>	<b>\$ 88,693,990</b>

(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](https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization)).



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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](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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