

# BRIEFING BOOK

# KLRD

Kansas Legislative Research Department

2022





# Kansas Legislator Briefing Book

Prepared for the  
2022 Kansas Legislature

# KLRD

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

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# Kansas Legislator Briefing Book

## Prepared for the 2022 Kansas Legislature

This publication contains briefs on timely topics that may be relevant during the current Legislative Session. Previous Briefing Book articles and more in-depth resources and memoranda continue to be updated with the latest information and are available on the Kansas Legislative Research Department website at [www.kslegresearch.org](http://www.kslegresearch.org).

For 2022 and future editions, the Briefing Book has been redesigned and refocused to be a more concise and useful resource for legislators. Articles now have a standard length of two pages to efficiently convey the most important points about each topic, and more graphics are included to illustrate large amounts of data in a concise format. The topics covered are also especially topical and timely in nature; previous Briefing Book articles that provided introductory overviews of broader government topics have been moved to the KLRD website.

The goal of these changes is to provide a publication that is compact, easy to read, and relevant to even the most veteran lawmakers as a new session begins in the Statehouse.

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## AGRICULTURE AND NATURAL RESOURCES

### Administration of Water in Kansas

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#### Administration of Water in Kansas

The administration of water in Kansas – generally regarding allocation, cleanliness, and availability – is, for the most part, divided among three state agencies:

- Division of Water Resources (DWR) in the Kansas Department of Agriculture (KDA);
- Bureau of Water in the Kansas Department of Health and Environment (KDHE); and
- Kansas Water Office.

The following state agencies and entities have less significant roles in the administration of water:

Adjutant General's Office  
Department of Commerce  
Division of Conservation, KDA  
Bureau of Environmental Field Services, KDHE  
Bureau of Environmental Remediation, KDHE  
Bureau of Waste Management, KDHE

Kansas Biological Survey  
Kansas Corporation Commission  
Kansas Department of Wildlife and Parks  
Kansas Forest Service  
Kansas Geological Survey  
Kansas State Research and Extension

#### State Agency Roles

##### *Division of Water Resources, Kansas Department of Agriculture*

The DWR in the KDA is under the direction of the Chief Engineer, who administers 30 laws and responsibilities, including the Kansas Water Appropriation Act (Act), which governs how water is allocated and used; statutes regulating the construction of dams, levees, and other changes to streams; and the State's four interstate river compacts, and coordinates the National Flood Insurance program in Kansas.

One of the most important programs the DWR administers is the Water Appropriation program, which is authorized by the Act and directed by rules and regulations regarding water rights.

This program also is involved in coordinating with groundwater management districts, irrigation districts, rural water districts, public wholesale water supply districts, and water assurance districts; administering the Water Transfer Act and Water Banking Act; administering intensive groundwater use control areas (IGUCAs); and other functions related to water rights and use.

In 2020, the Kansas Water Appropriation Act turned 75-years-old. It continues to be amended by the Legislature nearly every legislative session as needs, technologies, and available water continue to change over time.

## ***Bureau of Water, Kansas Department of Health and Environment***

Much of the authority for maintaining water quality rests with the Bureau of Water in KDHE. Although most of the State's water quality programs have their home in KDHE, some do not. For example, when oil and gas activities have been the source of water pollution, the Kansas Corporation Commission has authority for remediation.

Examples of water quality programs administered by KDHE include:

- Clean drinking water standards;
- Harmful algal blooms management and surface water quality standards;
- Livestock Waste Management program;
- Municipal, commercial, and Industrial wastewater lagoons regulations;
- Watershed management; and
- Water Well program.

## ***Kansas Water Office***

The Kansas Water Office was established as the water planning, policy, coordination, and marketing agency for the state. The primary function of the agency is the development and implementation of the Kansas Water Plan, which is determined in coordination with the Kansas Water Authority, which consists of 24 members. The Kansas Water Authority also receives input from 14 regional advisory committees that represent the 14 watersheds in the State.

The Kansas Water Office also oversees various water projects that occur all over the state for water conservation, water management, technology and crop varieties, and additional sources of water supply. In addition, the agency monitors the storage capacity in the Kansas federal reservoirs and climate and drought conditions and outlook.

## **House Committee on Water**

After the historic flooding in 2019, research was completed by KLRD to look at which state agencies and entities are involved in water administration. A spreadsheet was developed that tracked the agencies and entities by water administration area – for example, research and data, water quality, and water quantity.

The House Committee on Water was created for the 2021 Legislative Session. The House Committee held informational hearings throughout the Session, learning from the state agencies and entities about their operations and responsibilities. The Committee discussed how these operations and responsibilities potentially could be modified or consolidated.

During the 2021 Interim, the House Committee on Water met in Garden City, where the Committee members learned about water issues in Garden City and Southwest Kansas. The Committee members toured sites and listened to stakeholders.

The Committee then held an informational meeting at Garden City Community College, where they heard from members of the public about their thoughts on the State's water administration and configuration of water administration responsibilities at the state-level.

For the 2022 Legislative Session, it is anticipated the House Committee on Water will continue this discussion and potentially introduce legislation regarding water administration, including state agency and entity configuration.

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## AGRICULTURE AND NATURAL RESOURCES

### Local Enhanced Management Areas (LEMAs)

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#### Background

Local Enhanced Management Areas (LEMAs) are a tool that allows groundwater management districts (GMDs) to conserve water by setting goals and control measures. LEMAs must be approved by the Chief Engineer, which is the statutorily created head of the Division of Water Resources within the Kansas Department of Agriculture.

#### Statutory Authority

In 2012, GMDs were granted statutory authority under KSA 82a-1041 to recommend the approval of LEMAs to the Chief Engineer. According to the statute, LEMA plans must:

- Propose clear geographic boundaries;
- Pertain to an area wholly within the GMD;

- Propose goals and corrective control provisions adequate to meet the stated goals;
- Give due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures;
- Include a compliance monitoring and enforcement element; and
- Be consistent with state law.

#### Overview of Process

**Goals and Plan.** A GMD develops a goal and plan for a LEMA and submits it to the Chief Engineer.

**Review of Plan.** The Chief Engineer reviews the GMD's proposed LEMA to make sure it meets the statutory requirements.

**Initial Hearing.** If the Chief Engineer finds the GMD's proposed LEMA acceptable for consideration, then the Chief Engineer provides notice of an initial hearing within 30 days. The initial hearing determines whether conditions warrant the implementation of the LEMA, including:

- Whether one or more of the following circumstances listed in KSA 82a-1036(a)-(d) exist:
  - Groundwater levels are declining excessively;
  - Rate of groundwater withdrawal exceeds the rate of groundwater recharge;
  - Unreasonable deterioration of groundwater quality has or may occur; or

- That other conditions warranting additional regulation to protect public interest exist.
- Whether public interest or existing GMD law requires that one or more corrective control provisions be adopted; and
- Whether the geographic boundaries are reasonable.

**Subsequent Hearing.** The second public hearing determines whether the proposed corrective controls are adequate to help alleviate the identified problems and whether the LEMA plan should be adopted.

**Decision and Order.** The Chief Engineer must issue an order of decision within 120 days of accepting the plan, rejecting the plan, or returning it to the GMD. If the LEMA plan is accepted,

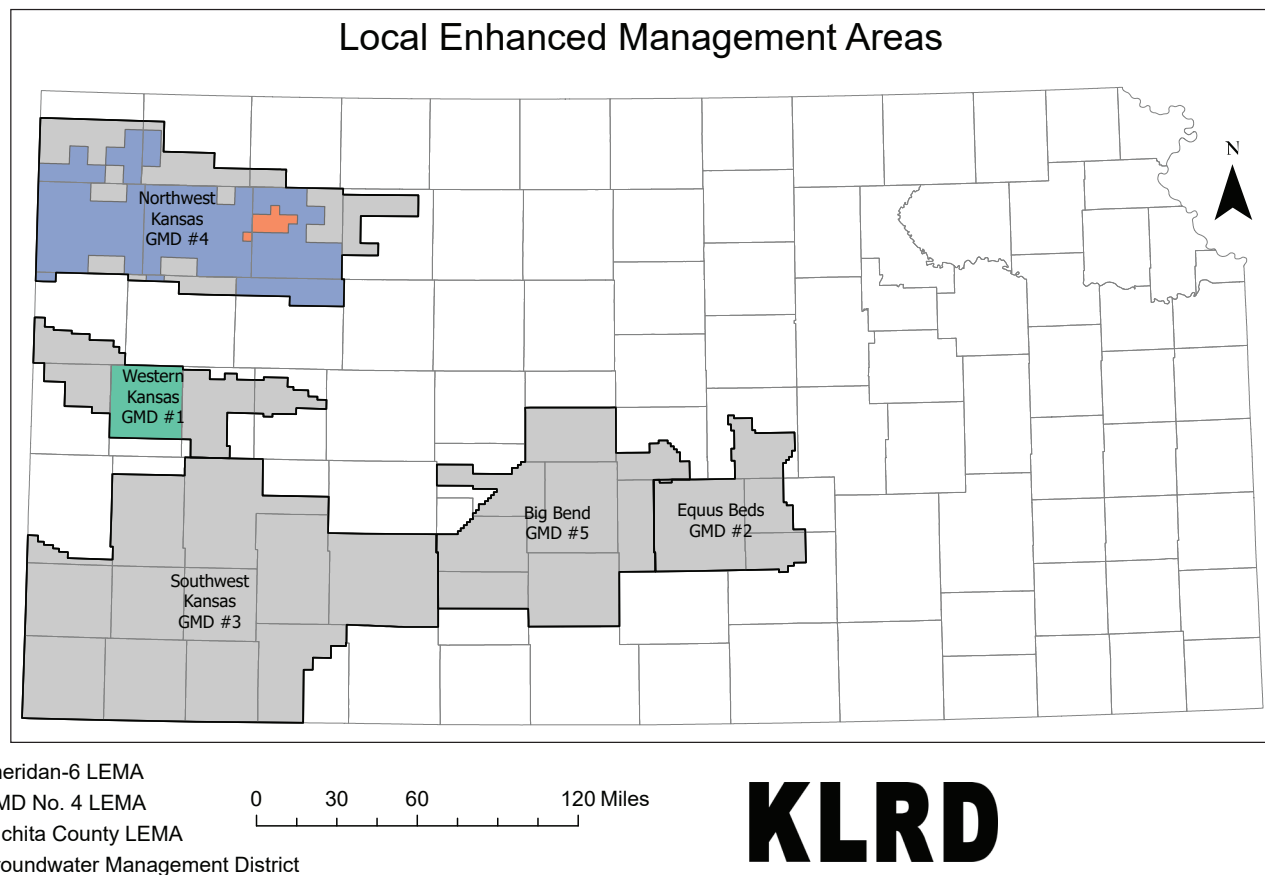
then an order of designation is issued within a reasonable time.

## Existing LEMAs

Currently, there are three LEMAs that have been approved by the Chief Engineer:

- Sheridan County 6 LEMA;
- GMD 4 LEMA; and
- Wichita County LEMA.

One proposed LEMA, the Rattlesnake/Quivira LEMA, did not receive approval from the Chief Engineer. Its approval process was discontinued in 2019.



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Kansas Department of Agriculture  
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November 1, 2021

## AGRICULTURE AND NATURAL RESOURCES

### Western Water Issues

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#### Water Shortage Declared

On August 16, 2021, the U.S. Bureau of Reclamation (Reclamation) declared the first-ever official water shortage on the Colorado River. This declaration triggered the largest mandatory water cuts in the Colorado River Basin to date.

While Kansas is not part of the Colorado River Basin, it does have a vested interest in Colorado's water supply issues, as the state relies on Colorado supplying an adequate amount of water each year.

#### The Colorado River

The Colorado River runs 1,450 miles from its headwaters in Colorado and Wyoming to its terminus in the Gulf of California. The river travels through seven states (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming) and Mexico. The Colorado River Basin spans 246,000 square miles, or about 8.0 percent of the continental United States. Water from the Colorado River is used to irrigate 5.5 million acres of agricultural land and to provide

municipal and industrial (M&I) water supplies to 40 million people. Water from the Colorado River is regulated by dams and stored in reservoirs. Two major dams along the Colorado River are the Glen Canyon Dam and the Hoover Dam. Each of these dams has an associated storage reservoir. Lake Powell, associated with the Glen Canyon Dam, has a storage capacity of 26.2 million acre-feet (MAF). Lake Mead, associated with the Hoover Dam, has a storage capacity of 26.1 MAF.

#### The Law of the River

The laws and agreements governing Colorado River operations are referred to collectively as "The Law of the River." The cornerstone of the Law of the River is the Colorado River Compact of 1922.

This agreement divided the Colorado River Basin into the Upper Basin (Colorado, New Mexico, Utah, and Wyoming) and the Lower Basin (Arizona, California, and Nevada) and apportioned the River's water supplies between these two basins. Each basin was apportioned 7.5 MAF per year for beneficial consumptive use.

#### Problems Facing the Colorado River

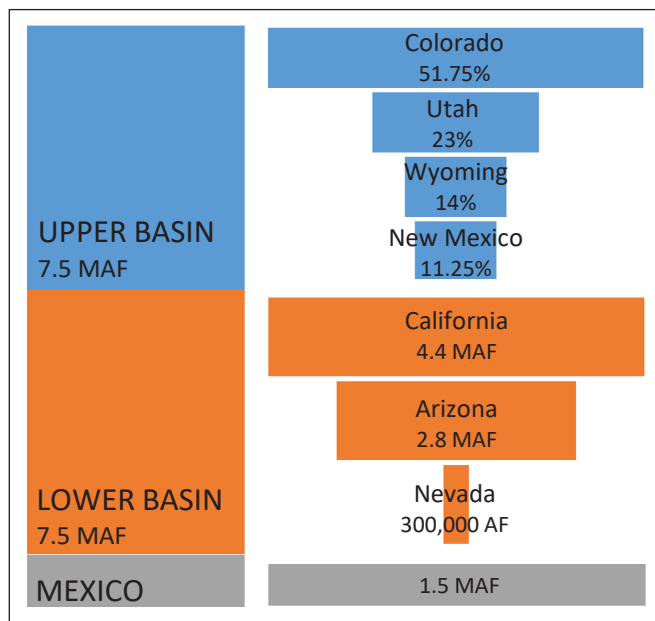
##### *Supply and Demand Imbalance*

When the Colorado River Compact of 1922 was approved, the appropriations of water supply made were based on the average flows during the preceding ten year period, which included several wet years.

The data from this period indicated the average annual flows of the Colorado River totaled 16.4 MAF. But historical data collected by Reclamation from 1906 to 2020 shows that natural flows



## Volume of the Colorado River by Region



MAF: Million-acre feet, a measure of volume.

averaged closer to 14.7 MAF annually. Thus, water supplies were over-allocated and subject to overuse. Even though this accounting error has been identified, the problem of overuse is likely to persist. Water use increased steadily over the course of the 20th Century and will most likely continue into the future. By 2050, Reclamation estimates demand for water from the Colorado River will increase to 18.1 MAF to 20.4 MAF per year, and the number of people who rely on the Colorado River is projected to double by 2060.

### Drought

In addition to the growing demand for water, a study conducted by the U.S. Geological Survey revealed natural flows from the Colorado River have declined approximately 20.0 percent over the last century. Between 2000 and 2020, flows averaged about 12.4 MAF annually. Reclamation found the current drought (2000 to 2021) has been the driest 22-year period on record, and it has resulted in 8 of the 20 driest years on record.

The drought has negatively affected water storage operations along the Colorado River. According to Reclamation, in fall 2021, Lake Mead was about 35.0 percent full, and Lake

Powell was about 32.0 percent full. In June 2021, modeling completed by Reclamation showed there is a 17.0 percent chance that Lake Powell could sink so low by 2024 that hydroelectric generation at the Glen Canyon Dam would become impossible, and there is a 20.0 percent chance that the water in Lake Mead will fall to 1,000 feet above sea level by 2025, which is only 50 feet above the minimum elevation needed to allow the Hoover Dam to generate electricity.

### Mitigation Efforts

The affected states and Mexico have been working to combat the declining natural flows and elevations of Lake Mead and Lake Powell. Mitigation techniques include using alternative water sources, like aquifers, changing landscaping regulations to incentivise lower water use, investing in waste water treatment and reuse, and studying the potential of desalination plants to transform saltwater into freshwater.

Due to Reclamation's water shortage declaration, mandatory water cuts have been triggered beginning January 1, 2022. Arizona will see an 18.0 percent reduction, Nevada will see a 7.0 percent reduction, and Mexico will see a 5.0 percent reduction. Future water cuts in the Lower Basin are expected if Lake Mead's water levels continue to fall.

### The Future of the Colorado River

Over the next few years, the states, Mexico, Native American Tribes, and the federal government will be negotiating a new framework to determine how to distribute water supplies, as the current guidelines expire in 2026.

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## COMMERCE, LABOR, AND ECONOMIC DEVELOPMENT

### Housing Initiatives

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#### Overview

Housing policy within the state of Kansas is similar to many other states in that it is comprised of programs and initiatives at the federal, state, and local level. Most federal housing programs in the 21st century are not directly administered but rather utilize state and local governments for implementation. In Kansas, the organization created to manage many of the federal and state housing initiatives is the Kansas Housing Resource Corporation. However, various programs are also handled directly by federal agencies, by other state agencies, or by local housing authorities such as those in Topeka, Kansas City, and Wichita.

#### Kansas Housing Resource Corporation

Originally established in 1992 as the Division of Housing with the Department of Commerce and Housing, the Kansas Housing Resource Corporation (KHRC) was created in 2003 as a self-sustaining, nonprofit, public corporation. The KHRC is tasked with overseeing the administration of all federal housing programs

within the state as well as the State Housing Trust Fund (SHTF). The SHTF was created to hold all state funds designated for housing programs. It currently receives appropriations of \$2.0 million a year from the State, which is used to fund the Moderate Income Housing Program.

#### *Federal Programs*

Federal programs administered by the KHRC focus on five target audiences: homeowners, renters, individuals who are homeless, community services, and housing partners.

#### *Homeowners*

For homeowners, the KHRC provides funding to aid first-time homebuyers with down payment assistance and obtaining financing. The agency also administers a weatherization assistance program to aid low-income homeowners in increasing the energy efficiency of their home.

#### *Renters*

For renters, the KHRC primarily provides aid through rental assistance programs for low-income renters. During the COVID-19 pandemic, the KHRC has also administered emergency rental assistance programs to aid renters behind on their rent due to hardships created by the COVID-19 pandemic. Renters are also eligible for the weatherization assistance program to increase energy efficiency.

#### *Homelessness*

The Emergency Solutions Grants program administered by the KHRC provides funding to a network of service providers throughout the state to combat homelessness by helping to improve the number of quality emergency shelters,

operate shelters, provide essential services for shelter residents, re-house homeless individuals and families, and prevent families and individuals from becoming homeless.

### *Community Services*

The Community Services Block Grants administered by the KHRC provide funding to eligible entities to serve low-income Kansans by helping alleviate causes and conditions of poverty within the community.

### *Housing Partners*

For housing partners, the largest of the target audiences, the KHRC oversees a multitude of programs that utilize federal funding as well as tax credits to incentive the private development of primarily rental housing within the state. This includes the Moderate Income Housing Program (MIHP), which is currently the only state-funded housing program.

The MIHP seeks to aid households who do not qualify for federal housing assistance by providing cities and counties with a population of less than 60,000 with funding to develop multi-family rental units and single-family for-purchase homes.

### **Kansas Statute**

The Legislature has also established three housing programs within Kansas statute. First, KSA 58-4901 *et seq.* authorizes the establishment of First Time Homebuyer Savings Accounts. These accounts are tax exempt for all contributions and interest not to exceed \$48,000 and are for the express purpose of paying eligible expenses when purchasing or constructing a home.

The second program is the Local Residential Housing Act (KSA 12-5219 *et seq.*), which allows local city and county governments to utilize public moneys and special obligation bonds to fund a variety of housing activities within the community. These activities include acquiring home mortgage

loans from a lender, contracting with a lender to service home mortgage loans on behalf of the city or county, and making loans to a lender for the purpose of making home mortgage loans.

The final program is the Rural Housing Incentive District (RHID) Act (KSA 12-5241 *et seq.*), which authorizes cities and counties to assist directly in the financing of public improvements that support housing in rural areas of Kansas with a housing shortage. The Act allows for cities and counties that establish a RHID to utilize special obligations bonds for activities such as acquisition of property within the district, site preparation, or construction of infrastructure such as sewers, electric utilities, or sidewalks.

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## COMMERCE, LABOR, AND ECONOMIC DEVELOPMENT

### Premium Pay for Essential Workers

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#### American Rescue Plan Act

The federal American Rescue Plan Act (ARPA) of 2021 provides \$2.6 billion, from the Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds), to state and local governments for discretionary purposes. Among other stated uses, these discretionary funds may be used to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency.

#### Premium Pay to Essential Workers

ARPA allows states to use their Fiscal Recovery Funds to support essential workers by providing premium pay directly to workers or through grants to third-party employers with eligible employees.

The intent of the premium pay is to help maintain continuity of operations that are critical to the health and well-being of communities as well as provide compensation to workers who have been at increased risk of contracting COVID-19 due to the nature of their jobs.

Premium pay is to be added to workers' normal earnings and may not substitute for a worker's normal earnings. Premium pay may be applied retrospectively for work performed since the start of the COVID-19 public health emergency.

#### *Eligibility*

In order to ensure that premium pay is directed toward the intended population, ARPA provides guidance that eligible workers should be both at heightened risk of exposure due to the nature of their work and be critical to the continuity of essential operations.

**Heightened Risk.** Premium pay is to be reserved for individuals who engage in work that involves "regular in-person interactions or regular physical handling of items that were also handled by others." By this definition, a worker who engaged in telework from a residence would not be eligible for premium pay.

**Essential.** Eligible workers are those who are necessary to maintain continuity of operations of critical infrastructure sectors. While governments receiving Fiscal Recovery Funds have the discretion to identify critical sectors in their communities, the following sectors are identified as essential:

- Health care;
- Public health and safety;
- Child care;
- Education;
- Sanitation;
- Food service; and
- Transportation.

## **Guidelines**

ARPA recognizes that many workers in the sectors listed above will make lower than average wages in their sector, creating a misalignment between health risk and compensation. To ensure these funds are directed toward these workers, the following guidelines have been created:

- Premium pay should be limited to \$13 per hour in addition to the wages the worker already receives, and not exceed an aggregate amount of \$25,000 per worker;
- Lower income workers should be prioritized;
- Premium pay that would increase a worker's total pay to an amount that is above 150.0 percent of the state's average annual wage for all occupations requires written justification; and
- Grants provided to third-party employers for the purpose of providing premium pay must be publicly disclosed and follow specific reporting requirements.

## **Premium Pay in Kansas**

On September 3, 2021, the Governor's Strengthening People and Revitalizing Kansas (SPARK) Task Force recommended, and the State Finance Council approved, the allocation of \$50.0 million from Fiscal Recovery Funds for hospitals to either provide premium pay or create custom retention programs for clinical staff.

Qualified staff include nurses and other employees who provide frontline care. Any general or critical access hospital with an emergency department as defined under KSA 65-425 is considered a qualified facility.

Hospitals must apply for the funding, which will be allocated to each hospital based on the number of licensed non-ICU beds and ICU beds. This funding must be spent by February 28, 2022, and may be applied retroactively to September 1, 2021.

As of October 2021, 118 Kansas hospitals have been awarded funds, with awards ranging from \$39,797 to \$7.5 million. The largest allocations included:

- \$7.5 million to Ascension Via Christi Hospital in Wichita;
- \$5.5 million to the University of Kansas Health System in Kansas City; and
- \$5.0 million to Wesley Medical Center in Wichita.

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## EDUCATION

### Critical Race Theory

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#### Defining Critical Race Theory (CRT)

CRT emerged in the 1970s as a legal theory in response to what some viewed as a stalling of the civil rights movement. Over the years, CRT grew and evolved, with several scholars, including Kimberlé Crenshaw, Cheryl Harris, Richard Delgado, Jean Stefancic, Patricia Williams, Gloria Ladson-Billings, and Tara Yosso, credited as originators along with Bell and Freeman by the American Bar Association.

Merriam-Webster Dictionary defines CRT as “a group of concepts used for examining the relationship between race and the laws and legal institutions of a country and especially the United States”; and also as “a movement advocating the examination of that relationship.” CRT, unlike other legal scholarship, allows for the notion of storytelling, to provide context and understanding. These three themes—racism as a structural issue, critique of liberalism in failing to meet the needs of Black Americans, and storytelling—allow the audience to best distinguish CRT from other scholarship.

However, as CRT is a constantly developing area, it is not limited to those three themes.

#### Federal Government Action

##### *Executive Branch*

CRT came to the forefront of American politics in September 2020, when President Trump issued Executive Order (EO) 13950, requiring all executive branch agencies to end trainings that teach or suggest certain prohibited concepts, race or sex stereotyping, and race or sex scapegoating. President Trump also spoke out against CRT and the “1619 Project,” which is a *New York Times* initiative that sets race and racism at the center of United States’ founding and history. The training ban was halted by a federal court in December 2020. President Biden then reversed the ban after taking office in January 2021.

EO 13950 defines the barred “divisive concepts” as:

- One race or sex is inherently superior to another race or sex;
- The United States is fundamentally racist or sexist;
- An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;
- Members of one race or sex cannot and should not attempt to treat others without respect to race or sex;



- An individual’s moral character is necessarily determined by his or her race or sex;
- An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;
- Any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or
- Meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.

### Legislative Branch

Several bills have been introduced in Congress relating to teaching race- or sex-based topics. The language of this legislation varies, with the majority either barring certain concepts from the EO in military training education or prohibiting the use of federal funds for teaching certain concepts from the EO or the “1619 Project.”

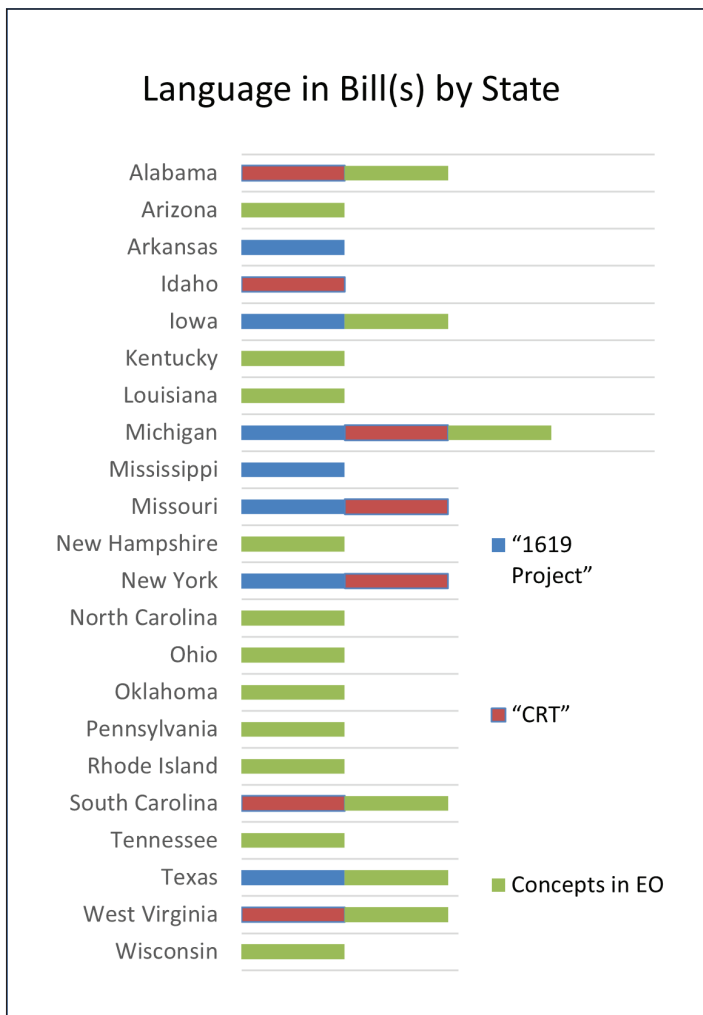
### State Legislatures and State Boards

As of October 20, 2021, legislators in 24 states have considered, passed, or pre-filed 31 bills barring certain race- or sex-based topics from being taught in elementary, secondary, or postsecondary public schools. These states include: Alabama, Arizona, Arkansas, Idaho, Iowa, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin. The topics and language of these bills vary by state. The graphic at right notes which state bills incorporated, at least in part, the concepts listed in EO 13950, CRT, or the “1619 Project.”

These bills have become law in eight states (Arizona, Idaho, Iowa, New Hampshire, Oklahoma, South Carolina, Tennessee, and Texas). Five bills, in Arkansas (2), Mississippi, Missouri, and South Dakota, were withdrawn

or died in 2021. The Alabama (2) and Kentucky Legislatures have pre-filed bills for the 2022 Session.

In addition to the states considering legislation, the state boards of education in Florida, Georgia, and Utah have barred teaching certain concepts in the K-12 curriculum. Only the Florida state board’s new rule explicitly mentions CRT.



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## EDUCATION

### Deferred Maintenance in Higher Education

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The Educational Building Fund (EBF) was established in 1941 primarily for the construction of new buildings at state universities. Currently, the fund is primarily used for deferred maintenance projects at state universities. The Kansas Board of Regents (Board) policy definition of “deferred maintenance” is annual maintenance and necessary renewal of facilities systems and components that have been postponed, delayed, or deferred, to a future budget cycle or until funds are available.

#### History of Deferred Maintenance at the State Universities

The Board prepared a report in 1994 indicating that the six universities needed \$288.3 million for capital improvements that included the federal Americans with Disabilities Act compliance, State Fire Code requirements, improving classrooms, major remodeling of existing buildings, and new construction. The 1996 Legislature authorized the issuance of \$156.5 million of bonds.

The initiative was referred to as the “Crumbling Classroom Initiative.”

Because the amount financed was less than what was needed for the projects, the Board reduced the amount that would be spent for rehabilitation and repair of university buildings. Since the majority of the EBF was being used to pay the bonds for the Crumbling Classroom projects, the balance of the EBF moneys was insufficient to keep up with the routine day-to-day maintenance projects. The bond payments were made through FY 2012.

In 2004, the Board prepared a new study for the Legislature stating that the State’s universities would need an additional \$584.0 million to cover the deferred maintenance costs. The study assessed the condition of 537 academic and administrative buildings as well as utilities and infrastructure components on the campuses.

In July of 2005, the Legislative Division of Post Audit conducted a performance audit titled: “Regents Institutions: Reviewing Proposals for Increased Maintenance Funding at the State’s Colleges and Universities” (<https://www.kslpa.org/wp-content/uploads/2019/08/r-05-16.pdf>). The conclusion of the audit found that the use of the EBF to pay for the Crumbling Classroom Initiative resulted in the increase of deferred maintenance projects over time.

In 2007, Sub. for Senate Sub. for HB 2237 was passed, which created the State Educational Institution Long-Term Infrastructure Maintenance Program. Beginning in FY 2008, the State would make annual transfers to the Board to fund deferred maintenance projects at the state universities. The transfers would total \$90.0 million, including \$47.0 million from the State General Fund (SGF). In addition, the universities were to transfer the retained interest from tuition, restricted fees, and sponsored research overhead to the State University Building

Maintenance Fund. Each university maintains a deferred maintenance support fund, which receives the interest income from the three other funds. The bill also authorized new tax credits for tax years 2008-2012 for contributions earmarked for deferred maintenance at universities and certain projects at community colleges. The tax credit was to sunset after tax year 2012. Due to the recession that occurred in the United States, this program was never funded.

### **Future Maintenance Funds**

2007 Sub. for Senate Sub. for HB 2237, discussed above, also required that the Board would not request SGF moneys for maintenance and operation of any newly built buildings which were funded with private dollars for at least 51.0 percent of the project (KSA 76-790). The institutions were to maintain a capital improvement account for future maintenance. In 2012, additional language was added to the university bonding authority language in appropriation bills. The added proviso language reads, "And provided further, that [university name] shall make provisions for the maintenance of the [name of project]." Since then, the universities are required to create a maintenance fund for the project for future upkeep of the building being bonded.

### **Board Oversight**

KSA 76-147 allows the Board to acquire land for building or utility construction, however there is no required notification to the Legislature in taking this action nor is there a statute regarding the acquisition of buildings. The Board policy states that state universities may acquire real property necessary to properly maintain and carry on a state university or the business thereof.

The state university must submit a description of all properties they desire to purchase or acquire to the Board for approval. Such description must include a legal description of the property, anticipated use, and the estimated cost of purchase and any cost relating to the razing or renovating and maintaining the property.

## **Kansas Board of Regents New Policy on Building Maintenance**

The Board approved a new policy in June of 2021 for university building maintenance.

Beginning in FY 2023, and each year thereafter, each university shall calculate a maintenance assessment as a percentage of the professionally estimated replacement cost of mission-critical buildings according to an assessment schedule, culminating in a sustainable 2.0 percent of current replacement value as approved by the Board on an annual basis. Utilizing each university's Deferred Maintenance Projects Fund, expenditures shall be itemized using a standard template for the Board's review annually.

Each state university shall identify and expend campus funds (excluding EBF allocations) annually for the purpose of addressing annual maintenance according to a prioritized assessment plan reviewed by the Board. Funding for the maintenance assessment may include contributions from university, state, federal, and philanthropic sources.

It is the stated intent of the Board to use the 2.0 percent of current replacement value funds to annually maintain the buildings in proper working order and focus the use of the EBF on strategic projects to reduce the backlog of deferred maintenance.

The Board voted to allow the universities a six-year escalator to ultimately arrive at the 2.0 percent current replacement value.

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## EDUCATION

### KSHSAA and School Sports Participation

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#### Kansas Statute

KSA 72-7114 *et seq.* establishes that the authority and responsibility to regulate, supervise, promote, and develop activities such as athletics, music, forensics, dramatics and any other interschool extracurricular activities by students from grades 7 through 12 lies with an association comprised of a majority of the high schools within the state.

Statute makes further requirements of the organization, such as making an annual report to the State Board of Education and outlining the size and composition of the organization's governing board.

The organization that fulfills this role within the Kansas is the Kansas State High School Activities Association (KSHSAA).

#### Kansas State High School Activities Association

Formed in 1937 and incorporated in 1956, KSHSAA is a private, nonprofit association

governed by a 70-member board of directors comprised of elected officials, school administrators, educators, and coaches.

The board of directors is responsible for making rules and bylaw changes while a nine-member executive board is elected from within the board of directors to manage policy, conduct hearings, and manage the affairs of the organization.

KSHSAA is comprised of 350 senior high and 408 middle or junior high schools. While member schools can be either public or private, they all must be accredited by the State Board of Education.

#### Student Eligibility

Part of KSHSAA's regulation of interschool extracurricular activities is to determine eligibility requirements for these activities. In order for a student to be eligible to participate, they must meet the following criteria:

- Have passed a minimum of five new subjects the previous semester;
- Be enrolled in and attending a minimum of five new subjects during the present semester; and
- Be a *bona fide* student in good standing per KSHSAA guidelines.

To be considered a *bona fide* student in good standing, the student must meet the following requirements:

- Be attending the school in which they wish to participate with;
- Not be under a penalty of suspension;

- Have character and conduct that does not discredit the school or student;
- Be in good standing<sup>1</sup>;
- Does not use anabolic steroids; and
- Not be competing under an assumed name.

## Nontraditional Students

### *Home School*

Regarding nontraditional students, the eligibility requirements from KSHSAA become more restrictive. A student attending home school<sup>2</sup> would be ineligible to participate in interschool extracurricular activities, as they would not meet the eligibility requirements of being a bona fide student at the school or being enrolled in the requisite amount of subjects at the school.

### **Virtual School**

The exception for nontraditional participation made by KSHSAA is for students attending a virtual school. A policy adopted by the executive board permits students attending a virtual school accredited by the Kansas State Department of Education (KSDE) to establish eligibility at the KSHSAA member public school in which they reside. In order to be eligible, the student must meet the following criteria:

- Be attending a KSDE-accredited virtual school;
- Be currently enrolled in and attending a minimum of one class at the KSHSAA member public school<sup>3</sup>;
- Pass a minimum of five units of credit the prior semester; and
- Be enrolled in a minimum of five units of credit not previously passed for the current semester.

Additionally, the local school district must approve a dual-enrollment agreement with the virtual school.

1 Guidelines state that the use of tobacco products, illegal drugs, or alcoholic beverages at school events by a student automatically deems the student not in good standing.

2 Home schools are classified as “non-accredited private schools” by the Kansas Department of Education.

3 If eligibility is sought in music, debate or speech activities then KSHSAA requires they be enrolled in the course.

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## EDUCATION

### Remote Learning

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The 2021 Legislature passed HB 2134, which included several policy provisions and appropriations for the Kansas State Department of Education for FY 2021, FY 2022, and FY 2023.

The bill also included provisions related to “remote learning,” defined as a method of providing education in which a student regularly enrolled in a school district does not physically attend the attendance center where the student would otherwise attend in-person on a full-time basis, and the instruction is prepared, provided, and supervised by teachers and staff of such school district to replace the instruction that would have occurred in the attendance center classroom.

Virtual schools are excluded from the remote learning definition and provisions.

#### Remote Learning Limitations

The bill provided that school districts cannot offer or provide more than 40 school term hours of remote learning to a student, unless:

- The local board of education authorizes a student to temporarily attend school through remote learning in excess of the 40-hour limitation when such student cannot reasonably attend in person due to illness, medical condition, injury, or other extraordinary circumstance;
- The State Board of Education (State Board), due to a disaster, conditions resulting from widespread or severe property damage caused by such disaster, or another condition restricting the operation of the school, certifies the school district cannot comply with remote learning restrictions and authorizes the school district to conduct up to 240 school term hours via remote learning; or
- The State Board provides the school district with a waiver certifying widespread or severe property damage restricting the operation of the school and authorizes the school district to conduct up to 240 school term hours via remote learning.

#### School Finance Provisions

School districts must apply to the State Board for authorization to exceed the 40-hour remote learning limitation or for a waiver from remote learning limitations.

The bill requires students who attend a school through remote learning in excess of these limitations to be deemed remotely enrolled.

Funding for such students would be subject to “remote enrollment” provisions, defined as the number of students regularly enrolled in kindergarten and grades 1-12 in the school district who attended school through remote learning in excess of the remote learning limitations provided in the bill.

Each school district that offers remote learning must determine remote enrollment on or before June 30 of each school year. The school district must then certify remote enrollment by grade to the State Board.

The State Board is required to determine the number of remotely enrolled students by school district. Funding for such remote learning is \$5,000 in remote enrollment state aid per remotely enrolled student, rather than the base state aid under the current school finance formula.

The State Board must notify school districts of the amount of remote enrollment state aid and must require each school district to return any payment over \$5,000 or deduct the excess amount over \$5,000 from future payments to the school district for remotely enrolled students if any overpayment is made to the district.

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## EDUCATION

### School Choice

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School choice programs can be generally divided into two areas: public and private. Public school choice programs involve public funding and public schools, such as charter schools. Private school choice programs involve public funding and private schools, including school voucher (vouchers), tax credit scholarship (TCS), and education savings account (ESA) programs. This article reviews only private school choice programs.

#### Vouchers

Vouchers are often used by states to offer students a scholarship in exchange for a transfer from a public school to a private school. Program limits may include requirements for the private school and student eligibility. Student eligibility may be limited based on: income thresholds, attendance at low performing schools, special needs, disabilities, military personnel families, and foster care placement. Vouchers are generally funded at or near the state per pupil allocation. If the award is less than the amount of that student's per pupil allocation, the state recoups the difference.

Per a 2021 survey on school choice by the Education Commission of the States (ECS), 16 states operate 27 distinct vouchers. Different populations may be served through one voucher or through different vouchers.

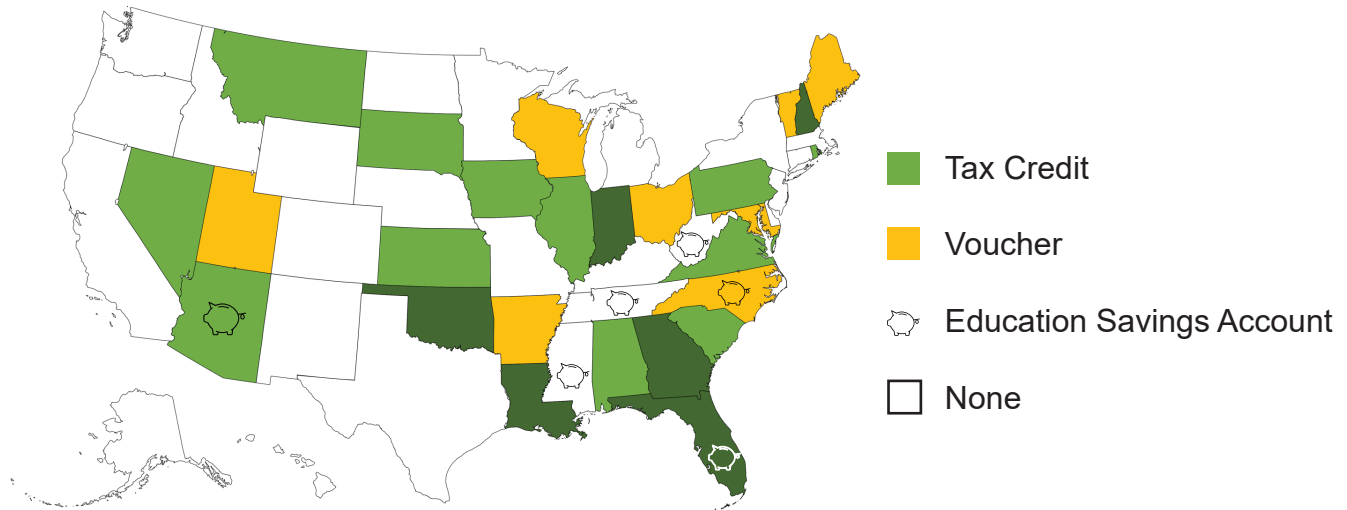
#### TCS Programs

TCS programs allow individuals or corporations to allocate a portion of their owed state taxes to private nonprofit organizations that issue private school scholarships to K-12 students. The individual or corporation donates to such an organization and receives a tax credit for the donation. The organization uses donations to provide scholarships to students. Like vouchers, states generally limit eligibility to certain student populations and set requirements for private schools. Unlike vouchers, the scholarship is not necessarily based on state per pupil allocation; rather it is generally based on the participating private school's tuition. According to the ECS, there are 23 TCS programs in 19 states, including Kansas.

#### ESA Programs

ESA programs involve the depositing of public funds into government administered accounts. Eligible students, and their parents, can then use the funds for a variety of purposes, including private school tuition, tutoring, dual- or concurrent-enrollment credits, and other allowable purposes. These purposes are generally limited in legislation, but are broader than other school choice programs focused on tuition. ESA programs may even allow a student to remain enrolled in public school part-time. Six states have enacted ESA programs according to the ECS. West Virginia's program, enacted in 2021, is the broadest as it is open to any student enrolled in a public school. Florida, Mississippi,

## School Choice Options by State



North Carolina, and Tennessee limit eligibility to those students with individualized education plans (IEPs) or disabilities. Arizona students are eligible for the ESA program if they have a disability, attend a low-performing school, have a parent who is active-duty military or was killed in the line of duty, are a juvenile court ward, are the sibling of a participating student, have a parent who is blind or deaf or hard of hearing, live on a reservation, or previously participated.

of “public school” as the lowest performing 100 schools and replacing it with any school operated by a unified school district;

- Require qualified schools post links to certain reports on the Kansas State Department of Education (KSDE) website; and
- Require KSDE include accredited nonpublic schools in achievement reports to the Governor and Legislature.

### Kansas Legislation

#### ***Tax Credit for Low Income Students Scholarship Program (TCLISSP)***

KSA 72-4351 through 72-4357 outlines TCLISSP student eligibility, school requirements, and limitations on tax credits. In HB 2134, the 2021 Legislature amended provisions to:

- Clarify that “eligible students” are children eligible for free or reduced-price meals and who were enrolled in kindergarten to eighth grade at a Kansas public school in the previous year when the scholarship is first sought or those who previously received a scholarship and have not graduated from high school or turned 21 years old;
- Expand eligibility by deleting the definition

#### ***Student Empowerment Act Program***

SB 175 (2021), among other provisions, would have created an ESA program in Kansas for eligible students, including students eligible for free- and reduced-price meals. The conference committee report for SB 175 was not adopted by both chambers.

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## EDUCATION

# Vaccine Requirements in K-12 Schools

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## Overview

First enacted in 1961, Kansas statute requires all children enrolled in a school or school-operated program to provide proof of vaccination for diseases as deemed necessary by the Secretary of Health and Environment (Secretary). Should proof of the required vaccinations not be provided for the child, then an alternative certificate qualifying them for an exemption must be provided, or the local school board has the authority to exclude the child from attending the school or school operated program.

## Kansas Statute

Contained in KSA 72-6262 *et seq.*, Kansas law requires proof of vaccination for all students enrolling for the first time in a school,<sup>1</sup> preschool, day care program operated by a school, or as designated by the Secretary. Certification must be from a licensed physician or local health department and detail that the student has received all tests and vaccines as deemed necessary by the Secretary. The current list of required tests and vaccines can be found in KAR

28-1-20 and any changes to the list are required to go through the rules and regulations process.

Students may be exempt from providing certification if, as an alternative, they provide the school with an annual written statement from a licensed physician that their physical condition is such that one or more of the required tests or vaccinations would “seriously endanger the life or health of the child”. The student would also be exempt if they provide written certification from at least one parent or guardian that the student is an adherent to a religious denomination whose beliefs are opposed to the tests or vaccinations.

Should the student be unable or unwilling to provide proof of the tests and vaccinations and also unable or unwilling to provide an alternative certification to exempt them from the requirements, then KSA 72-6265 gives local school boards the authority<sup>2</sup> to exclude the student from attendance at the school, preschool, or day care program until they provide one of the previously discussed certifications. Such an exclusion policy must include a requirement to provide the student’s parent or guardian with written notice that details the reasoning for exclusion, that it shall continue until compliance has been met, and that a hearing shall be afforded should the parent or guardian wish it.

## Recent Action

The most recent bill before the Legislature regarding student immunizations was 2020 HB 2601. The bill, as introduced, would have codified the vaccination list currently in KAR 28-1-20 as a requirement for all children attending maternity and child care facilities governed by KSA 65-508 and students attending schools governed by KSA 72-6262. The bill would have also allowed the Secretary to only add new immunizations to

■ Medical and Religious  
■ Medical, Religious, and Philosophical  
■ Medical Only

## Other States

All 50 states provide at least one type of exemption from mandatory vaccine requirements. Six states, California, Connecticut, Maine, Mississippi, New York, and West Virginia only allow medical exemptions from vaccines. All other states allow a combination of medical, religious, and philosophical exemptions from mandatory vaccines.

Number of Required Vaccines	States
7	Alabama, California, New Hampshire, South Dakota
8	Alaska, Colorado, Delaware, Florida, Massachusetts, Mississippi, Nebraska, Oregon, Washington, Wisconsin
9	Arizona, Illinois, Iowa, Maine, Maryland, Michigan, Missouri, Montana, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Vermont, Virginia, Wyoming
10	Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Nevada, New Jersey, New York, Pennsylvania, Texas, Utah, West Virginia
11	Connecticut, District of Columbia, Hawaii, Idaho, North Dakota
12	Ohio
13	Rhode Island

2 The statute gives the local school board authority to delegate this power to an employee or committee of employees to make determinations in its stead.

# KLRD

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## ELECTIONS AND ETHICS

### Federal Voter Registration Requirements

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#### Voting Rights Act

Federal Voting Rights Act law, at 42 U.S. Code §1971, includes this: “All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding. . . . No person acting under color of law shall[,] in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.”

#### National Voter Registration Act

Various sections of the National Voter Registration Act of 1993 (also known as the “NVRA” or “motor voter law”) set forth certain voter registration requirements with respect to elections for federal office. It was enacted as Public Law 103-31 and added to the code as 42 U.S. Code § 1973gg-1 *et seq.*

- Section 5 of the NVRA requires states to offer voter registration opportunities at state motor vehicle agencies by requiring any application for a driver’s license or nondriver’s identification card to serve as a voter registration application unless the applicant fails to sign the registration application.
- Section 6 of the NVRA requires states to offer voter registration opportunities by mail-in application. The form must meet criteria of the U.S. Election Assistance Commission.
- Section 7 of the NVRA requires states to offer voter registration opportunities at certain state and local offices, including public assistance and disability offices. Applications, assistance with that application if the applicant desires assistance, and accepting registrations for transmittal to election officials must be offered.
- Section 8 of the NVRA requires states to implement procedures to maintain accurate and current voter registration lists. Those procedures must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act.

#### Help America Vote Act

The Help America Vote Act (HAVA) of 2002, Public Law 107-252, among other things, established the U.S. Election Assistance

Commission to assist in the administration of federal elections and to otherwise provide assistance with the administration of certain federal election laws and programs, and it established minimum election administration standards for states and units of local government with responsibility for the administration of federal elections.

HAVA Section 303, codified at 52 U.S. Code § 21083, requires “a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.” It also requires “immediate electronic access” to the list by any election official in the state, including any local election official, security measures to be taken to protect the integrity of the list, and maintenance of the list (as further described in the Briefing Book article “Voter List Maintenance”).

HAVA Section 903 provides for criminal penalties for those who knowingly and willfully give false information in registering or voting, or conspire with another to do so, and for those who commit fraud or knowingly make a false statement with respect to the naturalization, citizenry, or alien registry of a voter.

Information about moneys distributed to the State under HAVA and the use of those moneys is provided in the KLRD memorandum “Help America Vote Act State Expenditures” in the Elections and Ethics policy area section of the KLRD website.

### **Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)**

The UOCAVA (Public Law 99-410, 52 U.S. Code § 20301 et seq.), enacted in 1986 and as amended by the Military and Overseas Voter Empowerment Act (“MOVE Act”), a subtitle of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84), requires that the

states and territories allow members of the U.S. uniformed services and the merchant marine, members of their families, and American citizens living abroad to register and vote absentee in elections for federal office. The U.S. Department of Justice states the portions of the UOCAVA regarding registration require state officials to:

- Provide UOCAVA voters with an option to request and receive voter registration and absentee ballot applications by electronic transmissions; and
- Accept otherwise valid voter registration applications without regard to state notarization requirements, or restrictions on paper type or envelope type.

UOCAVA provisions also address electronic submission of ballots, transmitting ballots no later than 45 days before a federal election, allowing UOCAVA voters to track the receipt of their absentee ballots through a free access system, and protecting the security and privacy of UOCAVA votes and voters.

HAVA provisions in Section 706 prohibit rejection of a UOCAVA application for registration “submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year.”

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## ELECTIONS AND ETHICS

### Voter List Maintenance

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Voter list maintenance is the process of removing voters from the voter registration list or party affiliation lists. In Kansas, it is the responsibility of the county election officer to remove names of voters who have died or become disqualified from voting. The Secretary of State must provide information to county election officers regarding disqualification of voters.

#### National Voter Registration Act

The National Voter Registration Act (NVRA, and also known as the “motor voter” act) requires states to conduct voter list maintenance to remove deceased individuals from voter rolls and requires states to have processes in place to remove voters in the instance of certain events, such as change of residence, death, felony conviction, or mental incapacitation in accordance with state law.

The NVRA prohibits states from removing registered voters from voter lists within 90 days of a primary or general election for federal office unless other factors require such removal. The NVRA also prohibits states from canceling voter registration based solely on a failure to vote.

#### Kansas Voter List Maintenance Provisions

The process for voter list maintenance in Kansas statute mirrors requirements outlined in the NVRA.

KSA 2020 Supp. 25-2316c(d) specifies registered voters cannot be removed from registration lists because they changed residence, unless:

- The voter confirms, in writing, that they have moved outside of the county in which they are registered or has registered to vote in any other jurisdiction; or
- Both of the following have occurred:
  - The voter has failed to respond to a notice from a county election officer that, based on information from the U.S. Postal Service, such voter has moved to a residence outside of the county where they are currently registered; and
  - The voter has not voted in an election during the period beginning on the date of such notice from the election officer and ending on the day after the date of the second federal general election occurring after the date of such notice.

KSA 25-2316c(f) requires a voter’s registration to be void when such voter dies or is disqualified from voting. The county election officer is required to remove from the registration books and from the party affiliation list any registered voter:

- Who appears in an obituary notice in a newspaper having general circulation in the county reporting the death of such voter;

- Who requests in writing that their name be removed from registration;
- Whose name is ordered removed from registration lists by a court of competent jurisdiction;
- Whose name appears on a list of deceased residents compiled by the Secretary of Health and Environment or appears on a copy of a death certificate provided by the Secretary of Health and Environment; or

Whose name appears in information provided by the Social Security Administration showing such voter to be deceased.

Additionally, KSA 2020 Supp. 25-2316c(g) requires the Secretary of State, within five days of receiving written notice of a felony conviction in a U.S. District court, to notify the county election officer in the jurisdiction in which such offender resides. The county election officer must remove the name of the offender from the registration records upon receiving such notice of a felony conviction from the Secretary of State, a county district attorney, or a Kansas district court. A person convicted of a felony may re-register to vote when all terms of the sentence have been completed (KSA 2020 Supp. 21-6613).

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## FEDERAL AND STATE AFFAIRS

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#### Background and Overview

Kratom, also known as *Mitragyna speciosa*, is a plant native to Southeast Asia. The leaves of a kratom plant are consumed by persons in order to produce effects similar to both opioids and stimulants.

According to the National Institutes of Health (NIH), two compounds in kratom leaves, *mitragynine* and *7-hydroxymitragynine*, interact with opioid receptors in the brain, producing sedation, pleasure, and decreased pain when taken in high doses. Lower doses cause alertness instead of sedation. The NIH also states some people in Western countries use kratom to try to treat pain or manage opioid withdrawal symptoms.

#### Regulatory Status of Kratom

Kratom is largely unregulated globally and in the United States. However, in recent years, the World Health Organization (WHO) has initiated a review of the substance, the U.S. Food and Drug Administration (FDA) has taken actions to regulate the importation of the substance, and

some U.S. states have regulated the sale, use, and possession of the substance.

#### International Law

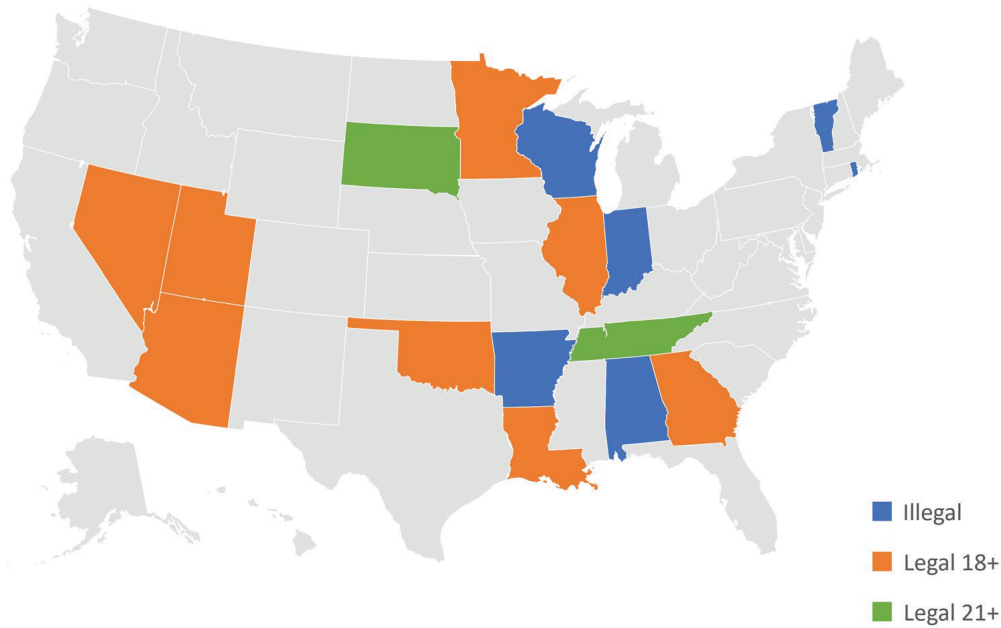
The WHO announced in July 2021 that kratom would be subject to pre-review by the Convention on Psychotropic Substances of the United Nations, whose membership includes the United States. The pre-review process is intended to determine whether kratom should be subject to a full review, which could result in the substance being banned internationally. Notification of the pre-review required the U.S. Secretary of Health and Human Services to solicit public comment on the substance.

#### Federal Regulatory Actions

Recently, the FDA classified kratom as both a “new drug” and a “new dietary ingredient” pursuant to the Food and Drug Cosmetic Act. This classification allowed the FDA to issue an import alert for kratom products, which allows the agency to seize shipments of the product at ports of entry to the United States on the basis that the drug or dietary ingredient has not been approved for use in the United States. Persons who have had shipments seized are allowed the opportunity to provide evidence to the FDA to show that a violation has not occurred.

The Drug Enforcement Administration (DEA), in 2016, announced its intention to place the active ingredients of kratom into Schedule I of the Controlled Substances Act. Schedule I substances are classified as substances that are illegal to possess and consume and most likely to be abused. However, after receiving public comment on the proposal, the DEA rescinded its proposal.

## Kratom Regulation by State



### State Law

Sale, use, and possession of kratom or its active ingredients is largely unregulated among U.S. states. However, 16 states have either made kratom and its active ingredients illegal to sell, use, and possess, or restrict such actions by minors.

Sale, possession, and use of kratom and its active ingredients are illegal in the following states: Alabama, Arkansas, Indiana, Rhode Island, Vermont, and Wisconsin (shown in blue on the map above).

The states of Arizona, Georgia, Illinois, Louisiana, Minnesota, Nevada, Oklahoma, and Utah require persons to be age 18 to possess and use kratom. The states of Tennessee and South Dakota have implemented an age requirement of 21.

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## FEDERAL AND STATE AFFAIRS

### Medical Marijuana

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#### Introduction

Medical marijuana use is legal under state law in 36 states and the District of Columbia. Recreational use of marijuana is legal under state law in 18 states and the District of Columbia. [Note: Marijuana use of any kind is illegal under federal law.]

In recent years, several bills were introduced to legalize medical or recreational marijuana use in Kansas. Legislation that would legalize medical marijuana in Kansas received a floor vote for the first time in 2021, as House Sub. for SB 158 passed out of the Kansas House.

#### Marijuana Legalization in Other States

**Medical Use.** Laws in the 36 states, and the District of Columbia, that legalize medical marijuana and cannabis programs provide 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 for either smoking or vaporization of marijuana products, plant material, or extract.

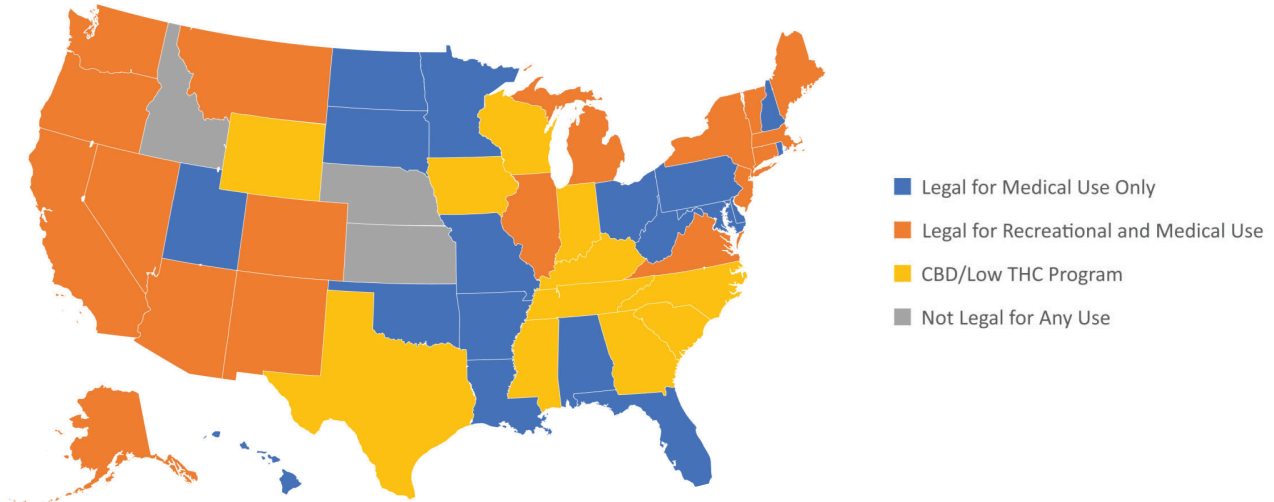
Another 11 states allow the use of low-THC, high-cannabidiol products for specific medical conditions, or provide a legal defense for their possession. The following six states have recently enacted comprehensive medical marijuana laws after previously legalizing low-THC products: Florida, Mississippi, Missouri, Oklahoma, Utah, and Virginia.

**Recreational Use.** As of June 2021, the following 18 states, and the District of Columbia, have legalized the recreational use of marijuana: Alaska, Arizona, California, Colorado, Connecticut, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Mexico, New Jersey, New York, Oregon, Vermont, Virginia, and Washington. Of those, Connecticut, Illinois, New Jersey, New Mexico, New York, Vermont, and Virginia legalized recreational use of marijuana through the legislative process, while the remaining states used a ballot initiative. A South Dakota ballot initiative to legalize recreational use of marijuana was ruled unconstitutional by a Circuit Judge and is pending appeal.

#### Medical Marijuana Licenses and Fees

While fee structures vary by state, fees and licensure can be required of distributors, dispensaries, patients, caregivers, laboratories, and processors. Marijuana application and licensing fees can vary by state, and are set by statute or regulation, often including caps or guidance in the statutes. For a regional review of medical marijuana licenses and fees in Arkansas, Colorado, Iowa, Missouri, and Oklahoma, see the following table.

## Marijuana Legalization in the U.S.



## Regional Medical Marijuana Licenses and Fees as of March 15, 2021

State	Cultivator	Distributor	Dispensary
Arkansas	Application - \$15,000 License - \$100,000 plus \$500,000 performance bond Renewal - \$100,000 plus \$500,000 performance bond	\$5,000 plus \$100,000 performance	Application - \$7,500 License - \$15,000 plus \$100,000 performance bond Renewal - \$22,500 plus \$100,000 performance bond
	<i>Note: The number of cultivators and dispensaries are limited in Arkansas: no more than 40 dispensary licenses; no more than 8 cultivation licenses.</i>		
Colorado	Class 1 (1-500 plants) application - \$1,000 Class 1 license - \$1,500 Renewal - \$1,800 to \$3,800+, based upon number of plants	Application - \$1,000 License - \$4,400 Renewal - \$4,700	Application - \$5,000 License - \$2,000 Renewal - \$1,800
Iowa	Application - \$7,500 Background check deposit - \$10,000 per business owner Background check deposit - \$200 per employee	NA	Application - \$5,000 Background check deposit - \$10,000 per business owner Background check deposit - \$200 per employee
Missouri	Application - \$5,115 License - \$25,575 Renewal - \$5,115	Application - \$5,115 License - \$5,115 Renewal - \$5,115	Application - \$3,069 License - \$10,230 Renewal - \$3,069
	<i>Note: MO fees increase or decrease each year based on the CPI. Fees listed here are based on the most recent fee schedule available on the MO Health Dept. website.</i>		
Oklahoma	Application - \$2,500	Application - \$2,500	Application - \$2,500

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## FEDERAL AND STATE AFFAIRS

### Sale and Delivery of To-Go Drinks and Direct Shipment of Alcohol

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During the COVID-19 pandemic, 32 states have passed legislation related to alcohol delivery, to-go drinks, and direct shipment of alcohol. The Special Committee on Liquor Law Modernization held meetings to discuss current Kansas laws and regulations and recently enacted regulated beverage legislation, and heard testimony from conferees concerning the sale and delivery of to-go drinks and the shipment of regulated beverages. The Special Committee's report to the 2022 Legislature may be found at <http://www.kslegresearch.org/KLRD-web/Committees/Committees-Spc-Liquor-Law-Modernization.html>.

#### Sale and Delivery of To-Go Drinks

Prior to March 2020, no state had explicit laws governing to-go or delivery of alcoholic drinks from bars, restaurants, and clubs. According to the R Street Institute, 29 states currently have temporary or permanent laws that allow for customers to take out alcoholic drinks or have them delivered directly.

In Kansas, Executive Order 20-27, issued April 22, 2020, allowed for sale of to-go beer and alcoholic drinks from liquor retailers, class A and B clubs, and drinking establishments until 11 p.m., as long as the drinks are in containers placed inside sealed, clear bags. HB 2137 (2021 law) made this permanent law. Delivery of to-go beer and alcoholic drinks is currently not allowed.

Currently, 22 states explicitly allow for delivery of beer and alcoholic beverages in addition to takeout. Seven states specify that only employees of the licensee may conduct deliveries, while the rest allow for the use of third-party delivery services.

#### Delivery from Retailers

Delivery from retailers, such as liquor or grocery stores, has also expanded since March 2020. Arkansas, Alabama, Georgia, Mississippi, Oklahoma, New Mexico, and West Virginia recently passed laws permitting alcohol to be delivered from retail stores. Wyoming, Iowa, and Louisiana expanded existing delivery laws to allow for alcohol from retail stores to be delivered by third-party services.

#### Direct Shipment of Alcohol by Manufacturers

According to the National Conference of State Legislatures, the majority of states have statutory provisions that allow for out-of-state manufacturers to ship alcoholic beverages directly to consumers, with many states restricting direct shipments to wine. Most states require a specific direct shipping license or permit. The following table provides more detail.

## Alcohol Authorized for Direct Shipment by State

Authorized for Direct Shipment	States
All spirits as specified	Florida, Hawaii, Kentucky, Nebraska, New Hampshire, Rhode Island, West Virginia, District of Columbia
Beer and wine as specified	Delaware, Massachusetts, Montana, North Dakota, Ohio, Oregon, Vermont, Virginia
Wine, cider, and mead	Connecticut, New Jersey
Wine and cider	New Mexico
Beer, wine, and cider	Oregon
Wine and mead	Arkansas
Wine only	Alabama, Alaska, Arizona, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah (wine subscriptions), Washington, Wisconsin, Wyoming

Currently, KSA 41-308a(a)(10) authorizes farm wineries to ship wine in-state if the winery obtains a special order shipping license under KSA 41-350. Microbreweries and microdistilleries are not permitted to ship product directly to in-state customers.

For more information on direct shipment of alcohol by manufacturers, visit the National Conference of State Legislatures at <https://www.ncsl.org/research/financial-services-and-commerce/direct-shipment-of-alcohol-state-statutes.aspx>.

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## FEDERAL AND STATE AFFAIRS

# Sports Wagering Laws Passed or Updated in 2021

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### 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. Since the *Murphy* decision, 32 states and the District of Columbia have legalized sports wagering, and 13 other states have considered legislation during the 2021 legislative session.

According to the American Gaming Association, a total of 28 states and the District of Columbia currently accept sports wagers, and a total of 4 states have legalized sports betting, but are not yet operational.

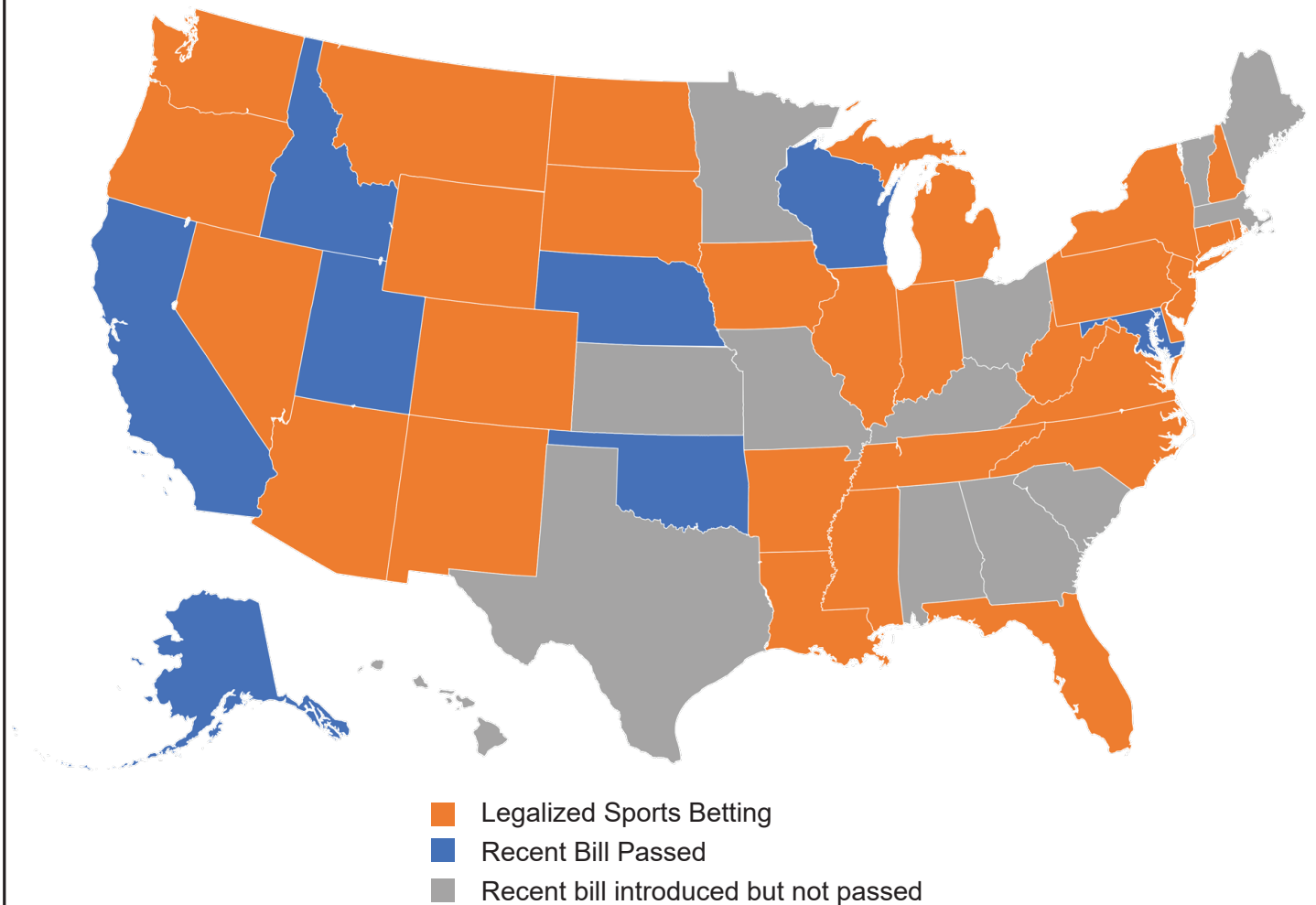
The following map shows states that are currently accepting sports wagers in orange. States that have legalized, but are not operational are shown in blue.

### 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, New York (tribal casinos only), Rhode Island, Washington, and Wyoming, persons age 18 or older may place sports wagers.

Out of the 32 states with legal sports wagering (either active, or pending implementation), 19 states and the District of Columbia restrict wagering on either local collegiate teams or on

## Sports Betting Bills by State as of November 2021



Source: American Gaming Association

amateur sports: Arizona, Arkansas (restriction only on amateur sports), Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Nebraska, New Hampshire, New Jersey, New York, Oregon, Rhode Island, South Dakota, Tennessee, Virginia, Washington, and Wisconsin.

Five states, Arizona, Illinois, Michigan, Tennessee, and Virginia, require the use of official league data for either proposition bets, or in-play wagers, or both.

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## FEDERAL AND STATE AFFAIRS

### Tobacco 21

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On December 20, 2019, President Trump signed 2019 HR 1865, which contained provisions that raised the federal minimum age for tobacco product sales from 18 to 21. The bill amended the Federal Drug and Cosmetic Act with a new section that 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 adolescent access to tobacco products. This policy is known as Tobacco 21.

#### Federal Policy

In October 2009, the Federal Food and Drug Administration (FDA) prohibited “characterizing flavors,” like fruit flavors, 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 tobacco products 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 Agreement.

The Synar Agreement 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 (SAPTB) grant funding. States are required to: (1) Annually conduct random inspections to ensure that retailers do not sell tobacco to individuals under age 21; (2) Annually report such findings to the federal government; and (3) Comply with reporting and enforcement requirements within the three-year grace period before funds are withheld.

With this change, 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. Youth use of ENDS products was deemed in the 2016 U.S. Surgeon General report to be a public health concern and associated with the use of other tobacco products.

#### Kansas Tobacco Laws

Kansas law has not increased the tobacco use, sale, and consumption age from 18 to 21. However, local municipalities like Wyandotte, Finney, Douglas, Shawnee, Johnson, Leavenworth, Labette, and Allen counties had adopted Tobacco 21 ordinances prior to enactment of the federal measures.

KSA 79-3321 describes the following as unlawful:

- The sale, furnishing or distribution of tobacco and consumable materials 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 is unlawful.

### *Indoor Clean Air Act*

KSA 21-6109 through 21-6116 prohibits the use of tobacco products in public places except in gaming floors of Lottery and Racetrack gaming 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:

- As 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)].

### *Recent Kansas Legislation*

HB 2563 (2020) 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. The bill would have allowed the sale of flavors approved by the FDA, with an exception for tobacco and menthol flavors.

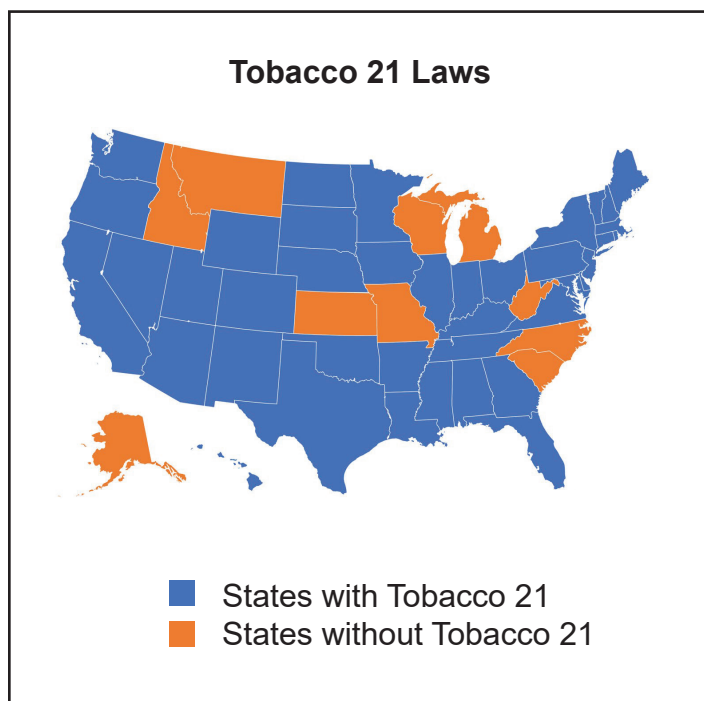
Additionally, the definition of “smoking” would have been amended to include the use of e-cigarettes. Selling, furnishing, and distribution of tobacco to a minor, or individual under age 21, would have been classified a Class B misdemeanor penalty.

### **Other States’ Tobacco 21 Laws**

Prior to the new federal law raising the tobacco purchase age to 21, 19 states and Washington, DC, and over 540 localities had implemented their own Tobacco 21 laws with varying exemptions, levels of enforcement, and penalties.

States such as Maryland, Pennsylvania, and Texas exempted active duty 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 the federal law in 19 states, and 14 states passed legislation after the federal law.



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## FINANCIAL INSTITUTIONS AND INSURANCE

### Health Insurance Mandates in Kansas

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This article examines required insurance benefits in Kansas law, the “test track” requirements for the Legislature’s consideration of proposed mandates, and pending legislation.

**What is a mandate?** Statutes added in Kansas insurance law require certain health care providers be paid for services rendered (provider mandates) or be paid for certain types of prescribed coverage or benefits (benefit mandates). For example, Kansas has a benefit mandate for osteoporosis:

- a) Any individual or group health insurance policy. . . which [is] delivered, issued for delivery, amended or renewed on or after July 1, 2001, shall include coverage for services related to diagnosis, treatment and management of osteoporosis when such services are provided by a person licensed to practice medicine and surgery in this state,

for individuals with a condition or medical history for which bone mass measurement is medically necessary for such individual. Such policy, provision, contract, plan or agreement may apply to such services the same deductibles, coinsurance and other limitations as apply to other covered services (KSA 40-2,166a)

**Which health insurance plans are affected when a new mandate becomes law?** Generally, the new law would apply to individual health insurance policies and group health insurance policies issued. The legislation would likely also specify policies issued by Health Maintenance Organizations (HMOs), municipal-group funded pools, and the State Employee Health Plan (SEHP).

**Which health plans and policies would not be required to incorporate new mandate requirements in their policies?**

- Self-insured health plans, including Association 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.);
- Supplemental benefit policies (e.g., dental care and vision plans); and
- Short-term limited duration plans.

**How do proposed new mandates become law?** The following chart illustrates the statutory process and associated timing for the Legislature’s consideration of a proposal during the 2022 Session.



## Kansas Health Insurance Mandates Prescribed Path – Kansas Law

<b>1</b> Requirements on proponents (KSA 40-2248, KSA 40-2249)	Prior to legislative consideration, proponents must complete a social and financial impact report.	2022 (if law is passed)
<b>2</b> Study in the SEHP (KSA 40-2249)	Before being implemented statewide, the coverage mandate must be studied for at least one year in the SEHP.	Study completed in Plan Year 2023.
<b>3</b> Report to the Legislature (KSA 40-2249)	The SEHP study report is submitted to the Legislature.	By March 1, 2024
	The Legislature could allow the coverage mandate to apply statewide by not taking action.	Effective after March 1, 2024
	Or, the Legislature could pass a new law to continue the SEHP study only or make the mandate effective statewide beginning at a later date.	As early as July 1, 2024

**What proposed mandates are pending before the 2022 Legislature?** Among pending legislation, statewide coverage is being sought for breast cancer examinations\* (SB 48 and HB 2241), contraceptives (HB 2343), and mental illness and substance use disorders [expansion of existing mandate] (SB 82 and HB 2073). Additionally, certain proposed mandates would only apply to insurance coverage within the State Employee Health Plan for specific conditions and require reporting to the Legislature the following session. These include HB 2110 (treatment of PANS/PANDAS — autoimmune conditions that affect children) and HB 2129 (tobacco cessation benefits).

\*Exempted from the requirements of KSA 40-2248 and KSA 40-2249a

*Note:* Prior law has excepted one or more of the prescribed steps (e.g., 2010 Senate Sub. for HB 2160 required the Health Care Commission to provide coverage for certain autism spectrum disorder coverages and required all individual or group insurance policies that provide coverage for prescription drugs to cover orally administered anticancer medications).

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## HEALTH AND SOCIAL SERVICES

### Budget Neutrality in KanCare

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KanCare is the program through which Kansas delivers Medicaid, a joint federal and state program that provides health and long-term care services to qualifying individuals. If states wish to waive certain federal requirements in order to carry out new initiatives, they can submit an application to the Centers for Medicare and Medicaid Services (CMS), the federal agency that oversees Medicaid. CMS may waive compliance with certain Medicaid requirements under Section 1115(a) of the Social Security Act. This is known as an “1115 waiver.”

In 2012, Kansas submitted an 1115 waiver to implement KanCare as a Medicaid reform initiative, which included managed care contracts for all medical programs and services. The application was approved, and the first KanCare 1115 waiver took effect January 1, 2013, and lasted until December 31, 2017, with a one-year extension granted through December 31, 2018.

Following a reapplication process, a second 1115 waiver was approved beginning January 1, 2019, and ending December 31, 2023.

#### Budget Neutrality

Medicaid is a partnership between the State and the federal government, with the federal government paying for approximately 60.0 percent of Medicaid expenditures in Kansas and the State paying the remaining 40.0 percent. For CMS to approve each 1115 waiver, Kansas must demonstrate that the project will be budget neutral for the federal government. For a waiver to be budget neutral, it must not result in greater Medicaid costs to the federal government than would be expected without the waiver. To ensure budget neutrality, CMS places a limit on the amount of federal Medicaid funding for which Kansas is eligible over the course of the five-year 1115 waiver project. Kansas must agree to limit spending to stay within the range of budget neutrality and return any federal funds received that exceed the agreed-upon cap.

When KanCare was implemented, CMS estimated the existing Kansas Medicaid program would have cost the federal government \$1.0 billion more if the 1115 waiver were not in place. This enabled Kansas to spend an additional \$1.0 billion in federal funds over the course of the five-year waiver and remain within the boundaries of budget neutrality. At the same time, CMS estimated that, based on anticipated spending increases and policy changes over the course of the five-year waiver, Kansas would be approximately \$568.0 million below the budget neutrality cap when the waiver ends on December 31, 2023.

## ***What Impacts Budget Neutrality***

Budget neutrality is based on how much is being spent per Medicaid program member per month. To calculate this, CMS sorts the population served by Medicaid into two groups. One group is made up of adults and children and the other is aged-blind-disabled and long-term care. A maximum per member per month amount is calculated for each of the two groups. For this reason, membership increases or decreases do not significantly impact budget neutrality unless there is a large increase or decrease within a high-cost eligibility group.

Budget neutrality is impacted by most changes to KanCare, including any policies that increase the capitation payments made to KanCare managed care organizations (MCOs). Examples of expenses that *do* count toward the budget neutrality cap include:

- Any changes to the rates paid to Medicaid providers;
- The addition of new Medicaid-covered codes or services; and
- Provider assessments used to draw down federal matching funds, such as the Health Care Access Improvement Program.

Some expenditures that do *not* impact budget neutrality include:

- Changes to client obligations, such as changes to the protected income level;
- Changes to the Program for All-Inclusive Care for the Elderly (PACE). [PACE is not included under the 1115 waiver];
- School-based services funded with Medicaid dollars (these programs operate outside of the 1115 waiver);
- Medicaid Expansion would not influence budget neutrality, as it would operate under a separate budget neutrality cap; and

- Provider rate increases paid outside MCO capitation payments [*i.e.* Strengthening People and Revitalizing Kansas (SPARK) distributions and the 2021 retroactive \$15/day nursing facility rate increase].

## ***Corrections to the Kansas Budget Neutrality Cap***

Due to the way CMS calculated the State's budget neutrality cap, several costs were underestimated, ultimately reducing the amount Kansas can spend before reaching the budget neutrality cap. One such cost was an increase to the MCO privilege fee that reduced the State's cumulative budget neutrality cap by an estimated \$234.0 million. Another underestimated cost was the anticipated expenditures for the adult and child population groups. At the time, CMS was calculating Kansas' budget neutrality cap, the State had placed a temporary pause in eligibility redeterminations for the adults and children group. This came during the processing of new applications for other population groups. This had the effect of lowering the anticipated expenditures by \$139.5 million for the adult and child population group.

KDHE is in the process of submitting a proposal to CMS to correct the above issues. If CMS accepts the proposal, the budget neutrality cap is expected to be raised, increasing the amount Kansas is eligible to spend. This follows a prior proposal that KDHE made to CMS in September 2020 after noticing a technical error in the State's budget neutrality calculation. This proposal was accepted by CMS, and the budget neutrality cap was raised; however, the amount Kansas is allotted to spend on each of the two population groups was not increased.

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## HEALTH AND SOCIAL SERVICES

### Differences Between Community Mental Health Centers and Certified Community Behavioral Health Clinics

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During the 2021 Session, the Legislature passed Senate Sub. for HB 2208 which, among other things, requires the Kansas Department for Aging and Disability Services (KDADS) to establish a certification process for certified community behavioral health clinics (CCBHCs), a Medicaid provider type.

Currently, KDADS anticipates that all of the state's 26 community mental health centers (CMHCs) will transition to become CCBHCs. The current projection is that CMHCs will begin certification during FY 2022, and by FY 2025 all 26 CMHCs will have transitioned.

#### Services Provided by Community Mental Health Centers and Reimbursement Mechanism

CMHCs are mental health facilities that provide community-based public mental health services, and largely serve as the main entry points for the mental health system. CMHCs provide outpatient

services to adults and children but also provide behavioral health screening for patients.

Currently, a CMHC bills and will receive reimbursement for each different service it provides. That reimbursement rate covers the cost for the provider to provide that service and does not cover any administrative costs the CMHC might have.

KDADS has indicated that this reimbursement model can place a CMHC in a situation where it might not be able to provide more intensive services. Due to reimbursement the CMHC might receive for certain services, and how frequently the services are utilized, this could reduce the services offered in certain areas, such as the western part of the state.

#### Services Provided by Certified Community Behavioral Health Clinics and Per Person Per Month Payment

CCBHCs are a relatively new Medicaid provider type that requires a clinic to meet certain requirements in order to earn certification. Generally, a CCBHC is required to provide a certain set of core services. These include, but are not limited to:

- Person-centered treatment planning;
- Crisis services;
- Outpatient mental health and substance use services; and
- Screening, assessment, diagnosis and risk assessment.

Currently, there are no CCBHCs operating in the state.

A CCBHC is funded through a per-person per-month model, where the facility receives a set amount each month based on the actual costs of providing care for patients. Different from the service reimbursement model CMHCs use, per-person per-month amounts factor in facilities' administrative costs based on reported costs to the state.

**Phased Plan for CCBHC Implementation**

During the 2021 Legislative Session, KDADS indicated it would implement a phased approach to transitioning CMHCs to CCBHCs. Its plan would begin in FY 2022 and continue through FY 2025. KDADS provided an estimate for the Medicaid expenditures for services offered by CCBHCs. Below is a chart demonstrating the phased approach to certification.

In 2021 SB 159, the Legislature added approximately \$2.7 million, including \$1.2 million from the State General Fund (SGF), for CCBHC funding for FY 2022. This funding would provide

\$1.6 million, including \$627,342 SGF, for the low-end service estimate in FY 2022.

The additional \$1.1 million, including \$556,710 SGF, would provide additional operating funding for the agency itself to allow for 10.0 FTE positions and other contractual services associated with CCBHC certification and ongoing compliance duties the agency anticipates.

KDADS and the Kansas Department of Health and Environment (KDHE) are working with CMHCs and consultants to move the CCBHC implementation schedule forward. KDHE will need to establish a prospective payment system that will require an approval request to the federal Centers for Medicare and Medicaid Services. KDADS and KDHE have indicated they have begun the state plan amendment necessary for CCBHC certification and anticipate submitting it to the federal Centers for Medicare and Medicaid Services by January 2022.

PLANNED PHASED IMPLEMENTATION OF CCBHC CERTIFICATION				
	FY 2022	FY 2023	FY 2024	FY 2025
Number of CMHCs	6	9	18	26
Services Cost Estimate—Low End				
SGF	\$ 627,342	\$ 5,646,077	\$ 11,292,153	\$ 16,310,888
All Funds	1,568,355	14,115,191	28,230,383	40,777,220
Services Cost Estimate—High End				
SGF	\$ 1,106,096	\$ 9,954,861	\$ 19,909,722	\$ 28,758,488
All Funds	2,765,239	24,887,153	49,774,306	71,896,220

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## HEALTH AND SOCIAL SERVICES

# Kansas Health Care Personnel Vaccine Mandates

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## Kansas Hospital Mandates

In 2021, several Kansas hospitals mandated all staff receive vaccinations against COVID-19. The table below lists hospitals and hospital systems in the state that issued COVID-19 vaccine mandates, as well as the date by which staff were to complete the vaccine regimen. Some hospitals, such as AdventHealth, paused their mandates following court injunctions against federal vaccine mandates.

The U.S. Equal Employment Opportunity Commission (EEOC) issued technical guidance on the topic of vaccine requirements. According to the EEOC, employers can mandate employees receive vaccines subject to reasonable accommodation provisions in Title VII of the Civil Rights Act and the Americans with Disabilities Act.

Hospital or System	Vaccine Deadline
Ascension Via Christi	11/11/21
Lawrence Memorial Hospital Health	11/21/21
Mercy Health System	09/30/21
Stormont Vail Health	10/31/21
University of Kansas Health System Kansas City Division	12/01/21
University of Kansas Health System St. Francis Campus (Topeka)	12/01/21
AdventHealth	01/04/22

The State of Kansas has not issued any COVID-19 vaccine mandates.

## Health-Related Federal Vaccination Requirements

In August 2021, the Biden Administration announced it would require all staff at Medicaid and Medicaid-participating nursing homes to be vaccinated against COVID-19 by January 4, 2022. In September 2021, the Centers for Medicare and Medicaid Services (CMS) extended that requirement to include staff at the following facilities, as a condition for participating in the Medicare and Medicaid programs:

- Acute care facilities;
- Critical Access Hospitals;
- Inpatient Rehabilitation Facilities;
- Ambulatory Surgical Centers;
- Comprehensive Outpatient Rehabilitation Facilities;

- Federally Qualified Health Centers;
- Rural Health Clinics;
- Durable medical equipment suppliers;
- Home Health Agencies;
- Hospices; and
- Clinical labs.

According to CMS data on nursing facilities nationwide, as of October 21, 2021, an average of 64.7 percent of health care personnel in Kansas nursing care facilities had completed a COVID-19 vaccination regimen. Staff at two Kansas facilities were 100 percent vaccinated against COVID-19.

On November 29, 2021, the U.S. District Court for the Eastern District of Missouri issued a preliminary injunction against the federal vaccine mandate for employees at CMS-regulated facilities in the 10 states, including Kansas, that filed the lawsuit. As of December 2021, two other district courts have issued injunctions against the CMS mandate, bringing the total number of states affected by the CMS mandate injunctions to 25. As a result of the injunctions, CMS announced on its website it had “suspended activities related to the implementation and enforcement of this rule pending future developments in the litigation.” On January 7, 2022, the U.S. Supreme Court heard oral arguments on the CMS mandate injunctions.

## ***Department of Labor Rules***

In September 2021, the Biden Administration announced the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) was planning to require all employers with 100 or more employees to vaccinate all staff. As of October 2021, the details of OSHA’s Emergency Temporary Standard had not been released.

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## HEALTH AND SOCIAL SERVICES

# Responding to the Shortage of Health Care Workers in Kansas

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According to the Rural Health Information Hub, Kansas has 82 critical access hospitals, 175 rural health clinics, 42 federally qualified health center sites located outside of urbanized areas, and 28 short term hospitals located outside of urbanized areas. Additionally, the Kansas Hospital Association reports there are 122 community hospitals throughout the state. The Kansas Hospital Association also reports 75 of these hospitals are in danger of closing due to operating at a financial loss. These hospitals continue to face a shortage of health care workers, which has been exacerbated by the COVID-19 pandemic. This article describes the reasons for that shortage and the State's response to it.

## Defining the Health Workforce

According to the Census Bureau's 2019 American Community Survey, there were 22 million workers in the health care industry, one of the largest and fastest-growing sectors in the

United States that accounts for 14 percent of all U.S. workers. The Center for Health Workforce Studies notes the health workforce refers to all of the people who deliver or assist in the delivery of health services, or help operate health care facilities. This includes:

- Health care professionals working inside the health care sector, such as in hospitals;
- Health care professionals working outside the health care sector, such as in schools or for insurance companies; and
- Health care professionals working in a private office.

Although the health care sector has seen growth in employment, the sector is expected to increase by 12 percent by 2029. However, the COVID-19 pandemic has impacted the health workforce and expanded the needs of the sector. In Kansas, this burden is greater due to the shortage of physicians, services, and hospitals across the state.

## Shortage of Health Care Workers

In Kansas, there is and will likely continue to be a shortage of physicians due to location and the aging population of Kansas physicians, which has only been exacerbated by the COVID-19 pandemic. According to the Kansas Health Institute (KHI), the southeast and southwest parts of the state have fewer primary care physicians per resident in comparison to the other areas throughout the state. While these areas also have a smaller population, the fewer number of primary care physicians provides residents with fewer options for adequate service and access dependent on insurance qualifications.

In respect to age, 15.6 percent of primary care physicians indicated they were 65 years of age or older in a 2019 Kansas State Board of Healing Arts survey. When reviewing the age distribution of primary care physicians in Kansas by region, KHI reports 42.2 percent of physicians from the southeast region are 55 years of age or older and, in southwest region, that number is 45.2 percent. KHI notes innovative practices such as rural rotations, job shadowing programs that promote health care work to students in rural areas, student loan repayment programs, and other incentives that would attract students in the health care field to stay or come to Kansas, can assist in providing the workforce necessary for Kansas residents in future years.

## **Responses to the Shortage**

### ***Telemedicine***

The Rural Health Information Hub notes, to expand services to more individuals in need of care, telemedicine is becoming an increasingly popular form of health care service. In all areas of Kansas, but especially in the rural parts of the state, telemedicine can provide residents with access to increased options for care. Telemedicine takes away the location barrier that some face by not having a health care facility in close proximity or, in cases of specialized needs, allows individuals to receive the care they need without the risk of passing along an illness.

Although telemedicine is becoming more popular, access to broadband must be considered in expanding services and opportunities throughout the entire state.

## **Recent Kansas Law**

Effective May 6, 2021, Senate Sub. for HB 2208 enacts the Rural Emergency Hospital Act (Act) and creates a category of licensure to enable certain Kansas hospitals to become licensed as rural emergency hospitals and receive federal health care reimbursement under that designation. The bill requires benefits coverage for services provided by rural emergency

hospitals if covered when performed by a general hospital or critical access hospital.

The bill also establishes the Rural Hospital Innovation Grant Program (Program), administered by the Secretary of Health and Environment for the purpose of strengthening and improving the health care system, increasing access to health care services in eligible counties, and helping communities achieve optimal health via transitional assistance.

The Secretary may award a Rural Hospital Innovation Grant (grant) to a county that applies in accordance with the provisions of the bill. The bill allows the Secretary to award a grant only if the state moneys to be awarded in the grant have been matched by private stakeholders, including hospital foundations or other organizations, on a basis of \$2 of private stakeholder moneys for every \$1 of state moneys.

The bill establishes the Rural Hospital Innovation Grant Fund (Fund), administered by the Secretary. The bill requires the Director of the Budget to certify and determine on June 15, 2021, the unencumbered federal funds received by the State that may be used to award the grants. An aggregate amount equal to \$10.0 million in available special revenue funds was to be transferred to the Fund on July 1, 2021. If the aggregate certified special revenue funds were less than \$10.0 million, the bill requires the difference between \$10.0 million and the amount certified to be transferred from the State General Fund to the Fund on July 1, 2021.

The Program sunsets July 1, 2025.

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## HEALTH AND SOCIAL SERVICES

### Savings Gained from the Enhanced Federal Medical Assistance Percentage

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#### Federal Medical Assistance Percentage

The Federal Medical Assistance Percentage (FMAP) determines the state and federal shares of funding for Medicaid, Adoption Assistance, and Foster Care. It is determined annually by the Secretary of Health and Human Services and is based on each state's per capita personal income compared to the average per capita personal income in other states.

#### Enhanced Federal Medical Assistance Percentage

The Families First Coronavirus Response Act (FFCRA) provides a temporary 6.2 percentage point increase to the FMAP for the duration of the federal public health emergency (PHE). This means that the federal government pays an additional 6.2 percent of the state's Medicaid expenditures. The State saves an additional 6.2 percent from the State General Fund (SGF) on its Medicaid program for the duration of the PHE.

The increase became effective on January 1, 2020, and extends through the quarter in which the PHE ends. The current PHE was renewed effective October 15, 2021, and will be in effect for 90 days. This extension would move the anticipated end date of the PHE to January 2022, unless extended further. Therefore, the savings are anticipated to continue through March 2022.

The Kansas Department of Health and Environment (KDHE) has provided the information in the following tables. The first table describes the savings accumulated thus far due to the 6.2 percent increase to the federal share and also includes the savings due to the increased enhanced FMAP (eFMAP). The eFMAP applies to Medicaid Services such as the Children's Health Insurance Program (CHIP) and is calculated using a different formula than the regular FMAP. The eFMAP gains 4.34 percentage points during the PHE. The total SGF savings for the last two quarters of FY 2020, the entirety of FY 2021 and one quarter of FY 2022 has been calculated to be \$449.6 million.

The second table shows the savings from the 6.2 percentage point increase for the three agencies impacted by the Medicaid FMAP increase: KDHE, Kansas Department for Aging and Disability Services (KDADS), and the Kansas Department of Corrections (KDOC).

#### Federal Medical Assistance Percentage Increase for Home and Community-Based Services Waivers

The American Rescue Plan Act of 2021 (ARPA) provides a 10.0 percent increase for home and community-based services (HCBS) provided between April 1, 2021, and March 31, 2022. These funds are intended to supplement, not supplant, state funds.

KDADS anticipates it should receive approximately \$80.3 million in additional federal funds for HCBS-related initiatives. KDADS currently plans to utilize these funds in improving three areas:

- \$57.1 million for workforce initiatives in an attempt to improve direct support worker retention and training;

- \$2.0 million to support HCBS participants find integrated jobs; and
- \$20.7 million to expand accessibility to HCBS services through waiting list studies, transition services, and agency staffing to assist the HCBS waiver programs.

Quarter Ending	FMAP Savings (6.2%)	Enhanced FMAP Savings (4.34%)	Total SGF Savings
March 2020	\$ 58,435,092	\$ 1,882,863	\$ 60,317,955
June 2020	63,476,684	1,947,016	65,423,700
<i>Subtotal 2020:</i>	<i>\$ 121,911,776</i>	<i>\$ 3,829,879</i>	<i>\$ 125,741,655</i>
September 2020	60,205,603	1,895,712	62,101,315
December 2020	59,806,369	1,958,688	61,765,057
March 2021	61,581,962	1,955,930	63,537,892
June 2021	66,029,133	2,032,091	68,061,224
<i>Subtotal 2021:</i>	<i>\$ 247,623,067</i>	<i>\$ 7,842,421</i>	<i>\$ 255,465,488</i>
September 2021	66,399,011	1,951,806	68,350,817
<b>GRAND TOTAL:</b>	<b>\$ 435,933,854</b>	<b>\$ 13,624,106</b>	<b>\$ 449,557,960</b>

Quarter Ending	KDHE	KDADS	KDOC	Total SGF Savings
March 2020	\$ 30,320,444	\$ 28,108,873	\$ 5,775	\$ 58,435,092
June 2020	35,278,340	28,175,947	22,397	63,476,684
<i>Subtotal 2020:</i>	<i>\$ 65,598,784</i>	<i>\$ 56,284,820</i>	<i>\$ 28,172</i>	<i>\$ 121,911,776</i>
September 2020	31,599,862	28,551,721	54,020	60,205,603
December 2020	30,965,994	28,811,117	29,258	59,806,369
March 2021	33,131,468	28,410,322	40,172	61,581,962
June 2021	37,345,760	28,650,601	32,772	66,029,133
<i>Subtotal 2021:</i>	<i>\$ 133,043,084</i>	<i>\$ 114,423,761</i>	<i>\$ 156,222</i>	<i>\$ 247,623,067</i>
<i>September 2021</i>	<i>33,586,476</i>	<i>32,781,171</i>	<i>31,364</i>	<i>66,399,011</i>
<b>GRAND TOTAL:</b>	<b>\$ 232,228,344</b>	<b>\$ 203,489,752</b>	<b>\$ 215,758</b>	<b>\$ 435,933,854</b>

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## JUDICIARY

### Adrian's Law

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Adrian's law requires the Kansas Department for Children and Families (DCF) or a representative of the law enforcement agency investigating the report to both visually observe and interact with children alleged to be victims of abuse and neglect. Adrian's law was coined in honor of the late Adrian Jones. The bill was originally introduced in the House Committee on Judiciary as 2019 HB 2392. In Conference Committee, its contents were inserted into 2021 HB 2158, a package of child welfare-related bills signed by the Governor and enacted on May 26, 2021.

#### History

Adrian Jones was a seven-year-old boy tortured to death by his father and stepmother in 2015. In 2017, records from DCF revealed Adrian was abused for years. Social workers documented Adrian as being at "high risk" for abuse. Adrian reported several incidents of abuse by his parents, but he was never removed from their custody.

Several abuse and neglect cases have surfaced in the six years since the Adrian Jones investigation began. Kansas lawmakers hoped Adrian's Law would save the lives of Kansas children by holding state and law enforcement officials accountable for reporting incidents of child abuse and neglect.

#### Investigation of Reports; Coordination and Cooperation Between Agencies

The enactment of Adrian's law amended KSA 2020 Supp. 38-2226 by adding a visual observation requirement by DCF or law enforcement conducting the abuse or neglect investigation, requiring that DCF or the investigating law enforcement officer visually observe the alleged victim of abuse or neglect and include the date, time, and location of all visual observations of the alleged victim in the report. If a joint investigation is conducted, both DCF and the investigating law enforcement agency shall visually observe the alleged victim.

#### Joint Committee on Child Welfare System Oversight

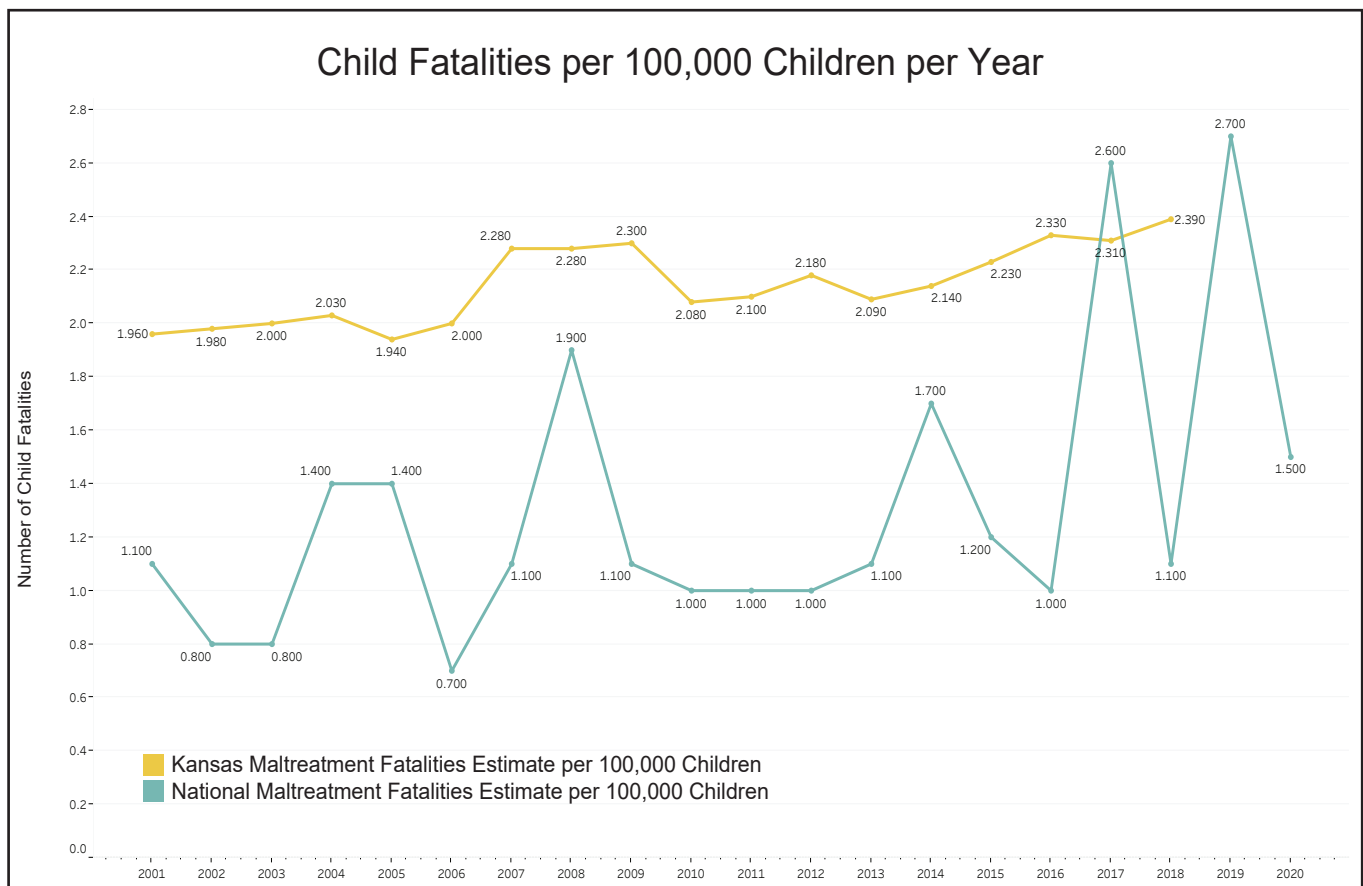
The same bill that enacted Adrian's law, 2021 HB 2158, established the 13-member Joint Committee on Child Welfare System Oversight. The Joint Committee is charged with reviewing the state child welfare-related policy enacted by the bill and overseeing the State's child welfare system. The Joint Committee was approved for four meeting days during the 2021 Legislative Interim Session and completed the four meeting days November 4, 2021.

The Joint Committee may introduce legislation and make formal recommendations related to the charge laid out in 2021 HB 2158.

As part of its report to the 2022 Legislature, the Joint Committee recommended legislation be introduced to amend the component of Adrian's law requiring visual observation of the alleged abused or neglected victim by DCF or investigating law enforcement by expanding it to also require a physician examination by a pediatrician with specialized training in examining abused children. The Joint Committee's report is available at [www.kslegresearch.org/KLRD-web/Interim-Committee-Reports-2021.html](http://www.kslegresearch.org/KLRD-web/Interim-Committee-Reports-2021.html).

The graph below provides the trends of estimated maltreatment fatalities per 100,000 children in Kansas and nationally.

Adrian's Law specifically seeks to reduce child fatalities of this kind in the state by improving the child welfare system.



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## JUDICIARY

# Kansas Criminal Justice Reform Commission

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## Background

In 2019, the Legislature passed HB 2290 establishing the Kansas Criminal Justice Reform Commission (Commission), composed of 16 voting members and 3 nonvoting members, including legislators, Judicial Branch personnel, prosecutors, defense attorneys, law enforcement personnel, and other stakeholders. The Commission was required to analyze, review, and study various criminal justice topics as specified by the bill. The Commission submitted an interim report to the Legislature in November 2019 (<http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2019CommitteeReports/KS-CriminalJustRefrmmComm-cr.pdf>) and a final report and recommendations in December 2020 based on the charge in HB 2290 ([http://www.kslegresearch.org/KLRD-web/Publications/Resources/Documents/Justice-Reform/Report\\_KCJRC\\_2021.pdf](http://www.kslegresearch.org/KLRD-web/Publications/Resources/Documents/Justice-Reform/Report_KCJRC_2021.pdf)).

In 2021, the Legislature passed HB 2077, amending the charge of the Commission with respect to the topics of diversion and supervision; adding a public defender member; removing

statutorily required study topics; and extending the final report deadline to December 1, 2021.

## 2021 Legislation Related to Commission Recommendations

Six bills were prefiled for introduction by the Joint Committee on Corrections and Juvenile Justice that were similar to recommendations made by the Commission. Each of the six bills were filed in both the House and the Senate: SB 3, HB 2026; SB 4, HB 2027; SB 5, HB 2028; SB 6, HB 2030; and SB 8, HB 2031. Of those bills, HB 2026 became law, which also included the provisions of HB 2027.

Seven bills sponsored by other members or committees (HB 2192, HB 2193, HB 2215, HB 2275, HB 2350, HB 2361, HB 2370) were related to legislative recommendations made by the Commission in the 2021 Session; the contents of three of these bills were enacted (HB 2192, HB 2193, HB 2275). In addition to bills recommended by the Commission, several bills including provisions discussed by the Commission in 2020 were requested by the Kansas Sentencing Commission.

## 2021 Interim Commission Activity

Following its practice in the 2020 Interim, the Commission organized itself into subcommittees in June 2021 to study and make recommendations regarding diversion, proportionality and sentencing, race, and three subcommittees related to supervision of offenders. The Commission approved several recommendations as presented by the six subcommittees in November 2021. The final report is available at <http://www.kslegresearch.org/KLRD-web/Publications/Resources/Documents/Justice-Reform/KCJRC-final-report-Dec-2021.pdf>.



2021 Legislation Related to Commission Recommendations		
Bill Number	Short Title (As introduced)	Status
HB 2026	Creating a certified drug abuse treatment program for people on diversion; providing for supervision by court services or community corrections	Enacted
HB 2027	Modifying the criminal penalties for unlawfully tampering with electronic monitoring equipment	Died on House Calendar (identical contents in SB 4 included in Conference Committee Report [CCR] for HB 2026)
HB 2028	Aligning the felony loss thresholds for certain property crimes with theft	Died on House Calendar
HB 2029	Counting any crime with a domestic violence designation as a prior conviction under domestic battery	In Senate Committee on Judiciary
HB 2030	Extending terminal medical release to inmates in the custody of the Kansas Department of Corrections (KDOC) with a condition likely to cause death within 120 days	In Senate Committee on Judiciary
HB 2031	Increasing good time and program credit for certain offenders	In House Committee on Corrections and Juvenile Justice
HB 2077	Extending the KCJRC and limiting the scope of study	Enacted
HB 2084	Allowing earned discharge credit for offenders on probation and limiting the maximum term of supervision on probation	In House Corrections
HB 2121	Amending the definition of "absconds from supervision"	Enacted
HB 2139	Reducing the criminal penalties for most severity level 5 drug crimes and increasing the penalties for offenders in criminal history category 5-I	In House Committee on Corrections and Juvenile Justice
HB 2146	Expanding the number of presumptive probation and border grid blocks in the sentencing grid for drug crimes	Died on House Calendar
HB 2192	Authorizing court services and community corrections to issue certification of ID	Included in CCR for HB 2121
HB 2193	Removing additional suspension time for unpaid fines and fees for restricted drivers' licenses	Contents related to removing additional suspension time for unpaid traffic fines and removing the application fee for restricted driving privileges included in the CCR for SB 127
HB 2215	Allowing persons with felony drug convictions to receive benefits under SNAP	In House Committee on Corrections and Juvenile Justice
HB 2275	Requiring KDOC to develop guidance to be used by parole officers when responding to violations of parole and postrelease supervision and that incentivize compliant behavior	Included in the Conference Committee Report (CCR) for HB 2121
HB 2350	Expanding the number of presumptive probation and border grid blocks in the nondrug sentencing grid	In House Committee on Corrections and Juvenile Justice
HB 2361	Authorizing the Kansas Supreme Court to adopt rules establishing specialty courts, creating the Specialty Court Funding Advisory Committee and the Specialty Court Resources Fund	In Senate Committee on Judiciary
HB 2370	Prohibiting a criminal conviction from acting as a sole disqualification for occupational licensure and creating guidelines for considering criminal convictions of an applicant for occupational licensure	In House Committee on Commerce, Labor and Economic Development
SB 3	Creating a drug abuse treatment program for people on diversion and allowing county and district attorneys to enter into agreements with chief judges and Community Corrections for supervision	Contents included in the CCR for HB 2026
SB 4	Same as HB 2027	Included in the CCR for HB 2026
SB 5	Same as HB 2028	In Senate Committee on Judiciary
SB 6	Same as HB 2029	In Senate Committee on Judiciary
SB 7	Same as HB 2030	In Senate Committee on Judiciary
SB 8	Same as HB 2031	Died on Senate Calendar

## JUDICIARY

# Legislative Response to the COVID-19 Pandemic and Related Litigation

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## State of Disaster Emergency Declaration, HCR 5025, and EO 20-18

On March 12, 2020, Governor Kelly issued a state of disaster emergency proclamation and related executive orders impacting government and the private sector in response to the COVID-19 pandemic. On March 19, the Legislature passed HCR 5025, ratifying and continuing the state of disaster emergency until May 1, 2020, “subject to additional extensions by concurrent resolution of the Legislature or as further provided in this concurrent resolution.” The resolution provided that the Legislative Coordinating Council (LCC) was authorized to review and revoke certain executive orders and proclamations.

Following three COVID-19 cluster outbreaks tracked to religious gatherings, Governor Kelly issued a new executive order (EO 20-18) on April 7 that would prohibit more than 10 people to

gather at churches and other religious facilities. On April 8, the LCC convened and revoked EO 20-18 pursuant to HCR 5025.

### Litigation Related to EO 20-18

**Kelly v. LCC.** In response to the LCC’s revocation of EO 20-18, Governor Kelly filed a lawsuit in the Kansas Supreme Court challenging the LCC’s action. On April 11, the Court ruled that the plain text of HCR 5025 did not authorize the LCC to revoke EO 20-18.

**First Baptist Church v. Kelly.** EO 20-18 was also challenged on constitutional grounds by two churches and their pastors. On April 15, First Baptist Church of Dodge City, Kansas, sought permission from the Governor to hold indoor services utilizing appropriate social-distancing guidelines. After the Governor denied the request, the church filed a complaint in federal court, seeking a temporary restraining order (TRO), a preliminary injunction, and a permanent injunction prohibiting Kansas from enforcing EO 20-18 against the plaintiffs, and judgments declaring that the order violated the 1st Amendment and Kansas’ Religious Freedom Restoration Act. The court granted the plaintiffs’ TRO on April 18. On April 30, the Governor issued a new executive order allowing religious gatherings as long as social distancing guidelines are followed, and plaintiffs voluntarily dismissed their complaint on May 4.

### Senate Sub. for HB 2054 and 2020 Special Session

On May 21, 2020, the Legislature convened for its *Sine Die* Session, and passed Senate Sub. for HB 2054 (HB 2054), a response to the 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 the Kansas Emergency

Management Act (KEMA). The Governor vetoed HB 2054 on May 26, 2020.

The LCC authorized the House and Senate Committees on Judiciary to hold meetings to review portions of HB 2054 on June 2. Consequently, the Senate Committee on Judiciary held three days of informational hearings on the status of negotiations between legislative leadership and the Governor's Office, including a draft bill based upon such negotiations. On June 4, the Legislature passed HB 2016, a bill containing many modified provisions of HB 2054. On June 8, Governor Kelly signed HB 2016 into law.

### **Special Committee on KEMA**

During the 2020 Interim Session, the LCC authorized a 13-member Special Committee to review KEMA, 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. Following six days of testimony, the Special Committee discussed a list of topics raised by conferees and members and recommended several items for further study by standing committees during the 2021 Legislative Session.

### **2021 Legislative Session**

In January 2021, the Legislature passed SB 14, which extended until March 31, 2021, the state of disaster emergency related to the pandemic in Kansas and various related provisions. The bill also prohibited the Governor, during any state of disaster emergency related to COVID-19, from issuing any order that substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business, or commercial activity.

In March 2021, the Legislature passed three additional bills (SB 40, SB 283, HB 2126) further extending provisions previously extended by SB 14, as well as amending and creating new law related to the pandemic and KEMA.

The Legislature also passed House Sub. for Sub. for SB 273, which would have created a COVID-19 Small Business Relief Act to provide compensation for certain businesses impacted by an order making a restriction related to the pandemic, but the Governor vetoed the bill.

### **Litigation Related to SB 40**

Among other provisions, SB 40 provides a grievance process for employees, students, or students' guardians to request a hearing to contest any action taken, order issued, or policy adopted by a school board during the COVID-19 state of disaster emergency. Under the bill, a school board must conduct a hearing within 72 hours of the request, and the bill allows aggrieved parties to file a civil action in district court within 30 days of the school board's decision. Such hearing at the district court level must also be conducted within 72 hours of receiving the petition, and the court must grant relief unless the court finds the action, order, or policy is narrowly tailored to respond to the state disaster emergency and uses the least restrictive means to do so.

#### ***Butler et. al v. Shawnee Mission School District Board of Education***

In June 2021, two parents of Shawnee Mission students requested a hearing in Johnson County District Court pursuant to SB 40 to contest a mask policy adopted by the school board. District Court Judge Hauber asked Attorney General Derek Schmidt to intervene in the case to respond to "identifiable constitutional issues" in SB 40. Judge Hauber ruled SB 40 unconstitutional on grounds that it violated the school board's due process rights and the separation of powers doctrine, and he declared the entirety of the law unenforceable. The Attorney General appealed the decision to the Kansas Supreme Court on July 15, and a stay of the District Court order pending appeal was granted by the Supreme Court on August 24. Oral arguments in the appeal were heard on October 26.

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## REDISTRICTING

# Introduction to Redistricting

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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 (State Board) 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 State Board districts, which 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. 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 uses the resulting information to build congressional, state legislative, and State Board districts using election precincts and census blocks. Federal law requires all state participation in the Program to be through a nonpartisan liaison; in Kansas, this is the Kansas Legislative Research Department.

## Delivery of 2020 Census Redistricting Data Files and Geographic Products

The national and state population information data was delivered on April 26, 2021. 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) was provided to the Governor and state legislative leaders of all states on August 12, 2021; the target date had been April 1, 2021.

## Kansas Population Adjustments

In 2019, the Legislature passed SCR 1605, which was placed on the November 2019 ballot. Passage of the question required the *Kansas*



*Constitution* to be amended to remove the requirement that the Office of the Secretary of State adjust the population information provided by the U.S. Census Bureau to count members of the military and college students. 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.

### How Does the Legislature Redistrict?

The process of redistricting in Kansas involves all three branches of state government. The Legislature proposes maps and passes bills providing initial approval of those maps. The Governor then signs the bills, vetoes the bills, or allows them to become law without a signature. The Kansas Supreme Court reviews the maps and gives final approval.

In 2021, the Legislative Coordinating Council created a Redistricting Advisory Group (Group) made up of three senators and three representatives. The Group was formed to assist with preparations for the legislative portion of the redistricting process.

In August 2021, the House and Senate standing redistricting committees held public meetings in 14 different locations across Kansas. A second round of meetings was also held in November 2021. The committees sought public input on what the citizens of Kansas wanted from the redistricting process. 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. 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.

### Kansas Supreme Court Approval

The *Kansas Constitution* provides the following 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 the Court finds the maps to be invalid:

- The Attorney General must petition the Court to determine 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 finds the the new maps to be 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.)

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## REDISTRICTING

### 2020 Kansas Population

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The decennial Census provides states with the information to be used for the redistricting process, which entails the drawing of congressional, state House, state Senate, and State Board of Education districts.

#### Apportionment Data

According to the 2020 Census, Kansas has an unadjusted population of 2,937,880. This is an increase of 84,762 from the 2010 Census.

Year	Unadjusted Population
2000	2,688,418
2010	2,853,118
2020	2,937,880

Based on the 2020 Census, Kansas ranks as 35th for population among the states and the District of Columbia.

Kansas was previously ranked 33rd for population based on the 2010 Census. California is the most populous state at 39,538,223, and Wyoming is the least populous at 576,851.

Apportionment is the process of dividing the 435 seats in the U.S. House of Representatives among the states.

Based on the 2020 Census, five states gained one seat (Colorado, Florida, Montana, North Carolina, and Oregon) and one state (Texas) gained two seats. Additionally, seven states lost one seat (California, Illinois, Michigan, New York, Ohio, Pennsylvania, and West Virginia).

Kansas did not gain or lose a congressional seat, keeping its current four seats.

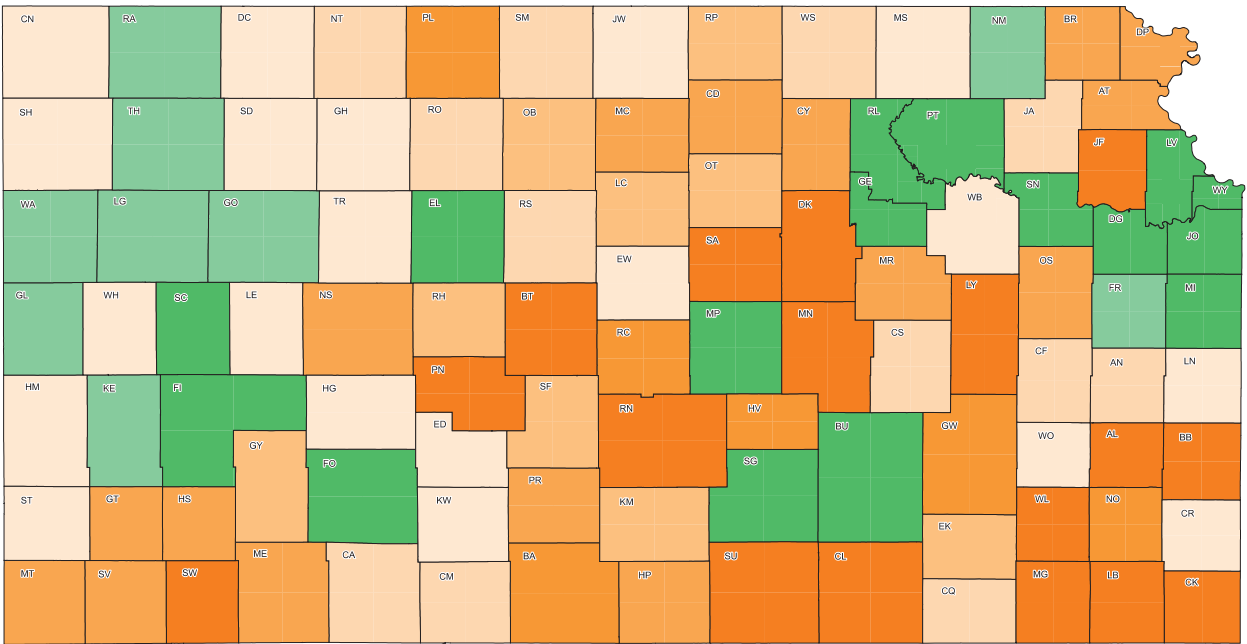
#### County Data

According to the 2020 Census, the three most populous counties in Kansas are Johnson with a population of 609,863, Sedgwick with a population of 523,824, and Shawnee with a population of 178,909.

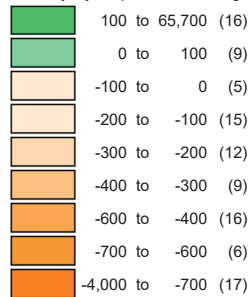
The three least populous counties are Greeley with a population of 1,284, Wallace with a population of 1,512, and Lane with a population of 1,574.

The following page features a map that reflects population change in all Kansas counties from 2010 to 2020.

**Population Change 2010 to 2020 by County  
via U.S. Census Data**



County by Population Change



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## STATE BUDGET

### Board of Indigents' Defense Services Budget Increases

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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.

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.

#### Agency Staffing

The 2020 Legislature required BIDS to submit a report to the Legislative Budget Committee (LBC) detailing issues relating to staff vacancies and retention as well as providing 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 FY 2022 budget request, with the remaining phases to be implemented in FY 2023 and subsequent years.

In 2021, the Legislature added \$4.2 million to the BIDS budget, and 45.0 full-time equivalent positions, to address staffing concerns and high caseloads for FY 2022. This amount included \$200,000 for a new case management system, as well.

## 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.

## Counsel Hourly Rate Increases

- 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.
- For FY 2017, the rate was increased to \$70 per hour.
- During the summer of 2018, BIDS voted to increase the rate for FY 2019 to \$75 per hour.
- For FY 2019, BIDS increased the rate to the statutory \$80 per hour cap.
- For FY 2022, the Legislature added \$3.6 million to the BIDS budget to increase the statutory cap to \$100 per hour, contingent upon 2021 HB 2363 not becoming law.

## Exceptional Fees for Counsel

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.

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## STATE BUDGET

### COVID-19 Federal Relief Funds

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Entities in Kansas are estimated to receive over \$30.5 billion in federal relief in response to the COVID-19 pandemic through legislation that includes the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2020, and the American Rescue Plan Act (ARPA) of 2021. This relief is provided through three means:

- Large discretionary funds provided to state and local governments;
- Non-discretionary emergency or supplemental funds provided to state agencies; and
- Funds provided by federal agencies directly to individuals and businesses, primarily as stimulus checks and loans.

#### Discretionary Funds

##### *Coronavirus Relief Fund*

The CARES Act allocated a total of \$1.3 billion from the federal Coronavirus Relief Fund (CRF)

to state and local governments in Kansas to aid in response to the COVID-19 pandemic. Of this, \$1.0 billion was provided to state government and \$215.9 million was provided directly to Johnson and Sedgwick counties.

Federal guidance stipulated that CRF moneys be used only for expenditures related to the pandemic, could not be used to fill revenue shortfalls, and must be expended by December 31, 2021.

In May 2020, the Governor established the Strengthening People and Revitalizing Kansas (SPARK) Task Force to make recommendations regarding the CRF, subject to approval by the State Finance Council. CRF moneys were allocated in three rounds:

- Round 1 distributed \$400.0 million to county governments, where funds were primarily used for public health measures, transfers to city governments, and assistance to schools;
- Round 2 distributed \$314.4 million to state agencies for programs involving broadband, small business grants, nursing home assistance, behavioral health grants, laboratory testing capacity, and early childhood education; and
- Round 3 allocated the balance of the fund primarily for a statewide COVID-19 testing strategy, child supervision, housing stability, unemployment insurance administration, and continuity of operations among various state agencies.

Additionally, the State Finance Council passed a resolution directing the transfer of any unspent remaining funds to the Kansas Unemployment Insurance (UI) Trust Fund.

## **State and Local Fiscal Recovery Funds**

ARPA allocated a total of \$2.6 billion from state and local Fiscal Recovery Funds to state and local governments in Kansas. In contrast to the CRF, ARPA expanded the purpose of these funds, included new restrictions, and appropriated funds directly to state, county and city governments. These appropriations included:

- \$1.6 billion directly to state government;
- \$564.9 million directly to 105 county governments;
- \$260.3 million directly to 10 metropolitan cities; and
- \$167.3 million indirectly to 581 Non-Entitlement Units (NEUs), which are generally cities with a population below 50,000.

Moneys from Fiscal Recovery Funds are permitted for the following purposes:

- Responding to the COVID-19 public health emergency or its economic impact;
- Providing premium pay to eligible government workers performing essential work;
- Replacing revenue lost due to the COVID-19 public health emergency; and
- Making investments in water, sewer, or broadband infrastructure.

Fiscal Recovery Funds may not be used for pension funds, debt services, or to offset tax cuts enacted after March 3, 2021. Funds must be expended by December 31, 2026.

As of September 2021, allocations from the State Fiscal Recovery Fund include:

- \$500.0 million for the Kansas UI Trust Fund, pursuant to 2021 HB 2196; and
- \$50.0 million for the Hospital Employee Retention Plan, as recommended by the

SPARK Task Force and approved by the State Finance Council.

## **Non-Discretionary Funds**

State agencies received \$3.5 billion in emergency or supplemental federal relief for defined purposes. The largest of these included:

- \$1.4 billion to the Kansas Department of Education, including \$1.2 billion from the federal Elementary and Secondary Emergency Relief Fund (ESSER);
- \$622.6 million to the Department for Children and Families;
- \$531.3 million to the Kansas Department of Health and Environment;
- \$319.4 million to the regents universities, of which at least 50.0 percent must be used for financial aid to students; and

## **Direct Relief to Individuals and Businesses**

An estimated \$22.0 billion was provided to individuals and businesses in Kansas, which primarily included:

- \$7.2 billion in stimulus checks;
- \$5.0 billion in low-interest forgivable loans through the Paycheck Protection program;
- \$2.1 billion in federal unemployment benefits;
- \$1.6 billion in payments to agricultural producers; and
- \$1.3 billion to health care providers and community health centers.

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## STATE BUDGET

### Kansas Budget Stabilization Fund

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Various laws or statutory sections are designed to provide certain safeguards with respect to state budgeting and management of expenditures and to prevent deficit financing. The most recent measure taken by the Legislature is the Budget Stabilization Fund. The Fund is intended to receive revenues when receipts exceed expectations and conserve them for periods of economic recession.

#### Budget Stabilization Fund

The 2016 Legislature in HB 2739 established the Budget Stabilization Fund. The Legislative Budget Committee was statutorily charged in KSA 75-6706 with developing and recommending a method to fund the Budget Stabilization Fund based on a review of risk-based practices used by other states, relative annual variance from revenue and expenditure estimates, and the circumstances upon which the funds may be expended.

In FY 2020, 50.0 percent of the amount that State General Fund (SGF) receipts exceeded the

consensus revenue estimates were transferred from the SGF to the Budget Stabilization Fund, totaling \$81.9 million. Various other provisions including the transfer of 10.0 percent of the unencumbered ending balance and transfers to the Kansas Public Employees Retirement System were briefly enacted into law but suspended prior to application.

The Budget Stabilization Fund can 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 shall not be considered as part of the ending balance of the SGF for compliance with any other statutory requirements such as allotments or the unencumbered ending balance requirement.

The Governor recommended that the balance of the Budget Stabilization Fund be transferred into the SGF due to anticipated shortfall in revenue due to COVID-19. Despite the fact that the shortfalls were not realized, the funds were transferred to the SGF via act of appropriation in FY 2022. The Governor also recommended suspending transfers from the SGF to the Budget Stabilization Fund for FY 2021.

The balance of the Budget Stabilization Fund at the beginning of FY 2022 was zero. Transfers of excess receipts are currently scheduled for FY 2022 and FY 2023.

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## STATE BUDGET

### Kansas Department of Health and Environment Laboratory

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#### 2021 Legislative Session Action

Section 61 of enacted 2021 SB 159 (the Omnibus appropriations bill) directs the Kansas Department of Health and Environment (KDHE) to issue a request for proposals (RFP) in FY 2022 to construct or renovate a building and equip a KDHE laboratory located within an eight-mile radius of the Capitol Complex in Topeka. The bill directs the Joint Committee on State Building Construction (Committee) to review these proposals and make recommendations to the State Finance Council concerning the laboratory.

Section 61 of 2021 SB 159 also authorizes the issuance of bonds for capital improvement projects, not to exceed \$65.0 million, for the KDHE laboratory. Before proceeding with the project, the bill requires approval from the State Finance Council for both the KDHE laboratory and Docking State Office Building projects in a single resolution. Finally, the bill requires the

Director of the Budget, in consultation with the Secretary of Administration and the Secretary of Health and Environment, to determine whether COVID-19 federal relief funds provided for discretionary purposes are available to be used to finance the construction of the laboratory.

#### Committee Activity

At its meeting on September 7, 2021, representatives of KDHE presented the Committee with eight site proposals for a KDHE laboratory. Three of the proposed sites were state-owned properties, and five sites were submitted by private entities during the RFP process.

#### State-owned Site Proposals

Three of the proposals were originally submitted to the Committee in January 2020 and proposed construction projects on three-state owned properties in Topeka with a total project cost of \$64.3 million estimated in March 2021. These sites were:

- Lot 4 in Downtown Topeka, near the Docking Building;
- A site on the grounds of the Kansas Neurological Institute (KNI); or
- A site adjacent to the current KDHE laboratory at Forbes Field.

#### RFP Process Site Proposals

Pursuant to 2021 SB 159, the Department of Administration, in collaboration with KDHE, issued an RFP open from August 2, 2021, to August 31, 2021, seeking building sites within an eight-mile radius of the Capitol Complex capable of supporting a 100,000 gross-square-foot

laboratory facility with suitable utilities services, vehicular access, and on-site parking. Land purchase and lease proposals were allowable, as well as options to renovate an existing building.

The Director of the KDHE laboratories presented the proposals and agency evaluations determining viability for each. The proposals submitted included the following commercial properties:

- The former Payless Shoesource corporate headquarters at 3231 SE 6th Avenue, which did not include lease payment amounts due to the proposer's pending acquisition of the property via commercial sale and would likely necessitate the sharing of space with other tenants;
- Mostly vacant lots near downtown Topeka at 11th Street and Quincy Street, which would entail annual lease payments of \$65,000 for the site and \$20,000 for parking;
- Vacant lots in east Topeka between 21st Street and Cyprus Drive west of Cedarwood Drive, which would entail an annual lease payment of \$25,000;
- Partially vacant lots at the Kanza Business and Technology Park at Kanza Drive and MacVicar Avenue, which would entail a land purchase of \$1.0 million; and
- An existing building in downtown Topeka at 220 Southeast 6th Street, which did not meet the minimum space requirements of the RFP and would entail an annual lease payment of \$1.9 million.

The Director of the KDHE laboratories stated that commercial lease agreements would necessitate contract negotiations, and land purchases would require legislative action. Further, use of these commercial properties would require engineering and soil composition assessments, which could delay the start of construction. Due to this, KDHE recommended consideration of the three state-owned properties.

On October 11, the Committee received testimony from the Department of Administration estimating that up to 50.0 percent of the total project cost could be eligible for moneys from the State Fiscal Recovery Fund provided through federal American Rescue Plan Act of 2021.

### **Committee Recommendation**

On October 11, the Committee recommended construction of a KDHE laboratory at the KNI site.

On December 17, the State Finance Council approved a plan to construct a KDHE laboratory at Lot 4 in Downtown Topeka, near the Docking Building.

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## STATE BUDGET

### Status of the Docking State Office Building

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This article details recent actions and proposals regarding the Docking State Office Building (Docking Building), located at 915 SW Harrison Street in Topeka. Built in 1954, the building provided office and meeting space for state employees. Underneath the structure is an energy center that services buildings in the Capitol Complex. Beginning in 2004, the Department of Administration began vacating the building, and it currently stands mostly empty.

#### Background and Legislative History

In 2019, the Legislature directed the Department of Administration to develop plans for the building. After a competitive bidding process, the Department contracted with Clark-Huesemann, a Lawrence-based architectural firm, to develop potential solutions.

In 2020, the Department submitted two options for the building, one to utilize the entire building (Option A) and the other to utilize three floors while adding three new floors (Option B). Both proposals would keep the existing energy center.

In 2021, the Legislature authorized the Department to issue up to \$120.0 million in bonds for the renovation of the Docking Building. Prior to proceeding, the State Finance Council must approve capital improvement projects for both the Docking Building and a Kansas Department of Health and Environment laboratory in a single resolution.

Docking State Office Building		
Option A: Utilize and Renovate Entire Building		
<b>Gross Square Footage</b>		<b>532,592</b>
<b>Net Square Footage</b>		
Capitol Police		6,940
Grab & Go Food Venue		1,187
State Agency		268,948
Training and Meeting Space		20,758
<b>Total</b>		<b>297,833</b>
<b>Project Costs*</b>		
Total Construction Cost	\$	96,903,989
Estimated Owner Costs		30,355,716
<b>Total</b>	<b>\$</b>	<b>127,259,705</b>
<b>Cost Per Square Foot</b>	<b>\$</b>	<b>182</b>

\* Revised estimates provided September 7, 2021.

#### Option A: Utilize Entire Building

Option A would reuse and rehabilitate all 14 floors of the building and include an event center on the first floor, food venue, exhibition space, shared conference space, Capitol Police offices, and 268,948 square feet for state agencies for a total project cost of \$127.3 million, with a construction completion date of April 2024.

## Option B: Utilize Three Floors and Add Three Floors

Option B would remove the upper 11 floors of the building, reuse the lower three floors, and add three floors for a total of 6 floors. This option would include an event center on the top floor, food venue, exhibition space, Capitol Police offices, and 188,527 square feet for state agencies for a total project cost of \$112.6 million, with a construction completion date of April 2025.

Docking State Office Building			
Option B: Use Three Floors, Add Three Floors			
<b>Gross Square Footage</b>			<b>364,038</b>
<b>Net Square Footage</b>			
Capitol Police			6,940
Grab & Go Food Venue			1,187
State Agency			188,527
Training and Meeting Space			20,758
<b>Total</b>			<b>217,412</b>
<b>Project Costs*</b>			
Total Construction Cost	\$	86,208,212	
Estimated Owner Costs			26,423,365
<b>Total</b>	<b>\$</b>	<b>112,631,577</b>	
<b>Cost Per Square Foot</b>	<b>\$</b>	<b>237</b>	

\* Revised estimates provided September 7, 2021.

## Challenges and Opportunities

During the 2021 Interim, the Secretary of Administration provided the Joint Committee on State Building Construction (Committee) with revised cost estimates, noting an increase in construction costs related to the COVID-19 pandemic. The Secretary also estimated that up to 50.0 percent of total project costs may be eligible for moneys from the State Fiscal Recovery Fund provided through the federal American Rescue Plan Act. However, eligibility for such funds would depend on the approved use of the building and, if disbursed, must be encumbered by December 2024 and expended by December 2026.

The Secretary indicated that, despite the increase in estimated costs, renovation of the Docking Building is key to the State's return-to-work strategy, as both proposed options would facilitate social distancing, allow temporary housing of state agencies while public health modifications are made to other buildings, and provide enhanced virtual and teleworking capabilities. Furthermore, both options would provide additional space allowing state agencies to maximize services and provide event space for large meetings, which does not currently exist in the Capitol Complex.

## Recent Legislative Action

On October 11, the Committee met to make a recommendation on the Docking Building. In addition to the two proposed options, committee discussion topics included the full demolition of the building and reconstruction of the energy center. Such demolition would first require construction of a new energy center to maintain continuity of services to the Capitol Complex, which could prolong efforts and impact availability of federal relief funds. Further, the Committee discussed an option for full renovation that would utilize only six floors, leaving remaining floors as a shell for future potential use.

The Committee ultimately recommended renovation or construction of a three-story event center at the site of the Docking Building.

On December 17, the State Finance Council approved a plan to remove the upper 11 floors of the Docking Building and renovate the remaining three floors.

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## STATE BUDGET

### Suspended State General Fund Transfers

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The transfers below continue to exist in statute and are suspended via appropriations bills at various intervals depending on the duration of each suspension.

#### Local Ad Valorem Tax Reduction Fund

What is now the Local Ad Valorem Tax Reduction Fund (LAVTRF) dates back to 1937, when the state sales and use taxes first were imposed at a 2 percent rate. At that time it was provided that, after demands were met for public welfare and elementary school aid, the balance in the Retail Sales Tax Fund on June 2 of each year shall be distributed to counties for the purpose of reducing property tax levies of counties and other local units. This so-called “residue” amounted to \$4.7 million in FY 1938, almost half of the sales tax collections that year.

#### *Amount Transferred*

Under current law, two transfers are made each calendar year from the State General Fund (SGF) to the LAVTRF, on January 15 and July 15. No moneys have been transferred to the LAVTRF since July 15, 2002, except a singular payment to the fund of \$20,250,000 in FY 2014. No moneys shall be transferred for FY 2021, FY 2022 and FY 2023. Starting in FY 2024 and every year thereafter, the amount of each semi-annual transfer shall be \$27.0 million, for a total yearly transfer of \$54.0 million.

#### *Allocation*

Money in the LAVTRF is now allocated among the 105 counties on the basis of population (65 percent) and assessed tangible property valuation (35 percent). Each county’s share is divided among all property tax levying subdivisions (including the county but excluding unified school districts) proportionately based on their property tax levies in the preceding year. The money so received must be credited to one or more tax levy funds of general application in the county or subdivision, except bond and interest funds. Those community colleges and municipal universities that received a distribution in 1983 can receive funds from the LAVTRF. No taxing entity may receive funds unless it budgets for those funds in a future fiscal year in a fund that has a tax levy and that tax levy would generate more income than would come from LAVTRF. KSA 19-2694 establishes a formula designed to prevent counties from receiving less money distributed on the basis of population due to changing from state census data to federal census data, effective July 1, 1979.



## **County and City Revenue Sharing Fund: History**

The County and City Revenue Sharing Fund (CCRSF) was created by 1978 legislation to replace other tax sources that had been shared with local units, namely, the cigarette tax, liquor enforcement tax, and domestic insurance company privilege tax.

### ***Amount Transferred***

Under current law, two transfers are made each calendar year from the SGF to the CCRSF, on July 15 and December 10, totaling 2.823 percent of sales and use tax revenue credited to the SGF in the preceding calendar year. The last transfer to the CCRSF was the July 15, 2002 distribution. All subsequent transfers have been suspended either via allotment or legislative action.

### ***Allocation***

Money in the CCRSF is now allocated among the 105 counties on the basis of population (65 percent) and assessed tangible property valuation (35 percent). Within county areas the money is distributed 50 percent to the county general fund and 50 percent to general funds of cities, based on the population of the cities.

## **Tax Increment Financing Revenue Replacement Fund**

KSA 12-1775a, passed by the 1996 legislature, created a method for cities with redevelopment districts established prior to July 1, 1996, to certify the amount realized from *ad valorem* taxes imposed in those districts due to legislative changes in the school finance formula in that year.

Once a year prior to February, each city with an affected redevelopment district would certify to the director of accounts and reports an amount equal to the amount of tax reduction. Subsequently, the director of accounts and reports would certify to the State Treasurer each amount certified and shall transfer from the

SGF to the Tax Increment Financing Revenue Replacement Fund (TIF Fund) the aggregate of all amounts so certified. The treasurer, prior to April 15 of each year, shall pay each city their certified amount. In FY 1998, the first year for this distribution, 8 cities with 15 redevelopment districts received payments. In FY 2017, there were four cities and six redevelopment districts remaining. The statute does not have a sunset.

The Department of Administration administers and certifies the distributions, and has interpreted the statute as expiring when the TIF districts expire or when any bonds sold to finance the TIF are paid off.

It is unclear whether amendments to the TIF plan that extend the districts beyond the 20 year statutory limit maintain the TIF district's right to receive funds from the TIF Revenue Replacement Fund. The Revenue Replacement Fund was supported by a \$1.0 million transfer from the SGF annually.

The Legislature suspended transfers from the fund in FY 2018, and no subsequent transfers have occurred.

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## TAXATION

# Income Taxation of Social Security Benefits

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This article provides information on federal and state income taxation of Social Security benefits.

It provides information concerning the federal income tax rules for Social Security benefits and their inclusion or exclusion from taxable income and the Kansas rules providing for the exclusion from income tax of federally taxable social security benefits under some circumstances.

Finally, this article highlights recent Kansas legislative proposals to expand the exemption of Social Security benefits from state income tax.

## Federal Income Tax Treatment of Social Security Benefits

Prior to 1983, Social Security benefits were entirely exempt from federal income taxation. Legislation enacted by Congress in 1983 provided for up to 50 percent of Social Security

benefits to be subject to the federal income tax if a taxpayer's combined income, including 50 percent of Social Security benefits, exceeded a statutory threshold. The taxable amount was the lesser of 50 percent of benefits or 50 percent of the amount by which the combined income exceeded the statutory threshold.

In 1993, Congress enacted a secondary threshold that could result in as much as 85 percent of Social Security benefits being taxable. This framework has not changed since that time. Today, the Social Security Administration reports that approximately 40 percent of people receiving Social Security benefits have to pay income tax on their benefits.

## Kansas Income Tax Treatment of Social Security Benefits

Kansas uses federal adjusted gross income as the starting point for the Kansas income taxation. Accordingly, income subject to federal tax is generally subject to the Kansas income tax. However, in 2007, the Kansas Legislature created a modification to federal adjusted gross income for Kansas income tax purposes to exclude from Kansas income tax Social Security benefits for taxpayers with federal adjusted gross income of \$50,000 or less for tax year 2007 and \$75,000 or less for tax year 2008.

The Kansas exclusion of certain Social Security benefit income from Kansas income tax applies uniformly to taxpayers regardless of the taxpayer's filing status.

## Recent Kansas Legislative Considerations

The 2020 and 2021 Kansas Legislatures have considered legislation that would further or entirely exempt Social Security income; however, no such legislation has been enacted into law.

Security benefits from Kansas income tax. The Committee recommended legislation that would have increased the income threshold for married filing jointly taxpayers to \$100,000. In 2021, the Senate Committee of the Whole twice advanced legislation that would have exempted all Social Security benefits from Kansas income tax.

## Kansas Individual Income Taxation of Social Security Benefits



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## TAXATION

# Property Tax Circuit Breakers and Tax Freezes

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This article provides information concerning property tax circuit breakers and property tax freezes, mechanisms employed by states to offset some of the property tax burden on certain taxpayers.

It describes the existing Kansas property tax circuit breakers and examines the prevalence of circuit breakers and tax freezes throughout the country.

Finally, it notes recent Kansas legislative considerations regarding these types of programs.

## Property Tax Circuit Breakers and Tax Freezes

A property tax circuit breaker is a type of property tax relief where the allowance and amount of benefits is dependent on the income or other eligibility criteria and the amount of property taxes paid. The terminology is analogous to a device that breaks an electrical circuit during an overload. Accordingly, circuit breaker property

tax relief is designed to accrue to taxpayers once the person's property taxes have become high relative to his or her income.

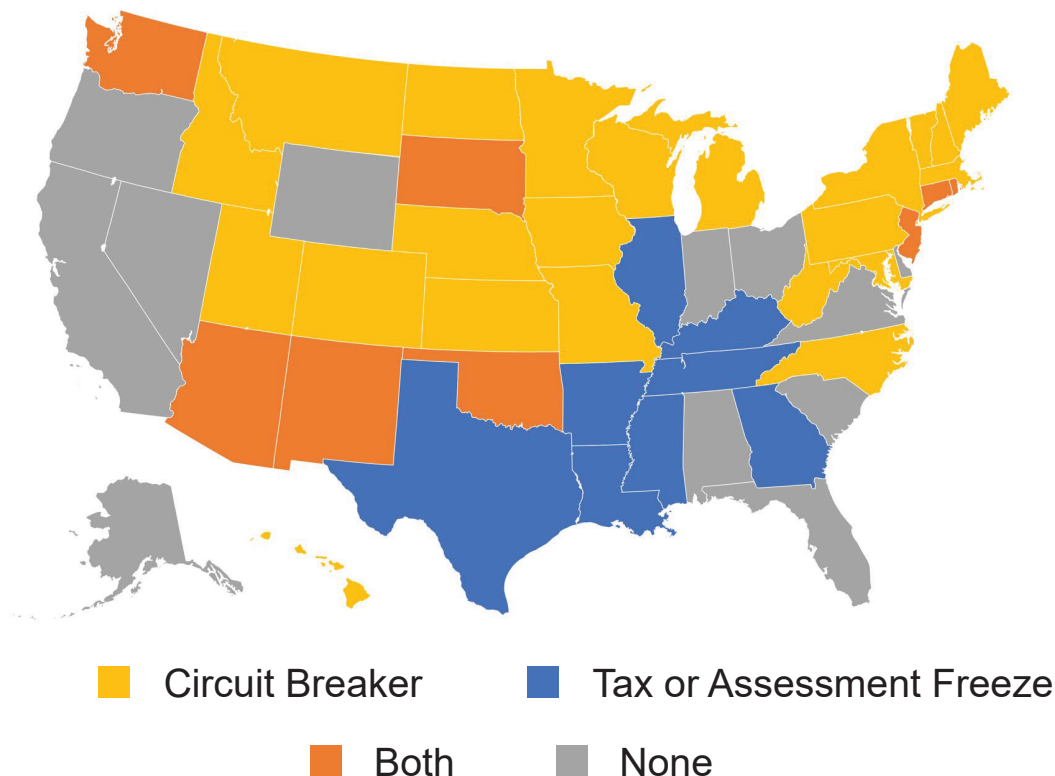
A property tax freeze program "freezes" a taxpayer's property tax burden to a fixed year and generally prohibits tax increases beyond the amount of tax paid in that year. The fixed year is typically the year in which the taxpayer reached an age or income threshold, and the prohibition of an increase may be accomplished in the form of a refund of a portion of the property taxes paid. A similar type of program can be described as an assessment freeze, where the tax may change, but the taxable valuation of the property is tied to a fixed year.

## Existing Kansas Circuit Breakers

Kansas currently has two property tax circuit breaker benefits, housed within a single program. Taxpayers are only permitted to claim one of the two benefits. Kansas does not have a tax or assessment freeze program.

Kansas became the sixth state to enact a circuit-breaker program with the creation of the Homestead Property Tax Refund Act in 1970. As the program exists today, taxpayers who own homes valued at less than \$350,000 may be eligible for the program. Additionally, the household of the taxpayer must have a person who is age 55 or older, a dependent under the age of 18, or an individual who is blind or otherwise disabled. Finally, the household income is required to be equal to or less than \$36,300. The benefit amount is based on a sliding scale of household income and property taxes paid, with a minimum benefit of \$30 and a maximum benefit of \$700.

## Property Tax Relief by State



Alternatively, Kansas taxpayers aged 65 or older with household income equal to or less than \$20,300 may be eligible for the Selective Assistance for Effective Senior Relief (SAFESR) program, which provides a refund of 75 percent of the prior year's actual property taxes paid.

### Other States' Circuit Breakers and Tax Freezes

Currently, 30 states and the District of Columbia offer a circuit breaker program, and 16 states offer either a tax or assessment freeze program, or both. Eight states offer both a circuit breaker and a tax or assessment freeze program (shown in orange on the map above).

### Recent Kansas Legislative Considerations

The 2019, 2020, and 2021 Kansas Legislatures have each considered legislation containing provisions entitled the Golden Years Homestead Property Tax Freeze Act. However, this legislation

has not been enacted into law. These pieces of legislation would have created a property tax freeze program in Kansas. The different versions of the legislation included various differing provisions for the fixed tax year, the income and other eligibility criteria, and benefit maximums. Some versions also would have eliminated the SAFESR program and replaced it with the Golden Years tax freeze program.

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## TRANSPORTATION

### Automated License Plate Readers

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#### How Automated License Plate Readers (ALPRs) Work

An ALPR system includes a camera system that photographs what it perceives to be a license plate on a vehicle and a computer system that interprets the image as a license plate number using optical character recognition. Time, date, and location are associated with the image. The camera may be mounted in a permanent location, such as on a bridge or tollway entrance gantry, or on a vehicle. Plate data are sent to a central location to be compared with data such as the license plate numbers of stolen vehicles or vehicles associated with specific crimes.

#### Kansas Law Enforcement Uses of ALPRs

According to testimony provided to the Senate Committee on Transportation in 2021 on SB 305 and to the House Committee on Transportation

in 2021, ALPR technology has been used by law enforcement agencies for almost two decades. Private industries such as insurers and vehicle repossession companies also use ALPR data collected by systems available from various vendors.

In testimony to the transportation committees and the Joint Committee on Kansas Security, Wichita Police Department (WPD) and Kansas Highway Patrol (KHP) officers stated ALPR technology has been used as a force multiplier to assist in the recovery of stolen vehicles, arrest of suspected felons, prosecutions, and recovery of kidnapping and sex trafficking victims; to confirm the presence of motorcycle gangs in the Wichita area; to reduce time searching for vehicles; and to confirm an alibi in a murder case.

#### Current Kansas Law Enforcement ALPR Data Storage and Sharing

In testimony to the 2021 Joint Committee on Kansas Security, a KHP officer described how the KHP stores and shares ALPR data. Data are transmitted to Criminal Justice Information System-level secure servers at Houston High Intensity Drug Trafficking Area (HIDTA) offices, where the data are held for six months and then deleted with no retrievability. (The HIDTA Program, created by Congress in 1988 and housed in the Office of National Drug Control Policy, coordinates and assists federal, state, local, and tribal law enforcement agencies to reduce drug trafficking and drug production in the United States.)

The system described by the KHP officer requires an authorized, vetted user to enter a username and password to access the system, with access level based on the user's role within the agency. A valid law enforcement

reason for accessing the data must be provided. The KHP officer stated agency policy and a memorandum of understanding regulate the use and dissemination of the data. The WPD officer described to the transportation committees the agency's written policies, how data is kept with the Houston HIDTA, and audits to determine whether access was for a legitimate law enforcement purpose.

### **Kansas 2021 SB 305**

No current Kansas state statute addresses ALPR data or policies specifically.

SB 305, as introduced in 2021, would authorize law enforcement agencies to collect captured license plate data, store the data, and access it only for a legitimate law enforcement purpose. It would prohibit ALPR data from being sold, shared, disclosed, or otherwise distributed for a commercial purpose; this would not prohibit the use of ALPR systems by an individual or private legal entity for lawful purposes.

The bill would require each law enforcement agency that uses an ALPR system to adopt and maintain a detailed, written policy regarding its use and operation; the bill would require the policy to include a specified data retention period, defined requirements for access by agency employees, training for employees, the designation of an ALPR system administrator as the point of contact for the law enforcement agency, and an audit process to ensure information obtained from the system is used only for legitimate law enforcement purposes.

Under the bill, law enforcement ALPR data would not be subject to the provisions of the Kansas Open Records Act.

### ***ALPR Laws in Other States***

At least 12 states have addressed ALPR data collection, use, and privacy in their laws: Alabama, Arkansas, California, Maine, Maryland, Minnesota, Montana, Nebraska, New Hampshire, North Carolina, Utah, and Vermont.

The aspects of ALPR law those state laws address include limits on what data can be lawfully collected, approved uses of the data, data privacy, data retention and destruction, access procedures for law enforcement agencies, and reporting on usage of ALPR data.

### **Concerns About ALPR Data**

Concerns raised about ALPRs have included concerns related to those on privacy protections and the potential for biased policing. Biased policing could show itself in monitoring locations used by people associated by religion, ethnicity, or political beliefs to a greater extent than monitoring based on manually entering license plate numbers into a system, according to testimony in opposition to SB 305 as introduced provided by a representative of the American Civil Liberties Union (ACLU) of Kansas. The ACLU of Kansas also raised issues of transparency that would prevent biased policing from being visible to the public. Concerns noted in other publications have been raised about collection of data not directly related to a current criminal investigation, data retention, and the approved uses of data.

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## UTILITIES AND ENERGY

### Broadband Projects Funded by COVID-19 Federal Funds

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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 at college universities. This article provides a summary of some of the recent broadband expansion funding initiatives at the federal and State level.

#### Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding

The CARES Act provided \$150.0 billion in direct relief to states from the U.S. Department of the Treasury (Treasury) through the federal Coronavirus Relief Fund (CRF). Kansas was allocated \$1.25 billion in CRF moneys. The Strengthening People and Revitalizing Kansas (SPARK) Task Force makes recommendations on the distribution of the CRF moneys in Kansas. The State Finance Council (Council) must approve those recommendations.

The SPARK Task Force recommended, and the 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 (CERG) funds. Governor Kelly created the Office of Broadband Initiatives through Executive Order No. 20-67 to oversee the CERG application process and distribute funds. Internet service providers (ISPs), local governments, nonprofits, and other private entities were eligible to apply for the grants.

For purposes of the grant applications, under served areas are defined as having download/upload speeds less than 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 was not to exceed \$10.0 million. Factors considered when evaluating proposals included: level of demonstrated need related to COVID-19, project readiness, broad community support, and geographic dispersion.

The Kansas Department of Commerce dispersed \$49.2 Million in CERG funds for 67 projects.

The Council also approved \$10.0 million from 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 FY 2020, ISPs would provide continued support using existing funds for 6 to 12 months in FY 2021.

## **American Rescue Plan Act Funding**

The American Rescue Plan Act (ARPA) established the Capital Projects Fund and appropriated \$10.0 billion to Treasury and to states and other qualified entities. According to guidance from Treasury, the Capital Projects Fund allows for investment in high-quality broadband and other connectivity infrastructure, devices and equipment. Kansas' allocation of the Capital Project Fund is \$143.4 million.

When planning the expenditures of these funds, the Treasury encourages consultation with the statewide entity responsible for broadband planning and implementation. Fund recipients may use the moneys for critical capital projects that directly enable work, education, and health monitoring in response to the COVID-19 public health emergency. In its guidance, the Treasury presumes broadband infrastructure, digital connectivity, and multi-purpose community facility projects eligible for funding. The Treasury guidance also prohibits expenditure of funds on general infrastructure projects, including, but not limited to, highways, bridges, transit systems, and ports.

As of December 31, 2021, Kansas has expended none of its allocated Capital Projects funding.

## **Kansas Broadband Expansion Funding**

House Sub. for SB 173 (2020 law), among other things, authorizes adding technology elements in a preservation plus project related to the Eisenhower Legacy Transportation Program. This includes laying broadband fiber or the conduit for broadband fiber.

The bill also authorized the Secretary of Transportation, 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 also established 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 required \$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 year thereafter through July 1, 2030, the annual required transfer is \$10.0 million.

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## UTILITIES AND ENERGY

### February 2021 Cold Weather Event

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#### February 2021 Cold Weather Event

In February 2021, severe cold weather swept across Kansas and much of the central U.S. According to the National Oceanic and Atmospheric Administration, the average temperature in the contiguous U.S. was 3.2 degrees Fahrenheit below the 20th-century average.

Extremely low temperatures and precipitation forced the closure or temporary cessation of wind turbines and natural gas plants across Kansas.

On February 14, the Governor declared a [State of Disaster Emergency \(https://governor.kansas.gov/wp-content/uploads/2021/02/2-14-2021-Extreme-Weather-Disaster-Declaration-Executed.pdf\)](https://governor.kansas.gov/wp-content/uploads/2021/02/2-14-2021-Extreme-Weather-Disaster-Declaration-Executed.pdf), warning of impending power outages and “critical energy supply shortages.”

To prevent overwhelming electrical grids as consumption increased, the Southwest Power Pool (SPP), a 17-state regional transmission organization that manages power supplies and transmission infrastructure, directed Evergy and

other electric utilities to initiate rolling blackouts, systematically cutting power to customers for brief periods of time.

On February 15, SPP interrupted power for about 1.5 percent of its demand for power for almost an hour. On February 16, SPP again interrupted power for about 6.5 percent of its demand for power for more than three hours.

In May 2021, SPP discussed with the Kansas Corporation Commission (KCC) members why the SPP power grid was unstable during the Cold Weather Event. Power generation did not meet expectations because there was not enough fuel for the power plants. In addition, during the cold weather, prices for natural gas rose by over 100 percent. Some wind turbines were iced-over due to foggy conditions that froze in the cold temperatures, resulting in 7,000 megawatts of power not generated. In addition, there were record amounts of power consumption by customers trying to keep their homes warm.

In July 2021, SPP attributed the power outages to fuel shortages for the power plants, especially with natural gas. During the worst of the cold weather, SPP had 39,777 megawatt hours of power generated. The five-year average of generation is 55,733 megawatt hours.

#### **Senate Sub. for HB 2072**

The Cold Weather Event occurred during the 2021 Legislative Session. In response to the event, the Legislature passed Senate Sub. for HB 2072, which creates the Utility Financing and Securitization Act (UFSA), allowing for the securitization of utility assets to recover energy transition costs for electric public utilities whose retails rates are subject to the jurisdiction of the KCC. The UFSA also allows electric and natural

gas public utilities whose retail rates are subject to the KCC to pursue securitization to help finance qualified extraordinary expenses, such as fuel costs incurred during extreme weather events.

### **SB 245**

SB 245 (2021 legislation) contained the original contents of Senate Sub. for HB 2072. On February 18, 2021, the Senate Committee on Financial Institutions and Insurance held a hearing on SB 245, which would have created the Kansas Grid Resiliency, Innovations, and Dependability Act. This bill would have authorized the KCC to issue ratepayer-backed securitized loans to finance unrecovered assets.

In response to the Cold Weather Event, the bill was revised, and the Senate Committee held a hearing on the revised version of SB 245 on March 17, 2021. Representatives of Black Hills Energy, Evergy, KCC, Kansas Gas service, Kansans for Lower Electric Rates, and the Kansas Industrial Consumers Group testified as proponents.

The proponents generally stated the new addition to the bill regarding securitization for qualified extraordinary costs would ease expense burdens for public utilities and their ratepayers after unforeseen weather crises, such as the Cold Weather Event. The KCC stated it will approve financing orders for securitization bonds only if it finds the bonds will reduce costs for ratepayers. An AARP representative testified as an opponent to the bill, stating the bill would hurt Kansas ratepayers and that utility expenditures should be subjected to full regulatory review.

### ***Fiscal Impact***

The 2021 Legislature added funding to several state entities for some energy bills related to the February cold weather event in FY 2021, and added language to lapse up to each amount of moneys below if federal funds are available.

### **The Legislature:**

- Added \$155,000, all from the State General Fund (SGF), to the state hospitals;
- Added \$1.4 million, all SGF, to the Kansas Department of Corrections;
- Added \$668,061 to the Adjutant General's Office, including \$179,519 SGF; and
- Added \$44,835 to the Kansas Highway Patrol, all from special revenue funds, and increased the transfer from the State Highway Fund by that same amount.

On October 8, 2021, the Director of the Budget, Kansas Division of the Budget, provided testimony to the Legislative Budget Committee that federal funds were not available to be used to cover the costs of the energy bills.

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