Kansas Legislative Research Department

Kansas Legislator Briefing Book

Prepared for the 2016 Kansas Legislature

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

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

Kansas Legislative Research Department
300 SW 10th Avenue
Room 68-West, Statehouse
Topeka, KS 66612-1504
Phone: 785-296-3181
Fax: 785-296-3824
http://kslegislature.org/klrd

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Kansas Legislative Research Department

A-1
Waters of the United States

Erica Haas
Principal Research Analyst
785-296-3181
Erica.Haas@klrd.ks.gov

Agriculture and Natural Resources

A-1 Waters of the United States

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

In April 2014, the EPA and the Corps jointly published a proposed rule relating to the CWA. The proposed rule updated the existing rule to comply with Supreme Court decisions; specifically, it addressed the definition of the waters of the United States by making it clear such waters do not only include navigable waters but also waters with a "significant nexus" to navigable waters.

In July and September 2014, EPA leadership, in its official blogs, stated Spring 2015 was the target for publishing the final rules; however, the proposed rules would not be finalized until the report titled *Connectivity of Streams and Wetlands to Downstream Waters: A Review of Synthesis of the Scientific Evidence (Report)* was finalized. The final Report was published in January 2015. (For more information on the final Report, see below.)

On June 29, 2015, the final rule was published in the *Federal Register* and became effective on August 28, 2015. The EPA published a chart identifying the differences between the proposed rule and the final rule. The chart can be viewed at http://www2.epa.gov/sites/production/files/2015-05/documents/fact_sheet_summary_final_1.pdf.

On June 30, 2015, the Kansas Attorney General announced Kansas joined eight other states to file a lawsuit against the EPA and the Corps. Twenty-two other states have divided into four groups and filed similar lawsuits. The complaint argues the final rule usurps the states' primary responsibility for the management, protection, and care of the intrastate waters and lands. The complaint also asks for the rule to be declared illegal, an injunction to be issued to prevent enforcement, and an order requiring the agencies to draft a new rule that complies with the law as it relates to states' authority. The complaint can be accessed at http://1.usa.gov/1U4xXLR.

On August 27, 2015, a federal district court judge for the District of North Dakota issued an injunction to block the rule from going into effect until a full trial on the legality of the rule could be conducted. There were differing opinions over whether the injunction applied only to the 13 states named in the lawsuit or whether the injunction applied to the rule nationwide.

On October 9, 2015, the Court of Appeals for the Sixth Circuit issued a stay of the rule nationwide pending further order of the Court. The Court stated the EPA's new guidelines for determining whether water is subject to federal control – based mostly on the water's distance and connection to larger water bodies – is at odds with a key Supreme Court ruling.

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

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

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

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

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

U.S. Supreme Court Cases

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

Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers (2001)

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

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

Rapanos v. United States (2006)

The *Rapanos* case addressed whether a wetland or tributary is a water of the United States. The Justices issued five separate opinions with no

single opinion commanding a majority of the Court; therefore, the EPA and the Corps issued a memorandum to provide clarification of the findings shared by a majority of Justices as it relates to jurisdiction. The findings of *Rapanos* are as follows:

The CWA has jurisdiction over the following waters:

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

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

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

The CWA does not have jurisdiction over the following features:

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

The significant nexus standard should be applied as follows:

- A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of the downstream traditional navigable waters; and
- Significant nexus includes consideration of hydrologic and ecologic factors.

Connectivity of Streams and Wetlands to Downstream Waters: A Review of Synthesis of the Scientific Evidence

The final Report published in January 2015 was used to inform the EPA and the Corps in drafting the final rule. (The full report can be accessed at http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=296414.) The final Report made the following conclusions:

- The scientific literature unequivocally demonstrates that *streams*, regardless of their size or frequency of flow, are connected to downstream waters and strongly influence their function;
- The scientific literature clearly shows that *wetlands and open waters in riparian areas* (transitional areas between terrestrial and aquatic ecosystems) *and floodplains* are physically, chemically, and biologically integrated with rivers *via* functions that improve downstream water quality. These systems act as effective buffers to protect downstream waters from pollution and are essential components of river food webs;
- There is ample evidence that many wetlands and *open waters located outside of riparian areas and floodplains*, even when lacking surface water connections, provide physical, chemical, and biological functions that could affect the integrity of downstream waters. Some potential benefits of these wetlands are due to their isolation rather than their connectivity. Evaluations of the connectivity and effects of individual wetlands or groups of wetlands are possible through case-by-case analysis;
- Variations in the degree of connectivity are determined by the physical, chemical, and biological environment, and by human activities. These variations support a range of stream and wetland functions that affect the integrity and sustainability of downstream waters; and

- The literature strongly supports the conclusion that the incremental contributions of individual streams and wetlands are cumulative across entire watersheds, and their effects on downstream waters should be evaluated within the context of other streams and wetlands in that watershed.

For more information, please contact:

Erica Haas, Principal Research Analyst
Erica.Haas@klrd.ks.gov

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Joanna Dolan
Principal Research Analyst
785-296-3181
Joanna.Dolan@klrd.ks.gov

Alcohol, Drugs, and Gaming

B-1 Charitable Gaming: Raffles and Bingo

Senate Sub. for HB 2155 created the Kansas Charitable Gaming Act (Act). The 2015 Act includes new law concerning the regulation of charitable raffles as well as changes to the Bingo Act. This article includes detailed information about those changes to the law concerning both charitable raffles and charitable bingo.

Raffles

Purpose

The Act states that charitable raffles are an important method of raising money for charitable purposes and are in the public interest. The Act also states the purpose and intent of the law concerning charitable raffles is to:

- Define the scope of charitable raffles;
- Set standards for the conduct of raffles that ensure honesty and integrity;
- Provide for means of accounting for moneys generated through raffles;
- Provide penalties for violations of laws and administrative rules and regulations related to raffles;
- Prevent commercialization of raffles;
- Prevent criminal participation in raffles; and
- Prevent diversion of funds from legitimate charitable purposes.

The Act allows raffles to be conducted by *bona fide* nonprofit religious, charitable, fraternal, educational, or veterans' organizations. The definitions of "nonprofit religious," "charitable," "fraternal," "educational," or "veterans" organizations are the same as those definitions used in continuing law for charitable bingo.

The Kansas Department of Revenue (KDOR) is required to report to both the House and Senate Federal and State Affairs Committees on the status of raffles and raffle licensees in the State by January 15 each year through 2018.

Licensure

Any *bona fide* nonprofit religious, charitable, fraternal, educational, or veterans' organization may apply for a license to conduct a raffle.

An application for a raffle license is required to include:

- The name and address of the organization;
- The place or location(s) or premises for which a license is sought;
- A sworn statement verifying the applying organization is a qualifying nonprofit organization, signed by the presiding officer and secretary of the organization;
- A sworn statement verifying that such organization is a *bona fide* nonprofit religious, charitable, fraternal, educational, or veterans' organization authorized to operate within the State of Kansas signed by the presiding officer and secretary of the organization;
- Other information as required by the Administrator of Charitable Gaming (Administrator); and
- An application fee, determined as follows:
  - Less than $25,000 in annual gross raffle receipts - no application fee;
  - $25,000 to $50,000 in annual gross raffle receipts - $25 license fee;
  - $50,000 to $75,000 in annual gross raffle receipts - $50 license fee;
  - $75,000 to $100,000 in annual gross raffle receipts - $75 license fee; and
  - More than $100,000 in annual gross raffle receipts - $100 license fee.

A license will be issued in the name of the organization licensed and will not be transferable or assignable. No license or renewal of a license will be issued to an organization if any of its officers, directors, officials, or persons employed on the premises have been convicted of, pleaded guilty to, or pleaded *nolo contendere* to a violation of state or federal gambling laws, or have forfeited bond to appear in court to answer charges for any such violation, or have been convicted of, pleaded guilty to, or pleaded *nolo contendere* to a crime that is a felony in any state. Licenses will expire on June 30 following the date of issuance.

A license will be required for each affiliated organization of any state or national nonprofit religious, charitable, fraternal, educational, or veterans' organization.

Restrictions on Licensees

Employees of licensees will be allowed to assist in the conduct of a raffle, but no person can receive any remuneration or profit for participating in the management, conduct, or operation of a charitable raffle, unless the remuneration or profit goes to the benefit of another nonprofit group.

Licensees will be required to report the name and address of any person winning a prize with a retail value of $1,199 or more.

Each licensee will be required to keep a record of all charitable raffles managed, operated, or conducted by such licensee for three years following the date of a raffle. Because organizations raising less than $25,000 in a calendar year are exempt from licensure requirements, those organizations are not licensees and also are exempt from the records requirements.

Structure of Raffle Regulation

The bill specifies the State has the exclusive power to regulate, license, and tax the management, operation, and conduct of and participation in charitable raffles. The Secretary of Revenue (Secretary) will appoint the Administrator who will be an unclassified employee and receive a salary set by the Secretary and approved by the Governor. The Administrator will be responsible for administering and enforcing the law concerning bingo and raffles. The bill requires the Secretary to adopt rules and regulations concerning the conduct of charitable raffles, including, but not limited to:

- Standards for the preparation, sale, and accountability of tickets;
- Conduct of drawings; and
- Awarding of prizes.

Licensed organizations will not be able to use electronic devices to conduct raffles or sell raffle tickets, and an organization will not be allowed to contract with a professional raffle or lottery vendor to manage, operate, or conduct a raffle.

Powers of the Administrator

To determine the receipts of licensees, the Administrator will be allowed to examine books, papers, records, or memoranda required to be included in the licensee's records.

The Administrator will be allowed to require the attendance of the licensee in the county where the licensee resides, or where charitable raffles are conducted, and can require the attendance of any person having knowledge relating to such records, and can take testimony and require proof of such person(s).

The Administrator also will be allowed to issue subpoenas to compel access to records to which a licensee has access or to compel the appearance of persons and could issue interrogatories, administer oaths, and take depositions to the same extent that he or she could in a civil action in district court.

The Administrator will be authorized to enjoin and have an order restraining persons without valid licenses from managing, operating, or conducting charitable raffles. Actions by the Administrator will be subject to review under the Kansas Judicial Review Act.

Punitive Actions by Administrator

The Administrator will be allowed to revoke or suspend a raffle license, after a hearing in accordance with the provisions of the Kansas Administrative Procedure Act, if the licensee:

- Obtained the license by giving false information;
- Violated any Kansas laws or provisions of the Act related to raffles; or
- Has become ineligible to obtain a license under the Act.

If a license is revoked, no new license may be issued to the organization or a person acting on its behalf for six months after the revocation. A license cannot be revoked or suspended for more than one year if the applicant is otherwise qualified on the date the applicant makes a new application for a license.

In addition to or in lieu of any civil or criminal penalty provided by law, the Administrator may impose a civil fine of not more than $500 for each violation of the raffle provisions. No fine can be imposed without a written order from the Administrator stating the violation, the fine imposed, and the right of the licensee to appeal. Money collected from fines will be credited to the State Charitable Raffle Regulation Fund.

Upon the recommendation of the Administrator, the Secretary will be required to adopt rules and regulations to implement the license requirements for nonprofit organizations conducting raffles.

Applicable Taxes

The bill specifies that in any raffle for which the prize is a motor vehicle, the vehicle will be subject to retailer's sales tax. All sales of charitable raffle tickets made in accordance with the Act will be exempt from sales tax.

Raffle Funds

The bill creates the State Charitable Raffle Regulation Fund and requires all moneys the Administrator receives from license fees to be remitted to this fund. All operating expenses related to the administration and enforcement of charitable raffles will be paid from the Regulation Fund. At the end of each fiscal year, money not used for raffle administration or enforcement will be transferred to the State General Fund.

The bill also creates the Charitable Raffle Refund Fund, which will be maintained by the Administrator from the license and registration fees and taxes collected under the Act. The Refund Fund will have a limit of $10,000.

Other Changes

The bill amends the definition of "bet" in criminal statutes to specify that charitable raffles managed, operated, and conducted in accordance with the raffle provisions cannot be considered illegal bets.

The bill contains a severability clause, stating if any provision of the Act or any application of the Act is found to be unconstitutional or invalid, the finding will not affect the other provisions of the Act.

Bingo

Concerning changes to the Bingo Act, the bill does the following:

General Requirements and Restrictions

- Keeps license fees for bingo at $25;
- Removes restrictions regulating the way bingo premises can be divided;
- Removes restrictions prohibiting the advertising of bingo (previously, advertising was allowed only pursuant to rules and regulations);
- Removes restrictions prohibiting other games of chance or contests where prizes are awarded from being conducted on a premise where bingo is being conducted; and
- Removes language excepting payment of prizes of less than $200 from the requirement that licensees with gross receipts of $1,000 or more must make all payments related to the management, operation, or conduct of bingo games from a bingo trust bank account.

Time, Location, and Number of Days Bingo Games May Be Conducted

- Removes restrictions regulating the number of days bingo games can be conducted at a premise other than the premise listed on the license (the previous limit was five days per year on a premise other than the premise listed on the license);
- Allows licensees to conduct bingo games in counties adjoining the county where the licensee is located;
- Removes restrictions limiting the number of days bingo games can be managed, operated, or conducted per week (the previous limit was two days per week);
- Removes restrictions limiting the number of times a premise can be used for bingo each week (the previous limit was three days per week);
- Removes restrictions limiting the number of regular, special, and progressive call bingo games that can be conducted in one bingo session (the previous limit was 25 games per session, no more than 5 of which could be special games);
- Removes restrictions limiting the number of licensees that may conduct bingo games at a given location in any one session (the previous limit was one licensee);
- Removes restrictions requiring a waiting period between bingo sessions (the previous requirement was 44 hours between bingo games on a premise or within 1,000 feet of a premise where bingo was conducted);
- Removes restrictions limiting where progressive bingo sessions can be conducted (previously, progressive bingo sessions could not be conducted at a location other than the specified location listed on the license); and
- Allows progressive bingo games to be conducted in conjunction with a session of bingo.

Number of Games Allowed in a Session of Bingo

- Removes restrictions limiting the number of progressive bingo games conducted during a single session of bingo (the previous limit was 2 games per session, with the entire progressive bingo game not exceeding 20 bingo sessions);
- Removes restrictions prohibiting limits on the number of instant bingo games that can be played in one session and the number of instant bingo tickets sold in a game of instant bingo (previously, there was no limit); and
- Removes restrictions limiting the number of mini games of bingo during a session (the previous limit was 30 games) and the time mini bingo can be conducted (previously, mini games could not be

conducted more than two hours prior to the first regular or special game or one hour after last regular or special game of bingo of a session).

Sale of Bingo Tickets and Supplies

- Removes restrictions limiting when instant bingo tickets can be sold (previously, bingo tickets could not be sold more than 2 hours prior to the start of the first regular or special game of call bingo or 1 hour after the termination of the last game of call bingo of a session) and how much sellers may charge for instant bingo tickets (the previous limit was $2);
- Removes restrictions prohibiting the sale or use of bingo cards except as provided by rules and regulations (previously, only bingo faces could be distributed except as provided in rules and regulations);
- Removes the requirement that boxes of instant bingo tickets must be accompanied by flare with the business name of the distributor and the license number to which the box is sold, if sold to a Kansas bingo licensee (flare with some information is still required); and
- Allows the Administrator, upon receiving notice, to revoke or suspend the license of an organization not providing full payment to a distributor of call bingo or instant bingo supplies within 90 days of the delivery of supplies.

Restrictions on Prizes

- Removes restrictions limiting the starting amount of a progressive game of bingo (the previous limit was $400);
- Removes restrictions limiting the prize amount for single games of bingo (the previous limit was $50 for regular call bingo, $500 for special call bingo);
- Allows consolation prizes of up to a $1,000 value (the previous limit was $400 value);
- Allows the aggregate prize for a single session of call bingo to be increased annually based on increases in the Consumer Price Index; and
- Requires monetary prizes of $1,199 or more to be paid by a check drawn on the bingo trust bank account of the licensee (previously, this was required for monetary prizes of $500 or more).

Bingo Premise Rent and Leases

- Removes the requirement that lease documents be submitted to the Administrator at the KDOR when bingo is conducted on leased premises or leased equipment is used to conduct a bingo game; and
- Removes requirements regulating the rent that can be charged for a leased premise (the previous requirement was that rental costs be fair and reasonable, and rent charged must not exceed 50 percent of the net proceeds for the session or the fair and reasonable rental value determined by the Administrator, whichever was less).

Restrictions on Personnel

- Removes restrictions limiting persons who lease premises and bingo licensees' ability to conduct drawings (previously, persons leasing bingo premises and bingo licensees were limited to participating in one drawing per session, and no more than four drawings per year);
- Removes language prohibiting a requirement that persons purchase something of value to participate in a drawing conducted by a licensee or lessor; and
- Removes language allowing only a non-monetary prize worth less than $25 to be awarded in such a drawing; and
- Allows employees of bingo licensees to assist in the conduct of games of bingo.

For more information, please contact:

Joanna Dolan, Principal Research Analyst
Joanna.Dolan@klrd.ks.gov

Natalie Nelson, Research Analyst
Natalie.Nelson@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Joanna Dolan
Principal Research Analyst
785-296-3181
Joanna.Dolan@klrd.ks.gov

Alcohol, Drugs, and Gaming

B-2 Fantasy Sports Leagues

In 2015, the Kansas Legislature passed a provision legalizing fantasy sports leagues as part of Senate Sub. for HB 2155. More information about the legalization of fantasy sports in the State of Kansas is included in this article.

Legalizing Fantasy Sports Leagues

The 2015 Legislature added fantasy sports leagues to the list of exceptions to the definition of an "illegal bet," thereby legalizing fantasy sports in the state. The Legislature defined "fantasy sports league" to mean any fantasy or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:

- All prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants;
- All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in multiple real-world sporting events; and
- No winning outcome is based:
  - On the score, point spread, or any performance or performances of any single real-world team or any combination of such teams; or
  - Solely on any single performance of an individual athlete in any single real-world sporting event.

For more information, please contact:

Joanna Dolan, Principal Research Analyst
Joanna.Dolan@klrd.ks.gov

Natalie Nelson, Research Analyst
Natalie.Nelson@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Natalie Nelson
Research Analyst
785-296-3181
Natalie.Nelson@klrd.ks.gov

Alcohol, Drugs, and Gaming

B-3 Liquor Laws

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

State and Local Regulatory Authority

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

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

The Liquor Control Act

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

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

The Cereal Malt Beverage Act

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

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

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

The Club and Drinking Establishment Act

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

The board of county commissioners may submit a proposition to voters to: (1) prohibit the sale of individual alcoholic drinks in the country, (2) permit the sale of individual alcoholic drinks only if an establishment receives 30 percent of its gross receipts from food sales, or (3) permit the sale of individual alcoholic drinks only if an establishment receives some portion of gross receipts from food sales. If a majority of voters in the county vote in favor of the proposition, the ABC Director must respect the local results when issuing or denying licenses in that county.

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

The Nonalcoholic Malt Beverages Act

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

The Flavored Malt Beverage Act

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

The Beer and Cereal Malt Beverage Keg Registration Act

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

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

Liquor Taxes

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

2015 Changes to Liquor Laws—HB 2223

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

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

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

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

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

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

Alcohol Consumption on Unlicensed Premises. The legislation provided that patrons and guests of unlicensed businesses will be allowed to consume alcoholic liquor and cereal malt beverages on the premises of unlicensed business property if the following conditions are met:

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

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

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

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

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

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

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

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

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

For more information, please contact:

Natalie Nelson, Research Analyst
Natalie.Nelson@klrd.ks.gov

Joanna Dolan, Principal Research Analyst
Joanna.Dolan@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Dezeree Hodish
Fiscal Analyst
785-296-3181
Dezeree.Hodish@klrd.ks.gov

Alcohol, Drugs, and Gaming

B-4 Lottery, State-owned Casinos, Parimutuel Wagering, and Tribal Casinos

Article 15, Section 3 of the *Kansas Constitution* prohibits lotteries and the sale of lottery tickets forever. The prohibition was adopted by convention, approved by voters in 1859, and approved by the 1861 Legislature. However, exceptions to the prohibitions were added in 1974 to allow for bingo and bingo games (discussed in article B-1) and in 1986 to allow for the Kansas Lottery (including state-owned casinos, since 2007) and parimutuel wagering on dog and horse races.

Revenue. Kansas laws provide for the allocation of Lottery revenues to the State Gaming Revenues Fund (SGRF), State General Fund (SGF), Expanded Lottery Act Revenues Fund (ELARF), and Problem Gambling and Addictions Grant Fund. In FY 2015, these funds received a total of $162.6 million.

Kansas Regular Lottery

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

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

The 1987 Kansas Legislature approved implementing legislation that:

- Created the Kansas Lottery to operate the State Lottery;
- Established a five-member Lottery Commission to oversee operations;
- Required at least 45 percent of the money collected from ticket sales to be awarded as prizes and at least 30 percent of the money collected to be transferred to the SGRF;
- Exempted lottery tickets from the sales tax; and
- Allowed liquor stores, along with other licensed entities, to sell lottery tickets.

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

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

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

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

State-owned Casinos

The 2007 Legislature enacted SB 66, commonly referred to as the Kansas Expanded Lottery Act (KELA), authorizing a state-owned and operated lottery involving electronic gaming and racetrack gaming facilities. A proviso in KELA stated that any action challenging the constitutionality of KELA shall be brought in Shawnee County District Court. In *Morrison v. Kansas Lottery* (2007), the Shawnee County District Court ruled KELA was constitutional because the State's selection of casino managers and electronic games, monitoring of managers' daily activities, ownership of gaming software, and control over revenue distribution demonstrate ownership and operation of a lottery involving electronic gaming. In *Six v. Kansas Lottery* (2008), the Kansas Supreme Court upheld the District Court's ruling and constitutionality of KELA.

Revenue. In FY 2015, revenue from the Kansas Regular Lottery was transferred from the SGRF in the following manner:

Veterans' Programs[b]	$	1,587,428
Economic Development Initiatives Fund		42,432,000
Juvenile Detention Fund		2,496,000
Correctional Institutions Building Fund		4,992,000
Problem Gambling Grant Fund		80,000
State General Fund[a]		25,020,240
Total	**$**	**75,020,240**

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

b The State General Fund transfer includes the revenue generated for Veterans' Programs.

Where can state casinos be located in Kansas?

KELA created gaming zones for expanded gaming. One casino may be built in each zone:

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

Who owns and operates the casinos?

The Kansas Lottery Commission has ownership and operational control. In addition, the Lottery is authorized to enter into contracts with the gaming

managers for gaming at the exclusive and non-exclusive (parimutuel locations) gaming zones.

Who is responsible for regulation?

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

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

KSA 74-8734 details the requirements of gaming facility contracts. Among other things, the contracts must include an endorsement from local governments in the area of the proposed facility and provisos that place ownership and operational control of the gaming facility with the Kansas Lottery, allow the KRGC complete oversight of operations, and distribute revenues pursuant to statute. The contracts also must include provisions for the payment of a privilege fee and investment in infrastructure. The 2014 Legislature passed HB 2272, which lowered the privilege fee in the Southeast Gaming Zone from $25 million to $5.5 million and lowered the investment in infrastructure in the Southeast Gaming Zone from $225 to $50 million).

The Lottery solicits proposals, approves gaming zone contracts, and submits the contracts to the Lottery Gaming Facility Review Board for consideration and determination of the contract for each zone. The Board is responsible for determining which lottery gaming facility management contract best maximizes revenue, encourages tourism, and serves the best interests of Kansas. The KRGC provides administrative support to the Board.

Revenue. Pursuant to KSA 74-8768, expanded gaming revenues deposited into the ELARF may only be used for state infrastructure improvements, the University Engineering Initiative Act, and reductions of state debt, the local *ad valorem* tax, and the unfunded actuarial liability of the Kansas Public Employees Retirement System (KPERS). In FY 2015, expenditures and transfers from the ELARF included:

KPERS Bonds Debt Service	$	33,397,128
Public Broadcasting Council Bonds		2,640,799
Statehouse Renovation		234,706
Kan-Grow Engineering Funds		10,500,000
KPERS Actuarial Liability		39,490,000
Total	**$**	**86,262,633**

Parimutuel Wagering

In 1986, voters approved a constitutional amendment authorizing the Legislature to permit, regulate, license, and tax the operation of horse and dog racing by bona fide non-profit organizations and to conduct parimutuel wagering. The following year, the Kansas Parimutuel Racing Act was passed:

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

As of 2013, there are no year-round parimutuel racetracks operating in Kansas; therefore, there was no revenue transfer to the SGRF from parimutuel racing.

Racetrack Gaming Facilities

Who decides who receives the racetrack gaming facility management contract?

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

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

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

What racetrack facilities are permitted to have slot machines?

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

Tribal-State Gaming

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

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

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

As of 2014, no new gaming compacts have been approved.

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

State Gaming Agency. The State Gaming Agency (SGA) was created by executive order in August 1995, as required by the tribal-state gaming compacts. During the 1996 Legislative Session, the SGA was attached to the KRGC for budget purposes through the passage of the Tribal Gaming Oversight Act. All management functions of the SGA are administered by its executive director. The gaming compacts define the relationship between the SGA and the tribes; the actual day-to-day regulation of the gaming facilities is performed

by the tribal gaming commissions. Enforcement agents of the SGA also are in the facilities on a daily basis and have free access to all areas of the gaming facility. The compacts also require the SGA to conduct background investigations on all gaming employees, manufacturers of gaming supplies and equipment, and gaming management companies and consultants. The SGA is funded through an assessment process, established by the compacts, to reimburse the State of Kansas for the costs it incurs for regulation of the casinos.

For more information, please contact:

Dezeree Hodish, Fiscal Analyst
Dezeree.Hodish@klrd.ks.gov

Joanna Dolan, Principal Research Analyst
Joanna.Dolan@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Dezeree Hodish
Fiscal Analyst
785-296-3181
Dezeree.Hodish@klrd.ks.gov

Alcohol, Drugs, and Gaming

B-5 Southeast Gaming Zone Casino Update

Background

The Kansas Lottery, as a result of the passage of 2014 HB 2272, which lowered the privilege and investment fees in the Southeast Gaming Zone, accepted proposals for a lottery gaming facility management contract from July 2014 until January 2015. It received four applications from Kansas Crossing, LC, Frontenac Development, LLC, Castle Rock Casino Resort, LCC, and SE Kansas Casino Partners, LLC. Within two months of the application deadline, SE Kansas Casino Partners, LLC withdrew its application.

Casino Presentations

In April 2015, the Lottery Commission heard presentations from the three remaining applicants. Kansas Crossing, LC proposed a development in Pittsburg, Crawford County with 625 slots, 16 table games, and a poker room. The proposed development also included a restaurant and bar, 120-room hotel, 20-pad recreational vehicle park, and 400-seat entertainment center. Frontenac Development, LLC proposed a development in Pittsburg, Crawford County with 750 slots, 18 table games, buffet restaurant, fast food area, night club, sports bar, 62-room hotel, meeting space, and 50-pad recreational vehicle park. The third applicant, Castle Rock Casino Resort, LCC, proposed a development in Cherokee County with 1,400 slots, 35 table games, poker room, fine dining, coffee shop, food court, sports bar buffet, 200-room hotel, meeting space, fitness center and spa. The applicant also proposed a 5,000 to 6,000 seat arena to be completed in a second phase of construction. The Lottery Commission approved all three applications and proposed contracts and forwarded them to the Lottery Gaming Facility Review Board (LGFRB) in late April 2015.

Pursuant to KSA 74-8735, LGFRB was tasked with selecting the contract that "…best maximizes revenue, encourages tourism and otherwise serves the interests of the people of Kansas." Over two months, the LGFRB held meetings in Topeka, Pittsburg, and Columbus to receive public and local government opinion and to hear applicant and consultant presentations. In June 2015, the LGFRB selected Kansas Crossing, LC to be the lottery gaming facility manager of a casino in Crawford County.

Resulting Litigation

In mid-July 2015, shortly after the selection of Kansas Crossing, LC, the Board of County Commissioners of Cherokee filed suit against the LGFRB, Kansas Racing and Gaming Commission (the State agency to which the LGFRB is attached), and the Kansas Lottery in Shawnee County District Court. The Commissioners requested that the Court issue a temporary injunction halting the construction of Kansas Crossing Casino. On July 31, the Court denied the Commissioners' request for an injunction. On July 31, 2015, Castle Rock Casino Resort, LCC entered the lawsuit against the defendants in Shawnee County District Court. In late October 2015, the Court denied the plaintiffs' motion for discovery. The lawsuit is still pending as of December 2015.

In mid-August 2015, Kansas Crossing, LC requested an extension on commencement of construction from the Kansas Lottery due to pending litigation. The Kansas Lottery approved a 90-day extension in late August. After the initial 90-day extension, Kansas Crossing, LC requested another 90-day extension, which the Lottery approved in early December 2015. The Lottery may rescind this extension or consider an additional extension, depending on the status of the lawsuit. Kansas Crossing Casino originally planned to open in July 2016; a delayed opening is now likely.

For more information, please contact:

Dezeree Hodish, Fiscal Analyst
Dezeree.Hodish@klrd.ks.gov

Joanna Dolan, Principal Research Analyst
Joanna.Dolan@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Raney Gilliland
Director
785-296-3181
Raney.Gilliland@klrd.ks.gov

Boards, Committees, and Commissions

C-1 Administrative Rule and Regulation Legislative Oversight

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

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

Rule and Regulation Authority—Examples

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

Kansas Roofing Registration Act (2013 Session)
In accordance with the rules and regulations filing act, the Attorney General is hereby authorized to adopt rules and regulations necessary to implement the provisions of this act. (2013 Sub. for HB 2024, New Section 4).

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

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

The Regulation Adoption Process

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

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

- Obtain approval of the proposed rules and regulations from the Secretary of Administration;
- Obtain approval of the proposed rules and regulations from the Attorney General including whether the rule and regulation is within the authority of the state agency;
- Submit the notice of hearing, copies of the proposed rules and regulations as approved, and the economic impact statement to the Secretary of State; and submit a copy of the notice of hearing to the chairperson, vice-chairperson, and ranking minority member of the Joint Committee on Administrative Rules and Regulations, and to the Kansas Legislative Research Department and Citizen Regulatory Review Board (required by Executive Order 11-02);
- Review the proposed rules and regulations with the Joint Committee;
- Hold the public hearing and prepare a statement of the principal reason for adopting the rule and regulation;
- Revise the rules and regulations and economic impact statement, as needed, and again obtain approval of the Secretary of Administration and the Attorney General;
- Adopt the rules and regulations; and
- File the rules and regulations and associated documents with the Secretary of State.

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

Legislative Review

The law dictates that the 12-member Joint Committee on Administrative Rules and Regulations review all proposed rules and regulations during the 60-day public comment period prior to the required public hearing on the proposed regulations. Upon completion of its review, the Joint Committee may introduce legislation it deems necessary in the performance of its review functions. Following the review of each proposed rule and regulation, the Joint Committee procedure is to forward comments it deems appropriate to the agencies for consideration at the time of their public hearings on the proposed rules and regulations. The letter expressing comments by the Joint Committee may include a request that the agency reply to the Joint Committee in writing

to respond directly to the comments made and to detail any amendments in the proposed rules and regulations made after the Joint Committee hearing and any delays in the adoption of or the withdrawal of the regulations. Staff maintains a database of responses to Joint Committee comments and reports on those responses to the Joint Committee. A limited number of regulations are exempt from the review process of the Joint Committee. In addition, certain permanent regulations have a defined statutory review period of 30 days, rather than the 60-day review period. Each year, the Legislative Research Department prepares a report on the oversight activities of the Joint Committee; this electronic report is available from the Department.

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

The Legislature also is permitted to adopt a concurrent resolution expressing its concern regarding any permanent or temporary rule and regulation. The resolution may request revocation of the rule and regulation or amendment as specified in the resolution. If the agency does not respond positively in its regulation to the recommendations of the Legislature, the Legislature may take other action through a bill. Recent legislative changes to the Rules and Regulations Filing Act have not changed this review process.

2008 Legislative Action

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

2010 Legislative Action

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

2011 Legislative Action

During the 2011 Legislative Session, HB 2027 amended the Rules and Regulations Filing Act by deleting the existing definitions of "rule and regulation," "rule," and "regulation," including several provisions exempting specific rules and regulations from formal rulemaking under the Act, and replacing them with a simplified definition. It also expanded the definition of "person" to include individuals and companies or other legal or commercial entities.

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

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

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

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

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

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

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

2012 Legislative Action

During the 2012 Legislative Session, SB 252 made several changes to the Kansas Rules and Regulations Filing Act.

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

- Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and
- Is not a logical outgrowth of the rule and regulation as originally proposed.

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

2013-2014 Legislative Action

The only legislative action during the 2013 Legislative Session was the passage of HB 2006, which amended the Kansas Rules and Regulations Filing Act to remove "Kansas" from the name of the Act. There were no amendments made to the Rules and Regulations Filing Act.

2015 Legislative Action

There were no amendments made to the Rules and Regulations Filing Act.

For more information, please contact:

Raney Gilliland, Director
Raney.Gilliland@klrd.ks.gov

Jill Shelley, Principal Research Analyst
Jill.Shelley@klrd.ks.gov

Whitney Howard, Research Analyst
Whitney.Howard@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Natalie Teemer-Washington
Research Analyst
785-296-3181
Natalie.Teemer-Washington@klrd.ks.gov

Boards, Committees, and Commissions

C-2 Joint Committee on Special Claims Against the State

Since near the turn of the twentieth century, legislative committees have furnished a venue for persons who thought they were injured in some manner by the activity of a state agency.

The statutory purpose of the present-day Joint Committee on Special Claims Against the State is to hear claims for which there is no other recourse to receive payment. The Joint Committee is the place of last resort when there is no other way of appropriating money to pay a claim against the state.

The Joint Committee was the only venue available for this purpose until passage in the early 1970s of the Tort Claims Act, which allowed state agencies to accept a limited amount of liability. The Tort Claims Fund, established in the Attorney General's Office, offers recourse for other actions brought against the State. The State does assume certain responsibility for its actions under the tort claims statutes; however, there are certain areas under those statutes where the State has no liability.

The fact that state agencies are immune under statute does not mean that a citizen cannot be injured by some action of the state. Because state agencies are immune, a potential claimant may have no remedy other than coming to the Joint Committee. Thus, the claims which come to the Joint Committee involve an issue of equity and do not always involve the issue of negligence on the part of the State or a state employee.

Committee Membership

The Joint Committee on Special Claims Against the State has seven members, consisting of three members of the Senate and four members of the House of Representatives. At least one House member and one Senate member must be an attorney licensed to practice law in the State of Kansas. Additionally, at least one Representative must be a member of the House Committee on Appropriations and at least one Senator must be a member of the Senate Committee on Ways and Means. The chairperson of the Joint Committee alternates between the House and Senate members at the start of each biennium. The members appointed from each chamber must include minority party representation. Any four members of the Joint Committee constitutes a quorum. Action of the Joint Committee may be taken by an affirmative vote of a majority of the members present, if a quorum is present.

Claims Process

The claimant starts the claims process by completing and submitting a claim form.

The claim form is available on the Internet through both the Legislature's website and the Legislative Research Department's website, or it may be requested in hard copy by contacting the Legislative Research Department.

None of the rules of evidence apply to the Joint Committee. It is an informal environment, which contains no impediments to getting the issues to the forefront. Therefore, the Joint Committee is considered a court of equity.

The claimant indicates on the claim form whether he or she wishes to appear in person for the hearing. In-person hearings for claimants who currently are incarcerated are conducted *via* telephone conference.

Claimants who request to appear in person for their hearing are notified 15 days in advance of the hearing via certified mail as prescribed in KSA 46-914. Additionally, the claim form must be notarized prior to consideration of the claim.

State agencies and employees are charged with providing the Joint Committee with information and assistance as the Committee deems necessary.

The Joint Committee is authorized by KSA 46-917 to adopt procedural guidelines as may be necessary for orderly procedure in the filing, investigation, hearing, and disposition of claims before it. The Joint Committee has adopted 12 guidelines (Committee rules) to assist in the process. These guidelines are available on the Internet through both the Legislature's website and the Legislative Research Department's website, or can be requested in hard copy by contacting the Legislative Research Department.

The Joint Committee traditionally holds hearings during an Interim Session from June through December of the year. The Committee is mandated by statute to hear all claims filed by November 1st during that Interim Session.

The Committee can meet during the Legislative Session only if both the President of the Senate and the Speaker of the House of Representatives authorize the meetings, pursuant to KSA 46-918.

Committee Recommendations

The Joint Committee makes recommendations regarding the resolution of the claims. The Committee is required by KSA 46-915 to notify the claimants of its recommendation regarding the claim within 20 days after the hearing.

The Joint Committee submits its recommendations for payment of claims it has heard in the form of a bill presented to the Legislature at the start of each session.

Claims Payments

Payment for claims that are appropriated by the Legislature and signed into law by the Governor are paid by the Division of Accounts and Reports. Prior to receiving payment, claimants are required to sign a release.

When an inmate owes an outstanding unpaid amount of restitution ordered by a court, money received by the inmate from a claim settlement is withdrawn from the inmate's trust account as a set-off, per KSA 46-920.

For more information, please contact:

Natalie Teemer-Washington, Research Analyst
Natalie.Teemer-Washington@klrd.ks.gov

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Dezeree Hodish, Fiscal Analyst
Dezeree.Hodish@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Robert Gallimore
Principal Research Analyst
785-296-3181
Robert.Gallimore@klrd.ks.gov

Boards, Committees, and Commissions

C-3 Senate Confirmation Process

State law in Kansas requires that certain appointments by the Governor or other state officials be confirmed by the Senate prior to the appointee exercising any power, duty, or function of the office. If a majority of the Senate votes on the question of confirmation of an appointment to an office and the appointment is not confirmed, the office shall become vacant at that time (KSA 75-4315b).

When the Senate is not in session, a standing committee of the Senate – the Confirmation Oversight Committee – reviews appointments and makes recommendations related to the appointments to the full Senate.

The Confirmation Oversight Committee has six members with proportional representation from the two major political parties (KSA 46-2601). One of the members of the Committee is the Majority Leader, or the Majority Leader's designee, who serves as Chairperson. The Minority Leader of the Senate, or the Minority Leader's designee, serves as Vice-chairperson.

If a vacancy occurs in an office or in the membership of a board, commission, council, committee, authority, or other governmental body and the appointment to fill the vacancy is subject to confirmation by the Senate, the Confirmation Oversight Committee may authorize, by a majority vote, the person appointed to fill the vacancy to exercise the powers, duties, and functions of the office until the appointment is confirmed by the Senate.

A list of those positions subject to Senate confirmation is included below along with flow charts showing the confirmation process for gubernatorial appointees and non-gubernatorial appointees.

Alphabetical List of Appointments Subject to Senate Confirmation

Adjutant General
Administration, Secretary
Aging and Disability Services, Secretary
Agriculture, Secretary
Alcoholic Beverage Control, Director
Bank Commissioner
Banking Board
Bioscience Authority
Board of Tax Appeals, Members and Chief Hearing Officer
Central Interstate Low-Level Radioactive Waste Commission
Children and Families, Secretary
Civil Service Board

Commerce, Secretary
Corporation Commission
Corrections, Secretary
Court of Appeals, Judge
Credit Union Administrator
Crime Victims Compensation Board
Electric Transmission Authority
Employment Security, Board of Review
Export Loan Guarantee Committee
Fire Marshal
Gaming Agency, Executive Director
Healing Arts, Executive Director of State Board
Health and Environment, Office of Inspector General
Health and Environment, Secretary
Highway Patrol, Superintendent
Historical Society, Executive Director
Hospital Authority, University of Kansas
Human Rights Commission
Indigents' Defense Services, State Board
Kansas Bureau of Investigation, Director
Kansas City Area Transportation District
Kansas Development Finance Authority, Board of Directors
Kansas National Guard, General Officers
Labor, Secretary
Librarian, State
Long-Term Care Ombudsman
Lottery Commission
Lottery Commission, Executive Director
Mo-Kan Metropolitan Development District and Agency Compact
Pooled Money Investment Board
Property Valuation, Director
Public Employee Relations Board
Public Employees Retirement Board of Trustees
Public Trust, State (Treece buyout)
Racing and Gaming Commission
Racing and Gaming Commission, Executive Director
Regents, State Board
Revenue, Secretary
Securities Commissioner
Transportation, Secretary
Veterans' Affairs Office, Commission on, Director
Water Authority, Chairperson
Water Office, Director
Wildlife, Parks and Tourism, Secretary

Senate Confirmation Process: Gubernatorial Appointments

Step 1

- The Governor appoints an individual to a vacancy requiring Senate confirmation.

Step 2

- The Governor's Office collects completed copies of the appointee's nomination form, statement of substantial interest, tax information, and background investigation, including fingerprints.

Step 3

- The Governor's Office submits completed copies of the appointee's nomination form, statement of substantial interest, and acknowledgement of release of tax and criminal records information forms to the Kansas Legislative Research Department (KLRD) *via* the Committee Chairperson.

Step 4

- KLRD and Revisor of Statutes staff review the file for completeness.

Step 5

- If the file is complete, KLRD staff informs the Chairperson of the Committee that the file is available for review.

Step 6

- The nominee's appointment is considered by the Senate Committee on Confirmation Oversight.

For more information, please contact:

Erica Haas, Principal Research Analyst
Erica.Haas@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Lauren Douglass
Principal Research Analyst
785-296-3181
Lauren.Douglass@klrd.ks.gov

Children and Youth

D-1 Adoption

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

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

Jurisdiction and Venue

The district courts in Kansas have general jurisdiction to hear adoption petitions. Jurisdiction must exist over the subject matter of the action as well as the parties. Generally Kansas will have jurisdiction if the birth mother and adoptive parents are all Kansas residents. If the child is of Native American heritage, the Indian Child Welfare Act (ICWA), 25 U.S.C.A. 1901 to 1963, may apply. If the child born in Kansas is to be placed with adoptive parents in another state, the parties may need to comply with the Interstate Compact for the Placement of Children (ICPC), KSA 38-1201 to 38-1206, likewise if the child is born outside of Kansas and an agency will be involved in the adoption in Kansas. Additional requirements exist for intercountry adoptions as well and are summarized briefly at the end of this article.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), KSA 23-37,101 to 37,405, applies to adoption proceedings in Kansas such that, if at the time the petition is filed a proceeding concerning the custody or adoption of the minor is pending in another state exercising jurisdiction substantially in conformity with the UCCJEA or its predecessor law, the Uniform Child Custody Jurisdiction Act (UCCJA), Kansas may not exercise jurisdiction unless the other state's court stays its proceeding. Similarly, if another state has issued a decree or order concerning custody, Kansas may not exercise jurisdiction unless the court of the state issuing the order does not have continuing jurisdiction, has declined to exercise jurisdiction, or does not have jurisdiction. For more information on the UCCJEA, see briefing article D-2, Child Custody and Visitation Procedures.

Petition

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

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

Consent

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

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

For stepparent adoptions, consent must be given by the living parents of a child; one of the parents if the other's consent is unnecessary under KSA 59-2136; or the judge of any court having jurisdiction over the child pursuant to the KCCC if parental rights have not been terminated and any child over fourteen sought to be adopted who is of sound intellect.

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

For an agency adoption, KSA 59-2129(b) provides that once parents relinquish their child to an agency pursuant to KSA 59-2124, consent must be given by the authorized representative of the agency and any child over fourteen sought to be adopted who is of sound intellect. KSA 59-2124(b) states that relinquishments will be deemed

sufficient if in substantial compliance with the form created by the Judicial Council and executed by both parents or one parent if the other is deceased or relinquishment is found unnecessary. Like consents, the relinquishment must be in writing and acknowledged by a notary or the court. (Again, the judge must advise the relinquishing person of the consequences of the relinquishment.) Additionally, KSA 59-2115 requires independent counsel for a minor relinquishing a child, and KSA 59-2116 provides that the natural mother cannot relinquish the child until twelve hours after the birth. If the agency accepts the relinquishment, the agency stands *in loco parentis* for the child and has the rights of a parent or legal guardian, including the power to place the child for adoption. If a person relinquishes the child, all parental rights are terminated, including the right to receive notice in a subsequent adoption proceeding involving the child.

When parents consent to an adoption, they agree to the termination of their parental rights, although the rights are not terminated until the judge makes the final decree of adoption. If the parent does not sign a consent, a court can terminate parental rights pursuant to a separate petition filed under the KCCC alleging that the child is a "child in need of care" (CINC) or a motion to terminate parental rights can be made in an existing CINC proceeding. For more information on CINC proceedings, see briefing article D-3.

Additionally, KSA 59-2136 addresses circumstances where the necessity of a parent's consent or relinquishment is in question, and while it frequently refers to fathers, it specifies that insofar as it is practicable, those provisions applicable to fathers also apply to mothers. If a father is unknown or his whereabouts are unknown, subsection (c) requires the court to appoint an attorney to represent him, and if no person is identified as the father or possible father, the court must order publication notice of the hearing in such manner as it deems appropriate. Without a father's consent, his parental rights must be terminated. The court must make an effort to identify the father, and if identified, he must receive notice of the termination proceedings. If no father is identified or if after receiving notice, he fails to appear or does not claim custodial rights, the court will terminate his parental rights. If a father is identified to the court and asserts parental rights, subsection (h)(1) requires the court to determine parentage pursuant to the Kansas Parentage Act, KSA 23-2201 to 23-2225. Further, if the father is unable to employ an attorney, the court must appoint one for him. Thereafter, the court may terminate a parent's rights if it determines by clear and convincing evidence that:

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

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

In a stepparent adoption, KSA 59-2136(c) authorizes the court to appoint an attorney to represent a father who is unknown or whose whereabouts are unknown. Additionally, subsection (d) provides that if a mother consents to a stepparent adoption when the child has a presumed father, his consent is required unless he is incapable of giving such consent or has failed or refused to assume the duties of a parent for the two consecutive years preceding the filing of the petition for adoption. In determining whether consent is required, the statute allows the court to disregard incidental visitations, contacts,

communications, or contributions. Further, there is a rebuttable presumption that if the father, after having knowledge of the child's birth, has knowingly failed to provide a substantial portion of court-ordered child support when financially able to do so for the two years preceding the filing of the petition for adoption, he has failed or refused to assume the duties of a parent. Finally, in determining whether a stepparent adoption should be granted, the court may consider the best interests of the child and the fitness of the nonconsenting parent.

Accounting for Consideration

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

- Reasonable legal and other professional fees rendered in connection with the placement or adoption;
- Reasonable fees of a licensed child-placing agency;
- Actual and necessary expenses, incident to placement or the adoption proceedings;
- Actual medical expenses of the mother attributable to the pregnancy and birth;
- Actual medical expenses of the child; and
- Reasonable living expenses of the mother incurred during or as a result of the pregnancy.

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

Assessments

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

Temporary Custody Order

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

Adoption Hearing and Final Decree

Upon filing an adoption petition, KSA 59-2133 requires the court to set the hearing within 60 days from the date of filing. Additionally, it requires notice to be given to birth parents in independent and stepparent adoptions, unless parental rights have been terminated. The court may designate others to be notified. In agency adoptions, notice must be served upon the consenting agency unless waived. After the hearing of the petition, the court considers the assessment and all evidence and, if the adoption is granted, makes a final decree of adoption.

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

Intercountry Adoptions

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

On April 1, 2008, the United States implemented the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which applies when a child habitually residing in one contracting state has been, is being, or will be moved to another contracting state after adoption in the state of origin by a person habitually residing in the receiving state or for purpose of an adoption in the receiving state. Article 4 of the Convention states that an adoption is to take place only if the competent authorities of the state of origin have established the child is adoptable; determined that an intercountry adoption is in the child's best interest; ensured the persons, institutions, and authorities whose consent is necessary have been counseled about the effects of consent and have given free, unconditional, and irrevocable written consent not influenced by the payment of money; and if the child is of an appropriate age and degree of maturity, ensured that he or she has been counseled on the effects of consent, expressed his or her opinion, and given consent when necessary. Additionally, Article 5 provides the competent authorities of the receiving state must have determined that the prospective adoptive parents are eligible and suited to adopt, have been counseled when necessary, and have authorized or will authorize the child to enter and reside permanently in the receiving state. More information on the Hague Convention is available at: https://www.hcch.net/en/instruments/conventions/full-text/?cid=69. The U.S. Department of State also has a web page devoted to intercountry adoption: http://adoption.state.gov.

For more information, please contact:

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Amy Deckard, Assistant Director for Information Management
Amy.Deckard@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Lauren Douglass
Principal Research Analyst
785-296-3181
Lauren.Douglass@klrd.ks.gov

Children and Youth

D-2 Child Custody and Visitation Procedures

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

Initial Determination

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

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

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

or threatened mistreatment or abuse. After a court assumes home state jurisdiction, other states must recognize any orders it issues.

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

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

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

- Each parent's role and involvement with the minor child before and after separation;
- The desires of a child of sufficient age and maturity and the child's parents as to custody or residency;
- The age and emotional and physical needs of the child;
- The interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;
- The child's adjustment to the child's home, school, and community;
- The willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;
- Evidence of spousal abuse, either emotional or physical;
- The ability of the parties to communicate, cooperate, and manage parental duties;
- The school activity schedule of the child;
- The work schedule of the parties;
- The location of the parties' residences and places of employment;
- The location of the child's school;
- Whether a parent or person residing with a parent is subject to the registration requirements of the Kansas Offender Registration Act, or any similar act; or
- Whether a parent or person residing with a parent has been convicted of child abuse.

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

Modification

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

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

While a state exercises continuing jurisdiction, no other state may modify the order. If the state that made the original determination loses this

continuing jurisdiction, another state can modify an order only if it satisfies the "home state" requirements outlined above.

KSA 23-3219(a) provides that to modify a final child custody order, the party filing the motion must list, either in the motion or in an accompanying affidavit, all known factual allegations that constitute the basis for the change of custody. If the court finds that the motion establishes a *prima facie* case, the facts of the situation will be considered to determine whether the order should be modified. Otherwise, the court must deny the motion.

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

Custodial Interference and the Kansas Protection from Abuse Act

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

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

This crime is a severity level 7, person felony.

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

Typically, the protective order remains in effect for a maximum of one year, but, on motion of the parent who originally filed the petition, may be extended for one additional year. Additionally, KSA 60-3107 requires courts to extend protection from abuse orders for at least two years and allow extension up to the lifetime of a defendant if, after the defendant has been personally served with a copy of the motion to extend the order and has had an opportunity to present evidence at a hearing on the motion and cross-examine witnesses, it is determined by a preponderance of the evidence that the defendant has either previously violated a valid protection order or been convicted of a person felony or conspiracy, criminal solicitation, or attempt of a person felony, committed against the plaintiff or any member of the plaintiff's household. Violation of a protection order is a class A, person misdemeanor, and violation of an extended protection order is a severity level 6, person felony.

Military Child Custody and Visitation

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

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

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

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

Third Party Custody and Visitation

Custody

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

Under the KCCC, KSA 38-2286 requires substantial consideration of a grandparent who requests custody when a court evaluates what custody, visitation, or residency arrangements are in the best interests of a child who has been removed

from custody of a parent and not placed with the child's other parent. The court must consider the wishes of the parents, child, and grandparent; the extent to which the grandparent has cared for the child; the intent and circumstances under which the child is placed with the grandparent; and the physical and mental health of all involved individuals. The court is required to state this evaluation on the record. If the court does not give custody to a grandparent but places the child in the custody of the Secretary of the Department for Children and Families (Secretary) for placement, then a grandparent who requests placement must receive substantial consideration in the evaluation for placement. If the grandparent is not selected for placement, the Secretary must prepare and maintain a written report with specific reasons for the finding.

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

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

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

The court also must find that:

- Reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home; or
- That an emergency exists that threatens the safety of the child.

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

Visitation

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

Child Support and Enforcement

KSA 23-3001 requires the court to determine child support in any divorce proceeding and allows the court to order either or both parent to pay child support, regardless of the custodial arrangement. Child support also can be ordered as part of a paternity proceeding. In determining the amount to be paid for child support, KSA 23-3002 requires the court to follow the Kansas Child Support Guidelines. KSA 20-165 requires the Kansas Supreme Court to adopt guidelines for setting child

support and consider all relevant factors, including, but not limited to:

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

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

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

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

For more information, please contact:

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Lauren Douglass
Principal Research Analyst
785-296-3181
Lauren.Douglass@klrd.ks.gov

Children and Youth

D-3 Foster Care Services and Child in Need of Care Proceedings

Foster Care Services

Foster care services are provided when the court finds a child to be in need of care pursuant to the Revised Kansas Code for the Care of Children, KSA 38-2201 to 38-2283. "Child in Need of Care" (CINC) proceedings can be divided into two categories: those concerning children who lack adequate parental care or control, or have been abused or abandoned; and those concerning children who commit certain offenses listed in KSA 38-2202(d)(6)-(10). The focus of this article is on the first group.

Foster care services in Kansas were privatized in 1997 due in part to longstanding concerns about the quality of services for children in state custody, in addition to a 1989 class action lawsuit alleging the Department of Social and Rehabilitation Services (SRS), now known as the Department for Children and Families (DCF), failed to care adequately for children who may have been victims of abuse or neglect. The court approved a settlement in 1993 containing 153 requirements with which SRS was required to comply within certain time frames. SRS did not achieve compliance with many of the settlement requirements for handling cases, and in early 1996, SRS officials informed the Legislature they were moving toward privatization to improve the quality and efficiency of services. After what contractors conceded was a chaotic transition, SRS was found to have successfully completed its terms in 2002.

Currently, the State, through DCF, contracts with two different service providers in four regions for foster care placements, adoptions, and family preservation services. The service providers are Saint Francis Community Services, which provides service to the West and Wichita regions, and KVC Health Systems, Inc. (KVC Kansas), which provides service to the East and Kansas City regions. The service providers subcontract with other providers. Several other agencies are involved in the area of foster care throughout the state, such as the Kansas Children's Service League and the Children's Alliance of Kansas. These agencies and others provide a variety of services, including information and resources, for foster parents and prospective foster parents.

Preliminary Issues for CINC Proceedings

CINC proceedings typically begin with a report to DCF, which may be made by anyone who suspects a child may be in need of care. Additionally, the following are required to report any suspicion of abuse or neglect:

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

Reports can be made to local law enforcement when DCF is not open for business. Once a report is received, KSA 38-2226 requires DCF and law enforcement to investigate the validity of the claim and determine whether action is required to protect the child. When a report indicates there is serious physical harm to, serious deterioration of, or sexual abuse of the child and action may be required to protect the child, DCF and law enforcement conduct a joint investigation. If there are reasonable grounds to believe abuse or neglect exist, DCF must take immediate steps to[1] protect the health and welfare of the child, as well as that of other children under the same care.

KSA 38-2231 requires law enforcement to place a child in protective custody when an officer reasonably believes the child will be harmed if not immediately removed from the situation where the child was found or the child is a missing person. A court may not remove a child from parental custody unless it finds there is probable cause to believe the child is likely to sustain harm if not immediately removed from the home; allowing the child to remain in home is contrary to the welfare of the child; or immediate placement of the child is in the best interest of the child. The court also must find there is probable cause to believe reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home, or an emergency exists that threatens the safety of the child.

To issue an *ex parte*[1] order for protective custody, the court also must find there is probable cause to believe the child is in need of care. An *ex parte* order must be served on the child's parents and any other person having legal custody of the child. Along with the order, the court may enter an order restraining any alleged perpetrator of physical, sexual, mental, or emotional abuse from residing in the child's home; visiting, contacting, harassing, or intimidating the child, another family member, or witness; or attempting to visit, contact, harass, or intimidate the child, another family member, or witness. A restraining order must be served on the alleged perpetrator.

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

When a court evaluates what custody, visitation, or residency arrangements are in the best interest of a child no longer residing with a parent, KSA 38-2286 requires substantial consideration of a grandparent who requests custody, which must be included in the record. The court must consider the wishes of the parents, child, and grandparent; the extent to which the grandparent has cared for the child; the intent and circumstances under

1 Ex parte orders are orders issued involving one party, usually for temporary or emergency relief.

which the child is placed with the grandparent; and the physical and mental health of all involved individuals. If the court places the child in the custody of the Secretary for Children and Families for placement, rather than a grandparent, the law requires substantial consideration of a grandparent who requests placement in the evaluation for placement, and if the grandparent is not selected, the Secretary must prepare and maintain a written report with specific reasons for the finding.

Court Proceedings

CINC Petition

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

Once the petition is filed, if the child is in protective custody, the court can serve a copy of the petition to all parties and interested parties in attendance at the temporary custody hearing or issue summons to all those persons if not present. Otherwise, the court will serve the guardian *ad litem*[22] (GAL) appointed to the child, custodial parents, persons with whom the child is residing, and any other person designated by the county or district attorney with a summons and a copy of the petition, scheduling a hearing within 30 days of when the petition was filed. Grandparents are sent a copy of the petition by first class mail. KSA 38-2235; KSA 38-2236.

2 Guardian *ad litem* For more information on the role of the GAL, see KSA 38-2205

Interested Parties and Attendance at Court Proceedings

In addition to receiving notice of hearings, KSA 38-2241 gives parties and interested parties the right to present oral or written evidence and argument, call and cross-examine witnesses, and be represented by an attorney. Grandparents are interested parties in CINC proceedings and have the participatory rights of parties, subject to the court's restriction on participation if it is in the best interest of the child. Other interested parties may include persons with whom the child has resided or share close emotional ties to the child and other persons as the court allows based on the child's best interests.

KSA 38-2247 allows anyone to attend all CINC proceedings leading up to and including adjudication, unless the court determines closed proceedings or the exclusion of an individual would be in the best interests of the child or is necessary to protect the privacy rights of the parents. Dispositional proceedings for a child determined to be in need of care, however, may be attended only by the GAL, interested parties and their attorneys, officers of the court, a court-appointed special advocate, the custodian, and any other person the parties agree to or the court orders to admit. Likewise, the court may exclude a person if it determines it would be in the best interests of the child or the conduct of the proceedings.

Temporary Custody Hearing

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

against an alleged perpetrator of physical, sexual, mental, or emotional abuse. KSA 38-2243. The court may place the child in the temporary custody of a parent or other person having custody of the child; another person who is not required to be licensed under the Kansas law governing child care facilities; a youth residential facility; a shelter facility; or, under certain circumstances, the Secretary for Children and Families.

Order of Informal Supervision

At any time after the petition is filed and prior to an adjudication, a court can enter an order for continuance and informal supervision pursuant to KSA 38-2244, placing conditions on the parties and entering restraining orders as needed. The order can continue for up to six months but may be extended for an additional six months. If the child is not placed with a parent, the court must give substantial consideration to a grandparent who requests custody, as outlined in KSA 38-2286 and discussed above.

Adjudication and Disposition

The court must enter a final adjudication or dismissal of a CINC petition within 60 days of the filing of the petition, unless good cause for a continuance is shown on the record. KSA 38-2251(c). At this stage, the petitioner must prove by clear and convincing evidence the child is in need of care. KSA 38-2250. If that burden is not met, the court must dismiss the proceedings. KSA 38-2251. If the child is found to be in need of care, however, the court will receive and consider information concerning the child's safety and wellbeing and enter orders concerning custody and a case plan, which governs the responsibilities and timelines necessary to achieve permanency for the child. KSA 38-2253.

Prior to entering an order of disposition, KSA 38-2255(a) requires the court to consider the child's physical, mental, and emotional condition and need for assistance; the manner in which the parent participated in the abuse, neglect, or abandonment of the child; any relevant information from the intake and assessment process; and evidence received at disposition concerning the child's safety and wellbeing. Based on these factors, the court may place the child with a parent; a relative of the child; another person who is not required to be licensed under the Kansas law governing child care facilities; any other suitable person; a shelter facility; a youth residential facility; or, under certain circumstances, the Secretary for Children and Families. This placement will continue until further order of the court. Along with the dispositional order, the court may grant any person reasonable rights to visit the child upon finding that the visitation rights would be in the best interests of the child or may enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. KSA 38-2255(d).

Permanency

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

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

the success of the plan, a hearing will be held to consider the merits of the plan. KSA 38-2263(e).

If reintegration is not a viable alternative, within 30 days proceedings will be initiated to terminate parental rights, place the child for adoption, or appoint a permanent custodian. A hearing on the termination of parental rights or appointment of a permanent custodian will be held within 90 days. An exception exists when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian. KSA 38-2255(f); for more information, see KSA 38-2268.

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

KSA 38-2269 lists factors the court will consider to determine parental unfitness. Additionally, a parent may be found unfit if the court finds the parent has abandoned the child, custody of the child was surrendered or the child was left under such circumstances that the identity of the parents is unknown and cannot be determined, in spite of diligent searching, and the parents have not come forward to claim the child within three months after the child is found. KSA 38-2269; KSA 38-2282. Finally, KSA 38-2271 outlines circumstances that create a presumption of unfitness, including a previous finding of unfitness; two or more occasions in which a child in the parent's custody has been adjudicated a child in need of care; failure to comply with a reasonable reintegration plan; and conviction of certain crimes. Parents bear the burden of rebutting these presumptions by a preponderance of the evidence.

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

Fiscal Year 2015 Statewide Foster Care Statistics

An average of 317 children were removed from the home and placed into foster care each month with a total number of 3,799 children placed during FY 2015. An average of 286 children exited foster care placement outside of their home each month, with a total of 3,430 children exiting. In 59 percent of cases, the primary reason for removal was abuse or neglect. A majority of children in out-of-home settings were placed in family foster homes, and the most common permanency goal was reunification. The total average out-of-home placement length of stay was 18.2 months with emancipation as the leading reason for ending placement. Further information on statistics, as well as current figures and regional data, can be found at http://www.dcf.ks.gov/services/PPS/Pages/FosterCareDemographicReports.aspx.

Recent Legislation and Reform Efforts

In addition to many existing workgroups, task forces, and committees that consider possible reforms to the CINC process and the delivery of foster care services, in recent years standing and special legislative committees also have considered changes.

Beginning in 2011, the Legislature made changes to the law to expand the rights of grandparents, designating them as interested parties (2011 House Sub. for SB 23) and requiring substantial consideration of grandparents who request custody when a child is removed from parental custody (2012 SB 262).

In 2014, a foster parents' bill of rights, Sub. for SB 394, was introduced, considered, and ultimately referred to the Judicial Council and to the Special Committee on Judiciary for interim study. The Special Committee recommended introduction of a bill proposed by the Judicial Council and that additional consideration be given to the grievance process. That bill was introduced in 2015 as SB 37, which could be considered further in the 2016 Legislative Session.

In addition to SB 37, the Safe Families Act was introduced in 2015 and would allow parents to delegate care and custody of a child to another using power of attorney. Following consideration in the Senate, its contents were added to SB 159, a bill that would allow law enforcement to take a child into custody when drugs are present. SB 159 currently is in House Judiciary. The Safe Families Act was referred to the Judicial Council for further study.

Following the 2015 Legislative Session, the Legislative Coordinating Council created the Special Committee on Foster Care Adequacy to study some of these issues, including the grandparents' rights legislation and the Safe Families Act, as well as DCF oversight of foster care contractors; whether a working group would aid in addressing foster care concerns; and the selection, qualification, and responsibilities of foster parents.

For more information, please contact:

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Lauren Douglass
Principal Research Analyst
785-296-3181
Lauren.Douglass@klrd.ks.gov

Children and Youth

D-4 Juvenile Services

The Division of Juvenile Services within the Kansas Department of Corrections (KDOC) oversees juvenile offenders in Kansas. Individuals as young as 10 years of age and as old as 17 years of age may be adjudicated as juvenile offenders. KDOC may retain custody of a juvenile offender in a juvenile correctional facility until the age of 22.5 and in the community until the age of 23.

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

Juvenile Services' operations consist of two major components:

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

Kansas Juvenile Justice Authority's (JJA) History and Community Focus

The juvenile justice reform process implemented in Kansas from 1997 to 2000 focused on prevention, intervention, and community-based services, with the premise that a youth should be placed in a juvenile correctional facility for rehabilitation and reform only as a last resort. Youth are more effectively rehabilitated and served within their own community. Prior to the transition, juvenile justice functions were the responsibility of several state agencies, including: the Office of Judicial Administration; the Department of Social and Rehabilitation Services (SRS), which is now the Department for Children and Families

(DCF); and the Department of Corrections. Other objectives included separating juvenile offenders from children in need of care in the delivery of services.

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

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

Juvenile Justice Reform Timeline

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

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

The mission of KYA was to develop policies related to the scope and function of the JJA. Specific areas studied included confinement, diversion, fines, restitution, community service, standard probation, intensive supervision, house arrest programs, electronic monitoring, structured school, day reporting centers, community residential care, treatment centers, and sanctions.

JJA was assigned to:

- Control and manage the operation of the state youth centers (now referred to as Juvenile Correctional Facilities);
- Evaluate the rehabilitation of juveniles committed to JJA and prepare and submit periodic reports to the committing court;
- Consult with the state schools and courts on the development of programs for the reduction and prevention of delinquency and the treatment of juvenile offenders;
- Cooperate with other agencies that deal with the care and treatment of juvenile offenders;
- Advise local, state, and federal officials; public and private agencies; and lay groups on the need for and possible methods of reduction and prevention of delinquency and the treatment of juvenile offenders;
- Assemble and distribute information relating to delinquency and report on studies relating to community conditions that affect the problem of delinquency;
- Assist any community within the state by conducting a comprehensive survey of the community's available public and private resources, and recommend methods of establishing a community program for combating juvenile delinquency and crime; and
- Direct state money to providers of alternative placements in local communities such as supervised release into the community, out-of-home placement, community services work, or other community-based service; provide assistance to such providers; and evaluate and monitor the performance of such providers relating to the provision of services.

1996. HB 2900, known as the Juvenile Justice Reform Act of 1996, outlined the powers and duties of the Commissioner of Juvenile Justice. The bill also addressed the areas of security measures, intake and assessment, dual sentencing, construction of maximum security facility or facilities, child support and expense reimbursement, criminal expansion, disclosure of information, immediate intervention programs, adult presumption, parental involvement in dispositional options, parental responsibility, school attendance, parental rights, and immunization. Further, the bill changed

the date for the transfer of powers, duties, and functions regarding juvenile offenders from SRS and other state agencies to July 1, 1996. The bill stated KYA must develop a transition plan that included a juvenile placement matrix, aftercare services upon release from a juvenile correctional facility, coordination with SRS to consolidate the functions of juvenile offender and children in need of care intake and assessment services on a 24-hour basis, recommendations on how all juveniles in police custody should be processed, and the transfer from a state-based juvenile justice system to a community-based system according to judicial districts.

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

Recent Reform Efforts

2013. Executive Reorganization Order (ERO) No. 42 abolished the Juvenile Justice Authority (JJA) and transferred the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice to KDOC and the Secretary of Corrections, effective July 1, 2013. All officers and employees of the JJA engaged in the exercise of the powers, duties, and functions transferred by the ERO were transferred to the KDOC, unless they were not performing necessary services.

2014. Following an informational hearing on juvenile justice reform initiatives, the House Committee on Corrections and Juvenile Justice charged a subcommittee with evaluating reform proposals and recommending legislation on the topic. Various proposals were eventually consolidated and passed by the Legislature in Senate Sub. for HB 2588. The provisions included:

- Requiring a standardized risk assessment tool or instrument be included as part of the pre-sentence investigation and report following an adjudication;
- Prohibiting the prosecution of any juvenile less than 12 years of age as an adult;
- Restructuring the placement matrix to make commitment to a juvenile correctional facility a departure sentence requiring a hearing and substantial and compelling reasons to impose such sentence for certain lower-level offense categories;
- Allowing juvenile offenders serving minimum-term placement sentences under the matrix to receive “good time” credit;
- Requiring the Secretary of Corrections to take certain measures to evaluate youth residential centers and develop fee schedules and plans for related services;
- Prohibiting a child alleged or found to be a child in need of care from being placed in a juvenile detention facility unless certain conditions are met; and
- Creating a new alternative adjudication procedure for misdemeanor-level juvenile offenses to be utilized at the discretion of the county or district attorney with jurisdiction over the offense.

2015. Additional reform efforts continued with passage of HB 2336, which required the court to administer a risk assessment tool or review a risk assessment tool administered within the past six months before a juvenile offender can be placed in a juvenile detention center, under house arrest, or in the custody of the KDOC or can be committed to a sanctions house or to a juvenile correctional facility.

Further, to examine Kansas’ juvenile justice system, leaders of the executive, judicial, and legislative branches of government established a bipartisan, inter-branch Juvenile Justice Workgroup. In cooperation with the Pew Charitable Trusts, Public Safety Performance Project, the Workgroup was charged with a comprehensive examination of

the system to develop data-driven policies based upon research and built upon consensus among key stakeholders from across the state. The Workgroup recommendations were presented at its November 17th meeting and include the following: http://www.doc.ks.gov/juvenile-services/workgroup.

For more information, please contact:

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Justin Carroll, Principal Fiscal Analyst
Justin.Carroll@klrd.ks.gov

Natalie Teemer-Washington, Research Analyst
Natalie.Teemer-Washington@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Reed Holwegner
Principal Research Analyst
785-296-3181
Reed.Hollwegner@klrd.ks.gov

Commerce, Labor, and Economic Development

E-1 Kansas Bioscience Authority

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

Governance

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

Powers

The KBA has the following duties:

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

Revenues and Fund Uses

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

distributions will pay for the bioscience development project costs in a BDD.

- The Bioscience Tax Investment Incentive Act makes additional cash resources available to start-up companies.
  - The Act creates the Net Operating Loss (NOL) Transfer Program.
  - The Program allows the KBA to pay up to 50 percent of a bioscience company's Kansas NOL during the claimed taxable year.
  - The Program is managed by the Kansas Department of Revenue and is capped at $1.0 million for any one fiscal year.
- The Bioscience Research and Development Voucher Program Act establishes the Bioscience Research and Development Fund in the State Treasury.
  - The Fund may receive funding from any source.
  - The program requires that any Kansas companies conducting bioscience research and development apply to the KBA for a research voucher. After receiving a voucher, the company will then locate a researcher at a Kansas university or college to conduct a directed research project.
  - At least 51 percent of voucher award funds are to be expended with the university in the state under contract and cannot exceed 50 percent of the research cost.
  - The maximum voucher funds awarded cannot exceed $1.0 million, each year for 2 years, and cannot exceed 50 percent of the research costs. The company is required to provide a one-to-one dollar match of the project award for each year of the project.
- The Bioscience Research Matching Funds Act establishes the Bioscience Research Matching Fund to be administered by the KBA.
  - The recipients must be bioscience research institutions, and institutions are encouraged to jointly apply for funds. The funds are to be used to promote bioscience research and to recruit, employ, fund, and endow bioscience faculty, research positions, and scientists at universities in Kansas.
  - Application for the matching funds must be made to the KBA.

Recent Activity

In 2013, the KBA changed the focus of its policies by creating a market-based, sustainable financial model. The following programs, as identified in the KBA financial audit for FY 2013, are not intended to be used in the future: **Research and Development Voucher Program; Matching Fund Program; Eminent Scholars Program; Rising Stars Program;** Retention, Expansion, and Attraction Program; Bioscience Growth Fund; Proof of Concept Investment Program; and the Grant Writing Voucher Program. The names of **programs** bolded above are specifically mentioned in KSA article 74-99b; however, the authorization language for these programs and administratively created fund are discretionary in nature, not mandatory. In testimony given to legislative committees during the 2014 Session, representatives of the KBA stated under-performing commitments had been reduced by $59 million and unfunded liabilities reduced by $56 million.

For more information, please contact:

Reed Holwegner, Principal Research Analyst
Reed.Holwegner@klrd.ks.gov

Bobbi Mariani, Managing Fiscal Analyst
Bobbi.Mariani@klrd.ks.gov

Edward Penner, Research Analyst
Edward.Penner@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Reed Holwegner
Principal Research Analyst
785-296-3181
Reed.Hollwegner@klrd.ks.gov

Commerce, Labor, and Economic Development

E-2 Unemployment Insurance Trust Fund

Overview

The Kansas Unemployment Insurance (UI) Trust Fund was created in 1937 as the state counterpart to the Federal Unemployment Insurance Trust Fund. The Fund provides income stability for Kansas citizens during times of economic difficulty while stimulating economic activity. The Legislature has modified the provisions of the Kansas Unemployment Insurance law several times over the past two decades to address the accumulation of excess balances in the Fund.

State Fund Contributions

Contributions to the UI Trust Fund are made by Kansas employers and are governed by KSA 44-710a. The Fund is designed to be self-correcting. When unemployment rates increase, contribution rates increase, and contribution rates decline during better economic times. The State charges employers a fee on the first $12,000 of wages paid to each employee, called the taxable wage base. In rate year 2016, the wage base increases, from $12,000 to $14,000. The fee amount collected from employers varies, depending upon the presence or absence of several factors or conditions, such as employer classifications. Employers in Kansas can be classified as a new employer, an entering and expanding employer, a positive balance employer, or a negative balance employer.

New employers in the construction industry with less than three years of employment history are charged a fee amount equal to 6.0 percent of their taxable wage base. For new employers who are not in the construction industry and have fewer than 24 months of payroll experience, the contribution rate is 2.7 percent.

After receiving notice from the state Department of Labor regarding contributions owed for the upcoming rate year, a new employer has 30 days to request an alternative rate be applied if the employer can provide information that the employer's operation has been in existence in another state for a minimum of three years prior to moving to Kansas. If that condition is met, the contribution rate charged to the employer may be equal to the rate previously charged by another state, provided that rate was not less than 1.0 percent. In order to retain the reduced contribution rate, the employer must maintain a positive account balance

throughout the four year period the reduced rate is in effect.

Employers with an employment history of at least three years qualify for experience-based ratings. Employers are classified as positive balance when their total contributions to the Fund exceed the amount of unemployment benefits charged to their accounts. Positive balance employers are grouped into 27 rate groups, depending upon their unemployment experience, and a specific contribution rate is determined for each employer. The standard rates for the positive groups range from 0.2 percent for rate group 1 and increase by units of 0.2 percent in each subsequent rate group until 5.4 percent is established for rate group 27.

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

Employers are classified as negative balance when their total contributions to the Fund fail to exceed the amount of unemployment benefits charged to their accounts. They are grouped into 11 rate groups. The standard rates for the negative groups range from 5.6 percent for rate group N1 and increase by units of 0.2 percent in each subsequent rate group until 7.6 percent is established for rate group N11.

The solvency adjustment, which is based upon the Fund's reserve ratio (the Fund's balance as of July 31, divided by total payroll for contributing employers) and the average high benefit cost rate (an average of the three highest ratios of benefits paid to total wages in the most recent 20 years) is applied to all experience rated employers, which range from a maximum of 1.6 percent to -0.5 percent. Employers have the choice to make additional contributions to the Fund in order to become positive balance employers and qualify for an experience-based rating with lower contribution rates.

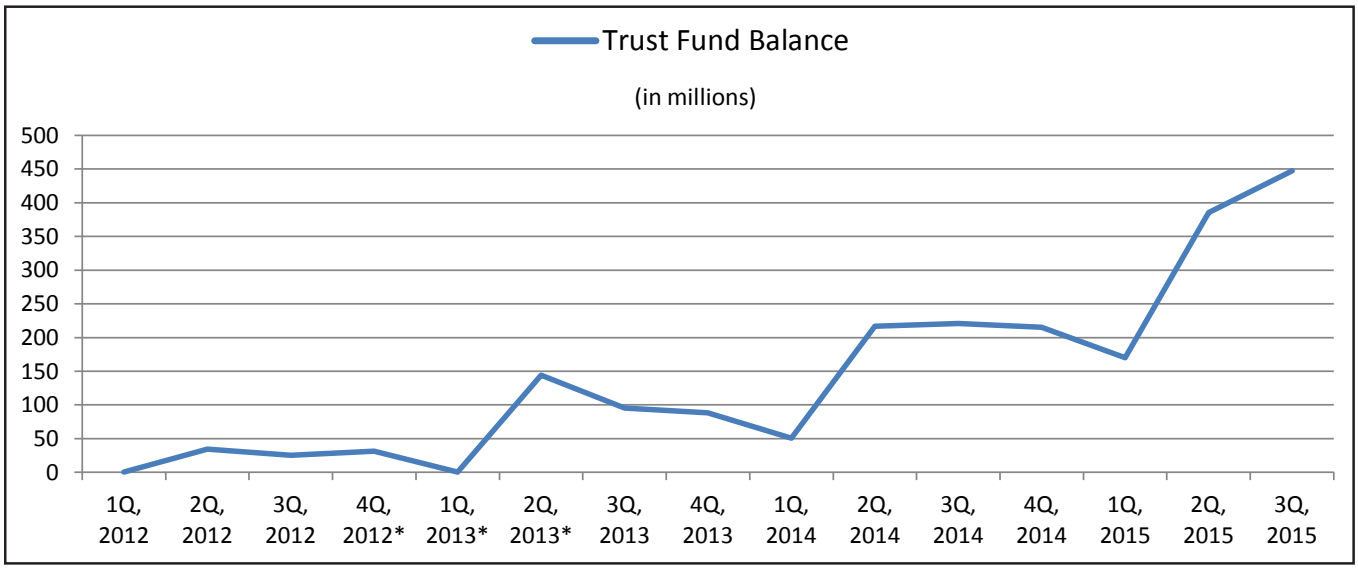
Federal Unemployment Trust Fund

In addition to the contributions to the Kansas UI Trust Fund, employers contribute to the Federal Unemployment Insurance Trust Fund (FUTF). Employers pay a rate of 6.0 percent on the first $7,000 of income; however, the federal government provides a tax credit of 5.4 percent against this rate for states with an unemployment insurance program in compliance with federal requirements. This yields an effective contribution rate of 0.6 percent for Kansas employers. The FUTF is used for administrative purposes and to fund loans to state unemployment insurance programs when they become insolvent.

Solvency of UI Trust Fund

Kansas uses the Average High Cost Multiple (AHCM), as recommended by the U.S. Department of Labor, to ensure the UI Trust Fund is adequately funded. The AHCM is the number of years a state can pay benefits out of its current Trust Fund balance if it were required to pay benefits at a rate equivalent to an average of the three highest 12-month periods in the past 20 years.

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



* Includes temporarily borrowed federal funds of $40.0, $75.3, and $50.2 million, respectively, for the reported quarters.

Source: Weekly UI Reports, KDOL

Current Status of the Fund

During the recession of 2008, the State borrowed funds from the Federal Unemployment Account to make unemployment benefit payments. The State borrowed $170.8 million in April 2011, but paid down the amount to $33.7 million in October 2011. The State then borrowed amounts weekly up to $141.7 million in April 2012. The State paid the federal loan balance in May 2012 with a goal to not borrow any additional funds from the federal government going forward. In total, the Kansas Department of Labor paid $5.7 million in interest payments on these loans, including $4.6 million in September 2011 and $1.1 million in September 2012. The State Department of Labor may borrow amounts from the Pooled Money Investment Board as necessary. The agency does not currently expect any future loans will be necessary.

Employee Benefits

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

Calculating the Weekly Benefit

The weekly benefit amount is what the claimant will receive each week in unemployment compensation. The weekly benefit amount is determined by multiplying 4.25 percent times the highest earning quarter in the first four of the last five completed calendar quarters. KSA 44-704(c) limits the weekly benefit amount to either $474 or 55.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year, whichever is greater. Subsection (d) of the same statute guarantees that employees will receive at least 25.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year.

Calculating the Length of Compensation

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

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

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

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

Enforcement of the UI System

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

For more information, please contact:

Reed Holwegner, Principal Research Analyst
Reed.Holwegner@klrd.ks.gov

Mark Savoy, Fiscal Analyst
Mark.Savoy@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

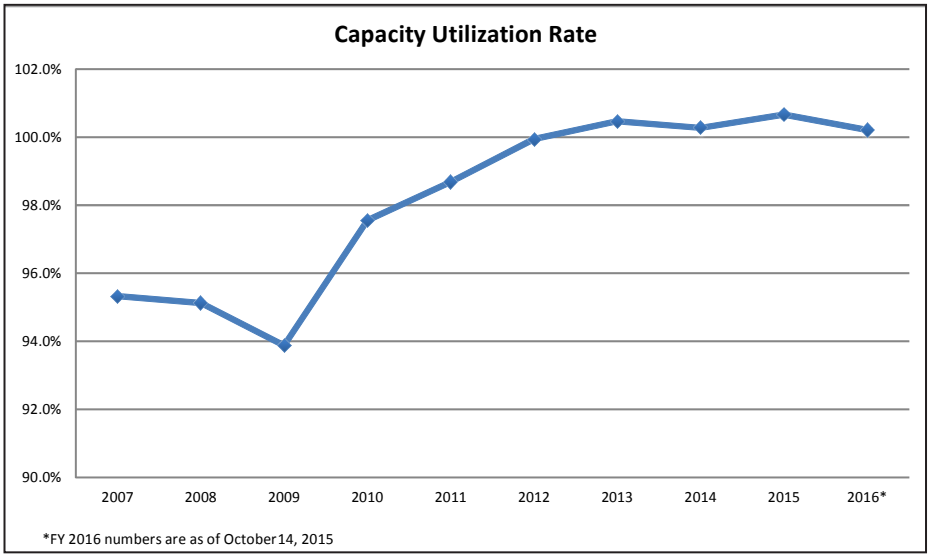
Justin Carroll
Principal Fiscal Analyst
785-296-3181
Justin.Carroll@klrd.ks.gov

Corrections

F-1 Kansas Prison Population and Capacity

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

The population and capacity concerns continued into the early part of the 2000s. The utilization rate reached a peak of 99.0 percent in FY 2006. Between FY 2006 and FY 2009 the average daily population decreased by 551 inmates to 8,536 while the total capacity increased by 73 to 9,317 beds, and utilization reached a recent low at 93.9 percent. The average daily population (ADP) has consistently increased since, and the utilization rate reached 101.8 percent in FY 2015.

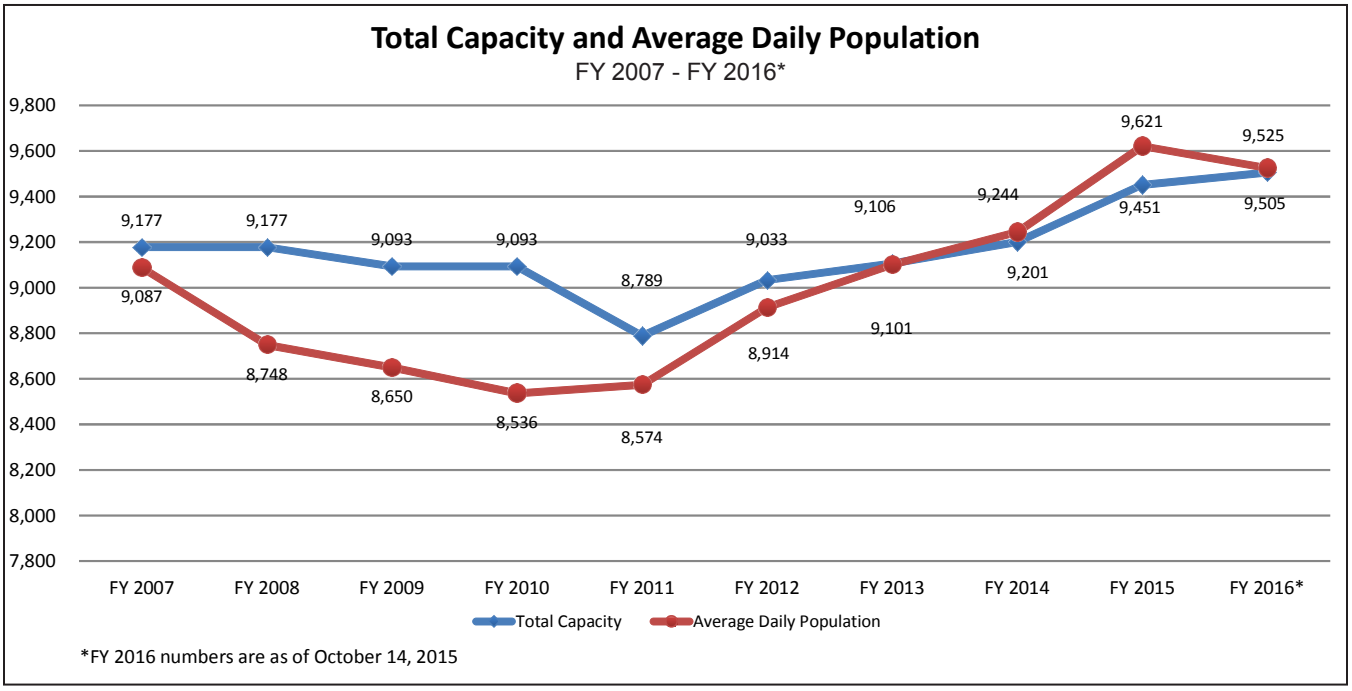


The budget reductions that occurred during FY 2009 prompted the Department of Corrections (DOC) to suspend operations at three smaller minimum-custody facilities (Stockton, Osawatomie, and Toronto) and

close the men's and women's conservation camps in Labette County. The Osawatomie facility has since been taken over by the Department for Aging and Disability Services. These suspensions and closings resulted in a decrease in total capacity by 447 beds.

Due to the increasing inmate population, the 2010 Legislature included a State General Fund appropriation for FY 2011 to reopen the Stockton Correctional Facility, which was reopened on September 1, 2010. In addition, prison beds at Larned Correctional Mental Health Facility and Lansing Correctional Facility that were unavailable due to renovation work have been opened again. During the 2012 session, the Governor recommended the Labette facilities be repurposed as a 262-bed geriatric facility set to house inmates beginning in January 2013 and the Department purchased a property to serve as a 95-bed minimum-security unit in Ellsworth that began housing inmates in September 2012. Current capacity of DOC facilities is 9,505.

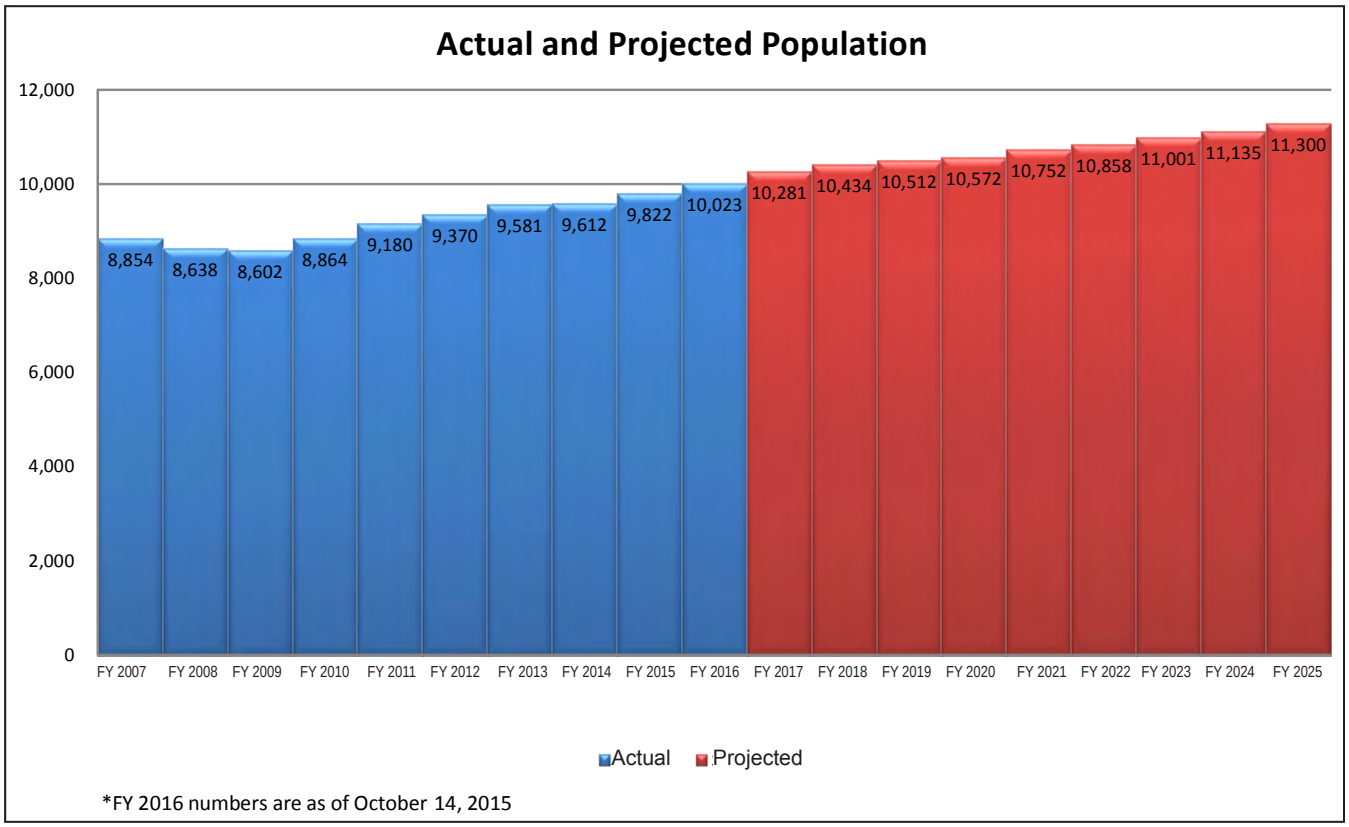
The increasing inmate population trend has continued into FY 2016. On October 14, 2015, the average daily inmate population in FY 2016 was 9,525, a utilization rate of 100.2 percent. An additional 199 inmates on average have been held in non-DOC facilities during FY 2016, primarily at Larned State Hospital and county jails. The Department has a limited number of prison beds that are not counted in the official capacity, such as infirmary beds, that allow the population to exceed the official capacity.



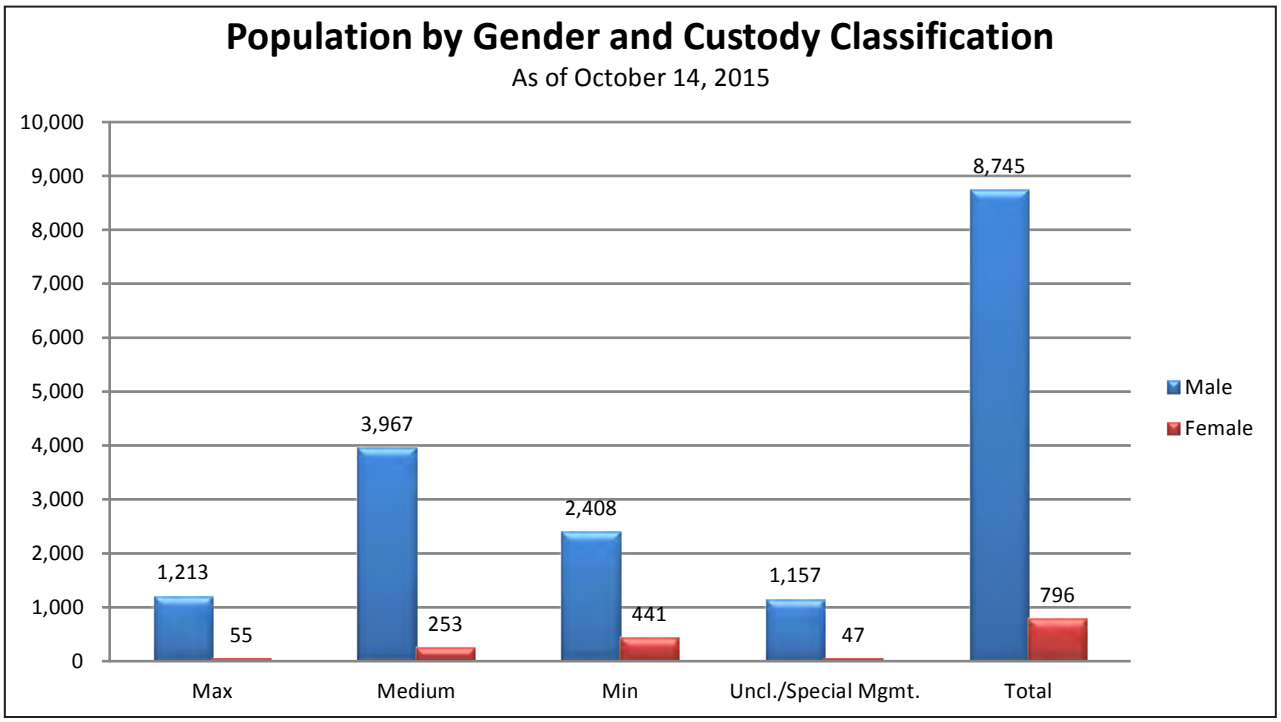
Budget reductions have prompted the Department of Corrections to reduce parole and post-release services and offender program services systemwide. The Department of Corrections continues to be concerned that these reductions will create an increase in the average daily population even after the addition of $2.0 million in FY 2014 and $3.0 million in FY 2015 for these programs. The FY 2016 prison population projections released by the Kansas Sentencing Commission project that the inmate population will exceed capacity by up to 387 inmates by the end of FY 2016 and by up to 1664 inmates by the end of FY 2025.

Population and Capacity by Gender and Custody Classification

In addition to total capacity, consideration also must be given to gender and custody classification. The following chart displays capacity and average daily population by gender and custody classification for FY 2016, to date.



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



Consequences of Operating Close to Capacity

According to the Department of Corrections, the following list illustrates some of the consequences of operating close to capacity:

- Excessive inmate movement;
- More difficult to manage emergencies;
- More difficult to separate inmates with conflicts (gangs, grudges, etc.);
- Greater reliance on segregation;
- Greater reliance on contract jail beds; and
- Inability to keep inmates near to their families, which creates more problematic releases.

Options for Increasing Capacity

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

There also is the option of new construction to expand the inmate capacity. During the 2007 Legislative Session, the Department of Corrections received bonding authority totaling $40.5 million for new construction including adding cell houses at El Dorado, Stockton, and Ellsworth correctional facilities and a new facility in Yates Center. The Department issued $1.7 million in bonds for architectural planning at the four proposed sites, but the balance of the bonding authority was rescinded during the 2008 and 2009 legislative sessions. Planning was completed for the expansion of El Dorado Correctional Facility. The Department included plans for construction on two new cell houses at El Dorado in its five-year capital improvement plan beginning in FY 2017 at a cost of $24.9 million. The cell houses will have up to 256 beds each depending upon the combination of single- and double-occupancy cells.

The Department of Corrections outlines other options for addressing prison capacity issues including:

- Increasing the amount of program credits earned by eligible inmates from 90 days to 120 days;
- Increase the use of electronic monitoring; and
- Housing inmates at county jails.

HB 2170, Justice Reinvestment Act

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

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

According to DOC and the Kansas Sentencing Commission, implementation of the Justice Reinvestment Act was slower than anticipated. Prosecutors across the state had concerns regarding some of the Act's technical provisions. The 2014 Legislature passed HB 2448 to modify and improve the Justice Reinvestment Act.

To date, no cost savings have been achieved though the Justice Reinvestment Act. Original projections estimated costs savings of approximately $350,000 in FY 2014 and $1.4 million in FY 2015 based on the closing of a cell house starting in the fourth quarter of FY 2014 and carrying on through FY

2015. The Department of Corrections was unable to achieve this. The Justice Reinvestment Act did delay construction of two new cell houses at the El Dorado Correctional Facility totaling $24.9 million slated to now begin in FY 2017.

For more information, please contact:

Justin Carroll, Principal Fiscal Analyst
Justin.Carroll@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Robert Gallimore
Principal Research Analyst
785-296-3181
Robert.Gallimore@klrd.ks.gov

Corrections

F-2 Sentencing

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

Off-Grid Crimes

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

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

The remaining off-grid person crimes require life sentences with varying parole eligibility periods. Persons convicted of premeditated first-degree murder committed prior to July 1, 2014, are eligible for parole after serving 25 years of the life sentence, unless the trier of fact finds there were aggravating circumstances justifying the imposition of the "Hard 50" sentence (requiring 50 years to be served before parole eligibility).

Persons convicted of premeditated first-degree murder committed on or after July 1, 2014, are eligible for parole after serving 50 years of the life sentence, unless the sentencing judge, after a review of mitigating circumstances, finds substantial and compelling reasons to impose the "Hard 25" sentence instead. See KSA 21-6620(c).

Persons convicted of felony murder committed prior to July 1, 2014, are parole eligible after serving 20 years of the life sentence. Persons convicted of felony murder convicted on or after July 1, 2014, are parole eligible after serving 25 years of the life sentence.

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

Also included in the off-grid group are certain sex offenses against victims under the age of 14: aggravated human trafficking (KSA 21-5426(b)), rape (KSA 21-5503), aggravated indecent liberties (KSA 21-5506(b)), aggravated criminal sodomy (KSA 21-5504(b)), commercial sexual exploitation of a child (KSA 21-6422), and sexual exploitation of a child (KSA 21-5510). Offenders sentenced for these off-grid crimes are parole eligible after 25 years in confinement for the first offense, parole eligible after 40 years in confinement for the second offense, or sentenced to life without parole if they have been convicted of two or more of these offenses in the past.

Drug Grid and Nondrug Grid

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

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

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

Grid Boxes

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

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

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

Sentencing Considerations

The sentencing court should consider all available alternatives in determining the appropriate sentence for each offender. The sentencing guidelines seek to establish equity among like offenders in similar case scenarios. Rehabilitative measures are still an integral part of the corrections process, and criminal justice professionals continue efforts to

reestablish offenders within communities. The guidelines do not prohibit sentencing courts from departing from the prescribed sentence in atypical cases. The sentencing court is free to choose an appropriate sentence, or combination of sentences, for each case. See KSA 21-6604.

Good Time and Program Credits

While incarcerated, offenders may earn (and forfeit) "good time" credits based upon factors such as program and work participation, conduct, and the inmate's willingness to examine and confront past behavioral patterns that resulted in the commission of crimes. These credits reduce the time the offender spends in prison while increasing the time the offender spends in postrelease supervision. Depending on the severity level of the offender's crime, the offender may earn up to 15 percent or 20 percent of the prison part of the sentence in good time credits.

Additionally, offenders serving only a sentence for a nondrug severity level 4 or lower crime or a drug severity level 3 or lower crime may earn up to 90 days of credit that may be earned by inmates "for the successful completion of requirements for a general education diploma, a technical or vocational training program, a substance abuse treatment program or any other program designated by the secretary which has been shown to reduce offender's risk after release." With a few exceptions for certain sex-related offenses, any program credits earned and subtracted from an offender's prison sentence is not added to the postrelease supervision term. See KSA 21-6821.

Postrelease Supervision

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

While on postrelease supervision, an offender must comply with the conditions of postrelease supervision, which include reporting requirements; compliance with laws; restrictions on possession and use of weapons, drugs, and alcohol; employment and education requirements; restrictions on contact with victims or persons involved in illegal activity; and other conditions. A "technical violation" of the conditions of postrelease supervision (such as failure to report) will result in imprisonment for six months, reduced by up to three months based upon the offender's conduct during the imprisonment. A violation based upon conviction of a new felony or a new misdemeanor will result in a period of confinement as determined by the Prisoner Review Board, up to the remaining balance of the postrelease supervision period. See KSA 75-5217.

Recent Notable Sentencing Guidelines Legislation

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

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

- The significance and usefulness of the defendant's assistance;
- The truthfulness, completeness, and reliability of any information;
- The nature and extent of the defendant's assistance;

- Any injury suffered, any danger of risk of injury to the defendant, or the defendant's family; and
- The timeliness of the assistance.

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

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

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

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

In June 2013, the U.S. Supreme Court's decision in *Alleyne v. U.S.*, 570 U.S. ___, 133 S. Ct. 2151, 186 L. Ed. 2D 314 (2013), called the constitutionality of Kansas' "Hard 50" sentencing statute (KSA 21-6620) into doubt. Since 1994, in cases where a defendant was convicted of premeditated first degree murder, the statute had allowed the sentencing court to impose a life sentence without eligibility for parole for 50 years when the judge found one or more aggravating factors were present. The *Alleyne* decision indicated that such determinations must be made by the trier of fact (usually a jury) using a reasonable doubt standard, rather than by the sentencing judge.

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

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

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

In 2014, the Legislature passed HB 2490, which included amendments to the sentencing provisions for premeditated first-degree murder, attempted capital murder, and felony murder.

The bill increased the default sentence for premeditated first-degree murder committed on or after July 1, 2014, from the Hard 25 sentence to the Hard 50 sentence. The sentencing judge may impose the Hard 25 sentence if the judge reviews mitigating factors and finds substantial and compelling reasons to impose the lesser sentence.

The bill also imposed the Hard 25 sentence for attempted capital murder (previously a severity level 1 felony) and felony murder (previously a Hard 20 sentence).

If a defendant's criminal history when sentenced for any of these crimes would subject the defendant to imprisonment for a term exceeding the Hard 50 or Hard 25 sentence (as applicable), then the defendant will be required to serve the mandatory minimum term equal to the sentence established under the sentencing guidelines.

In 2015, the Legislature passed HB 2051, which increased the amount of good time inmates

sentenced for post-July 1, 2012, drug severity level 3 crimes may earn, to try to restore the general good time eligibility criteria to a similar state as it existed before the 2012 changes to the drug grid. The bill also increased the amount of time that may be earned by any eligible inmate for program credits from 60 days to 90 days.

The source for the attached sentencing range grid for drug offenses and nondrug offenses is the *Kansas Sentencing Commission Guidelines, Desk Reference Manual, 2014*.

For more information, please contact:

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.gov

Natalie Teemer-Washington, Research Analyst
Natalie.Teemer-Washington@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

SENTENCING RANGE- DRUG OFFENSES

Categories→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felony	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

Presumptive Probation

Border Box

Presumptive Imprisonment

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

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

* ≤ 18 months for 2003 SB123 offenders

** Effective July 1, 2015 - retroactive

KSG Desk Reference Manual 2015
Appendix E

SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

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

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

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

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

KSG Desk Reference Manual 2015
Appendix E

Kansas Legislative Research Department

Shirley Morrow
Principal Fiscal Analyst
785-296-3181
Shirley.Morrow@klrd.ks.gov

Education

G-1 Career Technical Education Initiative (SB 155)

Career Technical Education (CTE) in Kansas

A new plan to enhance career technical education in Kansas was launched in 2012 with the enactment of SB 155. Its purpose is to better prepare high school students for college and careers. Beginning with the 2012-2013 school year, Kansas high school students could qualify for free college tuition in approved technical courses offered at Kansas technical and community colleges in the state. The program also initially provided the school districts with a $1,000 incentive for each high school student who graduates from that district with an industry-recognized credential in a high-need occupation. The 2015 Legislature changed the incentive to a prorated amount not to exceed $750,000 in total.

Occupations that are included on the qualifying credential incentive list can be found on the Kansas Board of Regents' website. The list currently includes, but is not limited to, the following occupations:

- Heavy and tractor-trailer truck drivers;
- Computer support specialists;
- Automotive service technicians and mechanics;
- Carpenters;
- Welders;
- Electricians;
- Plumbers and pipefitters;
- Sheet metal workers; and
- Heating, air-conditioning, and refrigeration mechanics and installers.

Student Participation

Since the program's inception, the number of student participating in postsecondary career technical education has grown significantly. This has resulted in a growth of college credit hours generated and credentials earned by students in high school. The following is a table from the Board of Regents' website on the success of the program.

	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Participating Headcount	3,475	3,870	6,101	8,208	10,390
College Credit Hours Generated	28,000	28,161	44,087	60,799	77,204
Credentials Earned	--	548	711	1,419	1,682

National Recognition

The Career Technical Education Initiative received national recognition as one of the "Top Ten Innovations to Watch" from the Brookings Institute in 2013. Also that year, Martin Kollman of the Kansas State Department of Education and Lisa Beck of the Kansas Board of Regents published the article "Free CTE College Tuition and Certification Funding: KS SB 155 at Work". It was published in the September issue of Techniques, a national monthly magazine published by the Association for Career and Technical Education.

For more information, please contact:

Shirley Morrow, Principal Fiscal Analyst
Shirley.Morrow@klrd.ks.gov

Sharon Wenger, Principal Fiscal Analyst
Sharon.Wenger@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Sharon Wenger
Principal Fiscal Analyst
785-296-3181
Sharon.Wenger@klrd.ks.gov

Education

G-2 School Finance

The 2015 Legislative Session resulted in the repeal of the School District Finance and Quality Performance Act (SDFQPA) that was passed in 1992. In its place, the Legislature created the Classroom Learning Assuring Student Success Act or CLASS Act. The CLASS Act provided a block grant form of funding for each school district for school years 2015-2016 and 2016-2017. Each district's block grant was based in part on, and is at least equal to, the total state financial support as provided in school year 2014-2015.

House Sub. for SB 7 included the CLASS Act. Senate Sub. for HB 2353 was a "trailer bill" making some adjustments to SB 7. Details from both bills are included in the following description.

A description of the history of school finance in Kansas, as well as a variety of articles describing issues affecting K-12 school finance, can be found at http://www.kslegresearch.org/KLRD-web/Education.html. An update on school finance lawsuits in Kansas also can be found at this website.

Classroom Learning Assuring Student Success Act

The CLASS Act is effective from July 1, 2015, through June 30, 2017, and makes appropriations for K-12 education for fiscal years (FYs) 2015, 2016, and 2017.

Block Grant for FYs 2016 and 2017

The block grant includes the following provisions:

- General State Aid school districts were entitled to receive under the SDFQPA for school year 2014-2015, with some adjustments, and a 0.4 percent reduction for an Extraordinary Need Fund (will be disbursed to districts in the same manner as in the SDFQPA);
- Supplemental general state aid and capital outlay state aid as adjusted under the SDFQPA in 2014-2015 (adjustment described below);
- Virtual state aid as recalculated for FYs 2016 and 2017 (described below);

- Amounts attributable to the tax proceeds collected by school districts under the SDFQPA for the ancillary school facilities tax levy, the cost of living tax levy, and the declining enrollment tax levy; and
- Kansas Public Employees Retirement System (KPERS) employer obligations, as certified by KPERS.

General state aid for school year 2014-2015 is adjusted to account for consolidated school districts. Adjustments also are made in all school years to ensure districts that had been eligible for the new facilities weighting under the SDFQPA will receive that weighting.

Special education funding to school districts did not change and is a separate appropriation in the bill.

Extraordinary Need Fund

For FYs 2016 and 2017, 0.4 percent of general state aid will be transferred to the Extraordinary Need Fund. Any unencumbered moneys remaining in this Fund at the end of the fiscal year will be transferred back to the State General Fund. Districts may apply to the State Finance Council for payments from this Fund. In reviewing a district's application for payment from the Fund, the Finance Council must consider any:

- Extraordinary increase in enrollment;
- Extraordinary decrease in the district's assessed valuation; and
- Other unforeseen acts or circumstances substantially impacting a district's general fund.

Recalculation of Supplemental General State Aid (Local Option Budget [LOB] State Aid)

Under the new law, the Local Option Budget is comprised of a local mill levy and equalization aid from the state based on a formula described below.

LOB State Aid is recalculated based on quintiles below the 81.2 percentile of school districts' assessed valuation per pupil (AVPP) in school year 2014-2015 and capped at that amount for subsequent school years with gradations as follows based on AVPP, beginning with the districts with the lowest AVPP. (Each quintile equals about 46 school districts.)

- Lowest quintile – 97.0 percent of LOB State Aid;
- Second lowest quintile – 95.0 percent of LOB State Aid;
- Middle quintile – 92.0 percent of LOB State Aid;
- Second highest quintile – 82.0 percent of LOB State Aid; and
- Highest quintile – 72.0 percent of LOB State Aid.

Districts may continue to adopt a LOB and levy a property tax in an amount not to exceed the LOB of the district in school year 2014-2015, unless the district approves a higher amount for school year 2015-2016 prior to July 1, 2015.

The bill uses the AVPP for school year 2015-2016 (instead of the current school year) for the purpose of determining LOB State Aid for any district if all of the following apply: the district has a total assessed valuation for school year 2015-2016 less than the assessed valuation in the current school year; the difference in assessed valuation between the current school year and 2015-2016 is greater than 25.0 percent; and having such reduction is the direct result of the classification of tangible personal property by 2014 legislation changing the tax classification of commercial and industrial machinery used directly in the manufacture of cement, lime, or similar products. (KSA 2014 Supp. 79-507)

Recalculation of Capital Outlay State Aid

The state aid percentage begins at 75.0 percent for the district with the lowest AVPP and decreases by 1.0 percent for each $1,000 incremental increase in AVPP.

Bond and Interest State Aid

The bill amends the calculation of state aid for general obligation bonds approved for issuance at an election held on or after July 1, 2015, using

the same formula as the amended Capital Outlay State Aid formula.

Virtual State Aid

There was no change in the calculation of Virtual State Aid in school year 2014-2015. In school year 2015-2016, funding for full-time equivalent students will be calculated at $5,000 per student; part-time students, $4,045 per student; and students 19 and older, $933 per 1-hour credit course successfully completed in the school year.

In school year 2016-2017, funding for full-time equivalent students will be calculated at $5,600 per student; part-time students, $1,700 per student; and students 19 and older, $933 per 1-hour credit course successfully completed in the school year.

Special Levies

Districts may impose special local tax levies (for ancillary facilities, cost of living, and declining enrollment), if the district levied such tax in school year 2014-2015 or if the district is qualified to levy such tax under current law.

Fund Flexibility

Districts have flexibility to transfer money from most funds to the district's general fund with no cap on the amount of the transfer. Excluded from this flexibility are three funds: bond and interest, special education, and special retirement contributions.

2015 Senate Sub. for HB 2353

Senate Sub. for HB 2353 amended the CLASS Act to provide:

- Any student who is not a resident of a school district and attended that district in the 2014-15 school year would be allowed to attend school in the district in the 2015-16 and 2016-17 school years;
- Out-of-state virtual students are ineligible for state aid; and
- Districts experiencing changes in federal impact aid would not lose funding because of those changes.

For more information, please contact:

Sharon Wenger, Principal Fiscal Analyst
Sharon.Wenger@klrd.ks.gov

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.gov

Edward Penner, Research Analyst
Edward.Penner@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Sharon Wenger
Principal Fiscal Analyst
785-296-3181
Sharon.Wenger@klrd.ks.gov

Education

G-3 School Finance Formulas in the United States

School Finance History

In the early 1900s, flat grants providing a basic dollar amount per student, regardless of wealth or need, financed public schools. Beginning in the 1920s, many states started using a new system, "foundation formulas," with funding provided on a sliding scale based on the relative wealth of school districts. In the 1930s, states began to adjust formulas based on costs associated with certain student populations, such as students at risk of failure and students with disabilities.

Beginning in the 1960s, states further adjusted formulas for a number of reasons, including to create greater equity among districts, as well as to account for district size and regional cost differences.

The 50 States

A look at each of the individual state formulas provides wide variations in formula provisions; however, there are many similarities. Major formula components are described below, adopted from a state inventory of public education finance systems in the United States undertaken by Deborah A. Verstegen, Professor at the University of Nevada, and updated *via* surveys of states' education agencies conducted periodically. The latest update includes formulas in effect during the 2014-15 school year.

Basic Formula Components

Foundation programs provide a uniform per-pupil or per-teacher amount of funding using state and local funding. Thirty-seven states use this approach.

Only one state, Hawaii, which has only one school district, is funded completely by the state.

Combination systems combine full state funding, flat grants, or funding based upon varying tax rates. Nine states have combination approaches.

Adjustments for Various Needs

Thirty-seven states provide supplemental funding for low-income or at-risk students, based upon being qualified to receive free or reduced-

price lunch or breakfast, the actual number of students determined at risk of failure, or concentrations of low-income students. Thirteen states provide no additional funding for this group.

Of the adjustments made by the states:

- Forty-two states provide additional funding for English language learners.
- Thirty-three states provide additional funding for gifted and talented students.
- Thirty-two states provide funding for remote and small schools.
- Twenty-eight states provide additional funding for career and technical education.

Examples of other adjustments include additional funding for transient students or different funding based upon different grade levels.

Capital Outlay and Debt Service

Multiple methods are used to assist school districts with capital outlay or debt service costs. Assistance can range from grants to loans to little or no state assistance for major facility projects.

Special Education

States use one of four methods to pay for special education services:

- Per pupil funding based upon a weighted pupil count or a flat grant;
- Cost reimbursement with definition of eligible costs;
- Per teacher or instructional unit funding; or
- Funding based upon total student population rather than special education eligibility.

More detailed information about each state can be found at: https://schoolfinancesdav.wordpress.com/.

See also, Deborah A. Verstegen, *How Do States Pay for Schools? An Update of a 50-State Survey of Finance Policies and Programs* (University of Nevada, Reno, 2014).

Revenue Sources for Public Education Across the U.S.

The percentage of funding states contribute to their public K-12 educational systems varies from 88.54 percent in Vermont to 31 percent in South Dakota. The national average is 45.6 percent. Kansas' percentage provided by the state to its public K-12 system is 56.4 percent, according to the latest information available from the U.S. Census Bureau in its *Public Education Finance* report for 2013. Kansas is the 15th highest in percentage of state funding provided for K-12 education.

For more information, please contact:

Sharon Wenger, Principal Fiscal Analyst
Sharon.Wenger@klrd.ks.gov

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.gov

Edward Penner, Research Analyst
Edward.Penner@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

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

Martha Dorsey
Principal Research Analyst
785-296-3181
Martha.Dorsey@klrd.ks.gov

Elections and Ethics

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

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

Part One—Voter Identification Requirements

National Voter Identification (ID) Requirements

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

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

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

Kansas Law

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

In 2011, the law changed significantly through the passage of HB 2067. Relatively minor amendments were made in 2012 SB 129. Effective January 1, 2012, all those voting in person are required to provide photo identification at every election (with the exception of certain voters such as active duty military personnel absent from the country on Election Day), and all voters submitting advance ballots by mail are required to include the ID number on, or a copy of, a specified form of photo ID for every election. Free nondriver's ID cards and free Kansas birth certificates are available to anyone 17 or older for the purposes of meeting the new photo voter ID requirements. Each applicant for a free ID must sign an affidavit stating he or she plans to vote and possesses no other acceptable ID form. The individual also must provide evidence of being registered to vote. (For a detailed summary of 2011 HB 2067, see http://www.kslegresearch.org/KLRD-web/Publications/StateLocalGovt/Summary-2011-VoterID-HB2067-quick-sheet.pdf.)

Other State Laws

Analysis of other states' laws is complicated by relevant court actions. According to research conducted by the National Conference of State Legislatures (NCSL), as of December 14, 2015, a total of 36 states have passed voter ID laws. However, not all 36 states' laws are in effect. NCSL reported that in August 2015, a federal appeals court ruled at least part of Texas' strict voter ID law cannot be enforced, and it is uncertain whether the law will continue to be in effect. State courts have struck down laws in Arkansas, Missouri, and Pennsylvania, and North Carolina's law, enacted in 2013, becomes effective in 2016.[1]

Two key distinctions among the states' varying laws are described below:

- Whether the law is "strict," *i.e.*, whether a voter is allowed to cast a valid ballot without first presenting ID.
- Whether the law requires a photo ID.

NCSL reports seven states, in addition to Kansas, had strict photo ID laws in effect in 2014: Georgia, Indiana, Mississippi, Tennessee, Texas[2], Virginia, and Wisconsin. Other categories reported included the following, also in effect in 2014:

- Strict, non-photo ID laws: Arizona, North Dakota, and Ohio.
- Non-strict, photo ID laws: Alabama[3], Florida, Hawaii, Idaho, Louisiana, Michigan, Rhode Island, and South Dakota.
- Non-strict, non-photo ID laws: Alaska, Arkansas[4], Colorado, Connecticut, Delaware, Kentucky, Missouri, Montana, New Hampshire, Oklahoma[5], South Carolina[6], Utah, and Washington.

1 For a more detailed analysis of issues covered in voter ID court cases, see "Voter ID in the Courts: An introduction to legal challenges to voter ID laws." Karen Shanton for NCSL, May 2014.

2 As noted previously, a federal appeals court reportedly has struck down at least part of Texas' voter ID law and the law's future is uncertain.

3 NCSL reports Alabama's law also might be called a strict photo ID law, because voters who do not show a photo ID generally are asked to cast a provisional ballot and then provide the required ID later. What makes this provision different from, for example, Kansas law is there is an alternative: two election officials may sign sworn statements saying they know the voter.

4 NCSL reports Arkansas strict photo ID law was struck down by the Arkansas Supreme Court; this action left a pre-existing non-strict, non-photo ID law in effect.

5 NCSL reports while most Oklahoma voters show a photo ID before voting, the state's law also permits a non-photo voter registration card issued by the appropriate county elections board to serve as proof of ID in lieu of a photo ID.

6 South Carolina reportedly has a photo ID requirement but an alternative is offered for people with a "reasonable impediment" to obtaining a photo ID, according to NCSL. South Carolina's law also has been challenged in court.

Part Two—Voter Registration Requirements

National Voter Registration Requirements

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

The National Voter Registration Act of 1993, which expanded the locations where a person may register to vote, requires a voter registration application form used in conjunction with a driver's license application to include a statement containing each eligibility requirement (including citizenship) for that state (42 USC §1993gg-3).

Finally, HAVA (Public Law 107-252, Section 303) requires voter registration applicants to provide one of the following when registering:

- The applicant's driver's license number, if the person possesses a current and valid driver's license;
- The last four digits of the applicant's Social Security number, if the person does not possess a driver's license; or
- The applicant's state assigned identification number for voter registration purposes, for those applicants with neither a driver's license nor a social security number.

Kansas Law

Prior to the 2011 Legislative Session, state law required an applicant for voter registration to fill out a form specified by law and sign under penalty of perjury. Among a list of information items, the application form had to contain a checkbox to indicate whether the applicant was a U.S. citizen. Enacted legislation (2011 HB 2067) made it mandatory for an applicant to provide documentary proof of citizenship when registering to vote for the first time in Kansas. Documents acceptable for this purpose comprise a long list including:

- Driver's license or nondriver's ID card issued by the appropriate agency in any U.S. state, if the agency indicates on the license or nondriver's ID card that the person has provided satisfactory proof of U.S. citizenship;
- Birth certificate that verifies U.S. citizenship to the satisfaction of the county election officer or Secretary of State;
- Pertinent pages of a U.S. valid or expired passport;
- Naturalization documents or the number of the naturalization certificate, with further instructions if only the number is provided; and
- Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.

For a complete list of allowable documents, see KSA 2015 Supp. 25-2309(l).

As explained above, a person may request a free copy of his or her Kansas birth certificate for the purpose of registering to vote.

Court Decisions and Response by the Kansas Secretary of State

Challenge to Arizona's Proof-of-Citizenship Law

On June 17, 2013, the U.S. Supreme Court held that a proof-of-citizenship law in Arizona similar to current Kansas law "cannot stand in the face of the [National Voter Registration Act]." Options were allowed by the Court for the future, however, and Kansas Secretary of State, Kris Kobach, has pursued these options by establishing a two-tiered system of voting depending on the facts related to a prospective voter's registration. (Note: The Kansas proof-of-citizenship requirement applies only in instances of voters registering to vote for the first time in Kansas.)

Summary of Case

Following is the SCOTUSblog summary of the case in point (*Arizona v. Inter-Tribal Council of Arizona, Inc.,* 133 S. Ct. 2247 (2013)):

As part of an effort to increase voter registration and turnout, in 1993 Congress passed the National Voter Registration Act. The Act requires states to "accept and use" a specific federal form for voter registration; that form asks, among other things, whether the would-be voter is a citizen of the United States and over the age of eighteen. In 2004, Arizona voters approved a law that requires election officials in that state to refuse to register any would-be voter who cannot prove that he is in fact a citizen. Arizona residents, along with voting and civil rights groups, challenged the state law, arguing that it could not stand because it conflicted with, and was trumped by, the NVRA. The challengers won in the lower court, and the Supreme Court granted review last fall to consider not only whether the state law can survive, but also whether the lower court used the right test in making its decision: that court held that because the Constitution allows Congress to make or change election rules established by the states, Congress can veto any state laws relating to elections, even if it doesn't make clear that it intends to do so.

Today the Court held, in a seven-to-two decision by Justice Scalia, that Arizona's law cannot stand in the face of the NVRA. The Court first recognized that under the Elections Clause of the U.S. Constitution, Congress has the power to dictate when, where, and how elections are held, and state election laws that conflict with federal ones are therefore preempted and without effect. The Court thus held that by requiring states to "accept and use" the federal form, the NVRA effectively required the states to treat the federal form as sufficient evidence of citizenship without any additional proof, so that Arizona's proof-of-citizenship requirement was contrary to the NVRA, and therefore invalid. The Court recognized that the words "accept and use" do not necessarily carry such a broad meaning – they could mean only that the state was required to consider the federal form – but based on the context and the other provisions in the NVRA, the Court concluded that the requirement to "accept and use" the federal form has the stronger effect of requiring states to treat the federal form as sufficient. On the question of which legal test to apply, the Court made it clear that while preemption under the Supremacy Clause (which provides that federal law generally trumps contrary state law) requires Congress to clearly state its intent to preempt state requirements, preemption under the Elections Clause is more easily found because federal elections law will always displace state law.

Finally, the Court held that in the future, Arizona can ask the federal Election Assistance Commission, which creates the federal form, to include a requirement of additional proof of citizenship in the form, and to bring different legal challenges if the EAC refuses to do so.

Justice Kennedy drafted a separate opinion concurring in part and in the judgment; Justices Thomas and Alito each filed a dissenting opinion, arguing that Arizona's requirement should not have been held preempted.

(Source: http://www.scotusblog.com/2013/06/details-arizona-v-inter-tribal-council-of-arizona-inc)

Kansas' Response, Court Decisions, and Current Status of the Two-Tiered System

After the June 2013 decision, Secretary Kobach established a two-tiered system of voting. The two-tiered system would allow or prohibit voting in Kansas' state and local elections, depending on which voter registration form has been completed by a prospective voter and whether the voter has supplied Kansas-required proof of citizenship when registering to vote. (According to a September 2014 summary in *The Voting News* of an *Arizona Daily Sun* article, the State of Arizona established a similar two-tier system.) The tiers are as follows (again, this applies only to voters registering to vote for the first time in Kansas):

- A voter who has supplied the state-required proof of citizenship will be allowed to vote in any federal, state, or

local election in Kansas, regardless of whether the voter registered using the federal NVRA application or the state application.

- A voter who has not supplied proof of citizenship may vote *only in federal elections* if the voter has used the NVRA application to register.

In the *Arizona v. Inter-Tribal Council* decision, Arizona was given the option of asking the federal Election Assistance Commission (EAC) to include an additional requirement related to proof of citizenship in its registration application form. Due to the similarity of the two states' laws, Kansas joined with Arizona in seeking the additional requirement (*Kobach et al. v. The United States Election Assistance Commission*). Although a Wichita district court judge ruled the EAC must add the state-specific proof of citizenship requirement to the two states' federal forms, the 10th Circuit Court of Appeals in Denver overturned this ruling, stating Kansas cannot force the EAC, a federal agency, to add the requirements. (http://thevotingnews.com/appeals-court-overturns-state-proof-of-citizenship-requirements-on-federal-voting-forms-the-wichita-eagle/)

The two-tiered system itself has been challenged. In November 2013, the American Civil Liberties Union (ACLU) filed a lawsuit in Shawnee County District Court asking the court to prevent the implementation of the two-tiered system on the grounds the system violates the *Kansas Constitution*'s equal protection guarantee, violates the separation of powers set forth in the *Kansas Constitution*, and is void because it was based on informal directive rather than on the Kansas Rules and Regulations Filing Act (http://dockets.justia.com/docket/kansas/ksdce/5:2013cv04150/95753). In July 2014, a Shawnee County judge rejected the ACLU's request to block the policy for the 2014 election. The U.S. Supreme Court declined to hear Secretary Kobach's appeal of this appeals court decision, thereby leaving in place the two-tier voting system. Motions continue to be filed on the case (see Legal Documents section at https://www.aclu.org/cases/belenky-v-kobach).

At the time of publication, a court opinion and order relating to the 2011 law was anticipated. Information about any decisions or other responses from the courts will be published at: http://www.kslegresearch.org/KLRD-web/State&LocalGovt.html.

For more information, please contact:

Martha Dorsey, Principal Research Analyst
Martha.Dorsey@klrd.ks.gov

Jill Shelley, Principal Research Analyst
Jill.Shelley@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Cindy Lash
Principal Research Analyst
785-296-3181
Cindy.Lash@klrd.ks.gov

Energy and Utilities

I-1 Clean Power Plan

On August 3, 2015, President Obama and the U.S. Environmental Protection Agency (EPA) announced the Clean Power Plan (CPP), a federal rule that regulates reductions in carbon pollution from power plants in order to address climate change issues the President and the EPA believe are caused by carbon pollution. The ultimate goal of the CPP is to reduce U.S. carbon dioxide emissions by 32 percent from 2005 levels by 2030.

The CPP consists of establishing state-specific emission goals for the states to follow in developing plans to reduce greenhouse gas emissions from existing fossil fuel-fired electric generating units. The goals are expressed two ways, rate-based and mass-based, either of which the state can use in its plan. Depending on which way a state chooses to measure its goal, states can then develop and implement customized plans that ensure the power plants in the state meet the statewide goals. Emission trading is allowed under the federal rule.

The first interim compliance period for the rule begins in 2022, by which time the states should have a plan in place. Each state's plan must be submitted in 2016, but the EPA can approve a two-year extension. The final goals for each state under the CPP should be met by 2030. The EPA has determined the "starting point" for each state, and included in the CPP are the rate or mass of carbon dioxide emissions for each state in 2012, as calculated by the EPA using their own mathematical formulas.

Clean Power Plan—Kansas

For Kansas, the 2012 carbon dioxide rate has been measured as 2,319 lbs/Net MWh. If Kansas chooses a rate-based goal, the goal for the interim period between the years of 2022 and 2029 would be 1,519 lbs/Net MWh, with a final goal in 2030 of 1,293 lbs/Net MWh. If Kansas chooses a mass-based goal, the 2012 amount is measured to be 34,353,105 short tons of carbon dioxide emissions. The state would need to meet a goal of either 24,859,333 or 25,120,015 short tons (depending on which mass-based goal measurement is chosen) during the interim period, with a final goal of 21,990,826 or 22,220,822 short tons in 2030.

The 2015 Legislature passed HB 2233, which established the procedure for developing and submitting a state plan to the EPA to comply with

the CPP. The bill authorized the Secretary of Health and Environment (Secretary) to develop and submit a plan to the EPA for compliance with the requirements of the CPP. The Secretary and the Kansas Corporation Commission (KCC) were required to enter into a memorandum of understanding concerning implementation of the requirements and responsibilities under state law. Additionally, the bill established the CPP Implementation Study Committee, which consists of 11 members of the Legislature.

The Secretary and the KCC entered into a memorandum of understanding in early summer 2015. The Committee met late summer 2015 to study the CPP and how the Kansas Department of Health and Environment and the KCC have progressed with discussions toward developing a state plan for Kansas.

Clean Power Plan—Litigation

Several petitions have been filed challenging the legality of the CPP. Under the Clean Air Act, challengers have 60 days from the date of publication of the final rule to file a petition for review in the D.C. Circuit Court of Appeals. The deadline is December 22, 2015, as the final rule was published on October 23, 2015. The following is a review of filings as of November 17, 2015.

West Virginia, in conjunction with 23 other states (Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, North Carolina, Ohio, South Carolina, South Dakota, Texas, Utah, Wisconsin, and Wyoming), filed a petition for review arguing the final rule is in excess of the EPA's statutory authority; goes beyond the bounds set by the *U.S. Constitution*; and otherwise is arbitrary, capricious, and an abuse of discretion and not in accordance with law.

The 24 state group also filed a motion for a stay (which would halt the law from going into effect), pending a decision of the D.C. Circuit Court of Appeals. In addition, Oklahoma, North Dakota, and Mississippi each filed separate petitions for review and stays opposing the CPP.

A number of utilities and power industry players also have filed challenges to the CPP, including a coalition of 15 trade associations led by the U.S. Chamber of Commerce; a coalition of 3 coal industry groups; and a coalition of 38 power companies, utility industries, and labor groups.

Challenges to the "new source rule" also have begun. The new source rule mandates new and modified sources of carbon emissions must be regulated before or at the same time as existing sources through the CPP. North Dakota was the first state to challenge this rule. As of November 3, 2015, West Virginia, along with 23 other states (Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, Wisconsin, and Wyoming), filed a petition asking the D.C. Circuit Court of Appeals to strike down the "new source rule."

On the other side of the litigation, the EPA has found several allies. Eighteen states (California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington), the District of Columbia, and six local governments (New York City, Philadelphia, Chicago, Boulder [Colorado], South Miami, and Broward County [Florida]) have filed as intervenors in support of the EPA in the CPP litigation. In addition, a group of five power companies have filed a motion to intervene, as well as a separate motion by NextEra Energy.

The D.C. Circuit Court has consolidated all of the various filings into one proceeding, *West Virginia v. EPA*, D.C. Cir., No. 15-1363. Briefing on the motion to stay will conclude December 23, 2015. A decision on the stay is expected in early 2016. Following the decision on the stay, the Court will hear oral arguments on the petition for review. The final decision on the petition is expected late 2016 or early 2017.

Regional Greenhouse Gas Initiative

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative effort among nine Northeastern and Mid-Atlantic states to reduce carbon dioxide emissions through a coordinated cap and trade program. RGGI is administered and implemented by a non-profit corporation, RGGI, Inc. The nine states currently participating are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. RGGI officially organized in 2003, but the first compliance period did not begin until January 1, 2009. RGGI participants adopted a Model Rule to guide their actions, namely, to set limits on in-state emissions, issue carbon allowances, and establish state participation for regional carbon allowance auctions. The program uses three-year compliance periods and establishes overall emissions budgets for each period; the third compliance period began January 1, 2015. RGGI distributes state allowances through quarterly auctions where bidders may submit multiple confidential bids for a specific quantity of allowances at a specific price. Proceeds from the auctions are then distributed among the states by RGGI, Inc. As of September 2015, cumulative auction proceeds were more than $2 billion. Twenty-five percent of proceeds must be reinvested into consumer benefit programs such as energy efficiency, renewable energy, and direct bill assistance, but in practice, states reinvest virtually all of their proceeds. Power sector carbon emissions in participating states have declined 40 percent since 2005. Emissions were capped at 88.7 million short tons in 2015. The cap will decline 2.5 percent annually until 2020.

For more information, please contact:

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Erica Haas, Principal Research Analyst
Erica.Haas@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Natalie Nelson, Research Analyst
Natalie.Nelson@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Erica Haas
Principal Research Analyst
785-296-3181
Erica.Haas@klrd.ks.gov

Energy and Utilities

I-2 Renewable Portfolio Standard, Wind Generated Electricity in Kansas, and Production Tax Credit

Renewable Portfolio Standard (RPS)

The 2015 Legislature enacted House Sub. for SB 91, which created a voluntary renewable energy goal and reduced the lifetime property tax exemption for new renewable resources to ten years after December 31, 2016.

The bill established a voluntary goal that 30.0 percent of a utility's peak demand within the state be generated from renewable energy resources by the year 2020. This voluntary goal will become effective on January 1, 2016, as will the repeal of the current renewable energy portfolio standard and the corresponding rule and regulation authority enacted by the 2009 Legislature. Kansas' RPS, in effect through December 31, 2015, requires utilities to obtain net renewable generation capacity constituting at least the following portions of each affected utility's peak demand based on the average of the three prior years:

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

Renewable energy may be generated by wind, solar thermal sources, photovoltaic cells and panels, dedicated crops grown for energy production, cellulosic agricultural residues, plant residues, methane from landfills or from wastewater treatment, clean and untreated wood products such as pallets, hydropower, fuel cells using hydrogen produced by one of the other renewable energy resources, and energy storage connected to renewable generation by means of energy storage equipment.

As of June 2015, 29 states, the District of Columbia, and 3 territories had adopted RPS, while another 9 states and 1 territory had adopted a renewable portfolio goal. While the specific guidelines of each state's legislation vary, the most common forms of renewable energy cited in RPS legislation are wind, solar, geothermal, biomass, and hydropower. More information about individual states can be found at www.dsireusa.org, the website for the Database of State Incentives for Renewables & Efficiency.

Wind-Generated Electricity

Nearly all of Kansas' renewable generation of electricity comes from wind power. Kansas ranks second in the nation for wind energy potential, but ninth in power capacity installations. Kansas doubled its wind generation in 2012, reflecting $3.0 billion in new investment, and still growing. As of September 2015, Kansas had approximately 4,000 megawatts (MW) of wind energy generation capacity. In contrast, landfill gas and hydroelectric combined had about 14 MW of generation capacity.

Kansas Property Tax Exemption

After December 31, 2016, exemptions granted for property primarily used for wholesale sale of renewable energy resources for which applications were filed after December 3, 2016, will be limited to ten years.

Production Tax Credit (PTC)

PTC is a federal, per kilowatt-hour (kWh) tax credit for electricity generated by certain energy sources. The tax credit has been extended numerous times, most recently in December 2014 when Congress extended the tax credit for projects that were under construction by the end of 2014.

Generally, facilities are eligible for the PTC for ten years after being placed into service. The PTC ranges from 1.1 cents to 2.2 cents per kWh, depending upon the type of renewable energy source. The amount of the credit was established at 1.5 cents per kWh in 1993 dollars (indexed for inflation) for some technologies and half of that amount for others. The first PTC was created by the Energy Policy Act of 1992 and the PTC has been allowed to expire for short periods of time since 1992.

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

Community Solar

Midwest Energy and Clean Energy Collective broke ground on a 3,960-panel, 1 MW community solar array on August 25, 2014, in a pasture north of Colby, Kansas. Construction began in September 2014, and the array began producing energy on February 1, 2015. Midwest Energy stated the array should result in a roughly 30 percent efficiency gain over traditional roof-mounted panels.

For more information, please contact:

Erica Haas, Principal Research Analyst
Erica.Haas@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Natalie Nelson, Research Analyst
Natalie.Nelson@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Cindy Lash
Principal Research Analyst
785-296-3181
Cindy.Lash@klrd.ks.gov

Energy and Utilities

I-3 Southwest Power Pool Marketplace

Kansas belongs to the Southwest Power Pool (SPP) regional transmission organization. The SPP covers a geographic area of 575,000 square miles, and manages transmission in all or parts of 14 states: Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. The SPP also has been designated as a regional entity by the North American Electric Reliability Company (NERC), and as such is charged with ensuring that the bulk electric system in a designated area is reliable, adequate, and secure.

Historically, SPP also has operated a Real-Time energy imbalance market. Under this structure, the SPP member utilities had three ways to serve their customers: they could generate their own power; buy power from another provider; or buy from the SPP market. Participants could compare real-time prices from many sources, and in some instances, it might be cheaper for a utility to buy power from others than to generate its own electricity.

Several large regional transmission organizations serving other parts of the United States have operated more extensive energy markets than the SPP for a number of years. The SPP began work on an Integrated Marketplace in 2007. A 2009 outside analysis estimated the Marketplace would generate an additional $100 million in net benefits annually for the SPP. In March 2014, the SPP's Integrated Marketplace went live.

Components of the Integrated Marketplace

The Integrated Marketplace retains a Real-Time market and adds a Day-Ahead market and an Operating Reserves market.

Prior to the Integrated Marketplace, each of the SPP participants with generation resources evaluated its own demand for electricity (load) and determined which of its generation sources to use to meet its load. Participants could purchase additional energy in the Real-Time market, if needed, or sell excess energy in the market.

In the Integrated Marketplace, the SPP determines which generating units in its region should run the next day for maximum cost-effectiveness. For the Day-Ahead market, each utility must submit its loads and bids for generation by 11:00 a.m. the previous day, and will learn by 4:00 p.m. which of its generators have been selected to run the next day. SPP evaluates the generation bid-in and the estimated

loads and selects the most cost-effective and reliable mix of generation for the region. Because it centralizes available generation over the region, the market may be able to provide access to a more diverse (and presumably less costly) fuel mix than an individual utility could otherwise access.

The Operating Reserves market provides participants greater access to reserve electricity, improves regional balancing of supply and demand, and facilitates integration of renewable resources.

As part of the Marketplace implementation, the SPP has become the single Balancing Authority for the entire region. Previously, load and supply were balanced by 16 different entities within the SPP footprint, each with its own defined area of responsibility. Aggregating the load and supply for the entire region for balancing purposes has reduced excess capacity and led to more efficient dispatch of energy.

State Oversight

Because all of the costs of the Integrated Marketplace flow through to ratepayers, regulators in Kansas and other member states want to ensure that the Marketplace is working as planned and generating the projected savings. The Kansas Corporation Commission (KCC) staff invested significant effort in preparing for the Marketplace, and the workload of the KCC audit staff has increased because of the complexity of transactions in the Marketplace. The auditors have developed processes to monitor utilities' performance in the Marketplace on a monthly basis and are conducting a comprehensive review that should be completed by the end of 2015. The comprehensive review will be repeated annually and assesses such things as the utilities' internal controls, internal risk management activities, hedging/profitability analysis, and use of shadow settlement software to verify SPP settlement statements.

Early Outcomes

Although it is too soon to be certain, the KCC described results of the first year of operation of the Integrated Marketplace as "promising," noting the following for the State-regulated investor owned utilities (IOUs):

- Empire Electric reduced its Energy Cost Adjustment projections by three percent to account for its internally modeled results of the Marketplace;
- Westar Energy was able to deliver significantly more kilowatt hours of electricity in 2014 than 2013, for an essentially unchanged total fuel cost; and
- Kansas City Power and Light had substantially higher off-system sales in 2014 than 2013.

Sunflower Electric Power Corporation reported a few hurdles with transmission congestion, but officials concluded the new energy market has provided overall value and will continue to provide opportunities to capitalize on beneficial prices going forward. The SPP continues to work on market improvements.

For more information, please contact:

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Erica Haas, Principal Research Analyst
Erica.Haas@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Natalie Nelson, Research Analyst
Natalie.Nelson@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Melissa Renick
Assistant Director for Research
785-296-3181
Melissa.Renick@klrd.ks.gov

Financial Institutions and Insurance

J-1 Kansas Health Insurance Mandates

Background

Health insurance mandates in Kansas law apply to:

- Individual health insurance policies issued or renewed in Kansas.
- Group health insurance policies issued or renewed in Kansas. (The individual and group health policies are often referred to as accident and health or accident and sickness insurance policies in Kansas law.) Exceptions are noted below.
- Health Maintenance Organizations (HMOs) are included in the listing of policy issuers.

These mandates do not apply to:

- Self-insured health plans (ERISA plans*). Self-insured plans are governed by federal laws and are enforced by the U.S. Department of Labor. States cannot regulate these self-insured plans.
- Supplemental benefit policies. Examples include dental care; vision (eye exams and glasses); and hearing aids.

* ERISA = The Employee Retirement Income Security Act of 1974; states' laws that relate to employee benefits are pre-empted under this Act.

Since 1973, the Kansas Legislature has added new statutes to insurance law that mandate that certain health care providers be paid for services rendered (provider mandates) and be paid for certain prescribed types of coverage or benefit (benefit mandates).

Provider Mandates. The first mandates enacted in Kansas were on behalf of health care providers. In 1973, optometrists, dentists, chiropractors, and podiatrists sought and secured legislation directing insurers to pay for services the providers performed if those services would have been paid for by an insurance company if they had been performed by a practitioner of the healing arts (medical doctors and doctors of osteopathy). In 1974, psychologists sought and received approval of reimbursement for their services on the same basis. In that same year, the Legislature extended the scope of mandated coverages to all policies renewed or issued in Kansas by or for an individual who resides in or is employed in this state (extraterritoriality). Licensed special social workers obtained a mandate in 1982. Advanced nurse practitioners

received recognition for reimbursement for services in 1990. In a 1994 mandate, pharmacists gained inclusion in the emerging pharmacy network approach to providing pharmacy services to insured persons.

Benefit Mandates. The first benefit mandate was passed by the 1974 Legislature, through enactment of a bill to require coverage for newborn children. The newborn coverage mandate has been amended to include adopted children and immunizations, as well as a mandatory offer of coverage for the expenses of a birth mother in an adoption. The Legislature began its first review into coverage for alcoholism, drug abuse, and nervous and mental conditions in 1977. The law enacted that year required insurers to make an affirmative offer of such coverage which could be rejected only in writing. This mandate also has been broadened over time, first by becoming a mandated benefit and then as a benefit with minimum dollar amounts of coverage specified by law.

In 1988, mammograms and pap smears were mandated as cancer patients and various cancer interest groups requested mandatory coverage by health insurers. In 1998, male cancer patients and the cancer interest groups sought and received similar mandated coverage for prostate cancer screening. After a number of attempts over the course of more than a decade, supporters of coverage for diabetes were successful in securing mandatory coverage for certain equipment used in the treatment of the disease, as well as for educational costs associated with self-management training.

Table A - Kansas Provider and Benefit Mandates

Provider Mandates	Year	Benefit Mandates	Year
Optometrists	1973	Newborn and Adopted Children	1974
Dentists	1973	Alcoholism	1977
Chiropractors	1973	Drug Abuse	1977
Podiatrists	1973	Nervous and Mental Conditions	1977
Psychologists	1974	Mammograms and Pap Smears	1988
Social Workers	1982	Immunizations	1995
Advanced Registered Nurse Practitioners	1990	Maternity Stays	1996
Pharmacists	1994	Prostate Screening	1998
		Diabetes Supplies and Education	1998
		Reconstructive Breast Surgery	1999
		Dental Care in a Medical Facility	1999
		Off-Label Use of Prescription Drugs*	1999
		Osteoporosis Diagnosis, Treatment, and Management	2001
		Mental Health Parity for Certain Brain Conditions	2001

* Off-label use of prescription drugs is limited by allowing for use of a prescription drug (used in cancer treatment) that has not been approved by the federal Food and Drug Administration for that covered indication if the prescription drug is recognized for treatment of the indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

Legislative Review

Kansas law (KSA 40-2249a) requires the Legislature to review all state-mandated health insurance coverage periodically. KSA 40-2248 requires the person or organization seeking a mandated coverage for specific health services, specific diseases, or certain providers of health care services as part of individual, group, or blanket health insurance policies, to submit to the legislative committees assigned to review the proposal an impact report that assesses both the social and financial effects of the proposed mandated coverage. The law also requires the Insurance Commissioner to cooperate with, assist, and provide information to any person or organization required to submit an impact report.

The social and financial impacts to be addressed in the impact report are outlined in KSA 40-2249. Social impact factors include:

- The extent to which the treatment or service is generally utilized by a significant portion of the population;
- The extent to which such insurance coverage is already generally available;
- If coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
- The level of public demand for the treatment or service;
- The level of public demand for individual or group insurance coverage of the treatment or service;
- The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts; and
- The impact of indirect costs (costs other than premiums and administrative costs) on the question of the costs and benefits of coverage.

The financial impact requirements include the extent to which the proposal would increase or decrease the cost of the treatment or service; the extent to which the proposed coverage might increase the use of the treatment or service; the extent to which the mandated treatment or service might serve as an alternative for a more expensive treatment or service; the extent to which insurance coverage of the health care service or provider can reasonably be expected to increase or decrease the insurance premium and administrative expenses of the policyholders; and the impact of proposed coverage on the total cost of health care.

State Employee Health Benefit Plan Study. KSA 40-2249a provides, in addition to the impact report requirements, that any new mandated health insurance coverage approved by the Legislature is to apply only to the state health care benefits program for a period of at least one year beginning with the first anniversary date of implementation of the mandate following its approval. On or before March 1, after the one-year period has been applied, the Health Care Commission is to report to the President of the Senate and the Speaker of the House of Representatives the impact the new mandate has had on the state health care benefits program, including data on the utilization and costs of the mandated coverage. The report also is to include a recommendation whether the mandated coverage should be continued by the Legislature to apply to the state health care benefits program or whether additional utilization and cost data are required.

Recent Review and Legislation

2009 Session

During the 2009 Session, both provider and benefits coverage requirements legislation was introduced. The legislation introduced included: certain professionals, Behavioral Sciences Regulatory Board (BSRB) (SB 104, HB 2088); assignment of benefits (HB 2128); autism spectrum disorder (SB 12, HB 2367); dietary formulas (HB 2344); colorectal cancer screening (HB 2075/Sub. HB 2075; SB 288); mental health parity-full coverage (SB 181, HB 2231); and orally administered anti-cancer medications (SB 195). Additionally, the Insurance Department requested language to clarify the state's existing mental health parity requirements to meet compliance requirements of the federal HR 1424. The language of SB 49

was amended during the conference committee process and was incorporated in 2009 HB 2214.

Legislative Review (pursuant to requirements of KSA 40-2249a). The Senate Financial Institutions and Insurance Committee and the House Insurance Committee also received briefings, during the regular session, from Committee staff on the current and recently considered health insurance mandates. Testimony also was received from interested parties.

2010 Session — An Emerging Trend: the Study Directive

The 2010 Legislature reviewed carryover mandates legislation and also introduced new measures for consideration. A modified version of 2009 SB 195 (oral anticancer medications; parity of pharmacy and medical benefits) was amended into 2010 SB 390, a bill updating requirements on insurers for genetic testing. Ultimately, the oral anticancer medication provisions were enacted in Senate Sub. for HB 2160, a bill that incorporated both oral anticancer medication provisions and an autism benefits study in the State Employee Health Plan. Those provisions, introduced in 2010 SB 554, are discussed below. The Legislature further considered the reimbursement of services provided by certain licensees of the BSRB, as proposed in 2010 HB 2546 (identical to 2009 SB 104 and HB 2088, with technical amendments). The Legislature again considered a bill that would have required health insurance plans to provide coverage for telemedicine, defined by the bill as using telecommunications services to link health care practitioners and patients in different locations. The bill was jointly referred to two House committees and died in Committee.

The Study Before the Law. Recently, the Legislature's review and response to health insurance mandates has included a new direction: the study before the mandate is considered and enacted by the Legislature. As prescribed by the 1999 statute, a mandate is to be enacted by the Legislature, applied to the State Employee Health Plan for at least one year and then a recommendation is made about continuation in the Plan or statewide (KSA 40-2249a). Legislation in 2008 (HB 2672) directed the Kansas Health Policy Authority (KHPA) to conduct a study on the impact of extending coverage for bariatric surgery in the State Employee Health Benefit Plan (corresponding mandate legislation in 2008: SB 511; HB 2864). No legislation requiring treatment for morbid obesity (bariatric surgery) was introduced during the 2009-2010 Session. 2009 Sub. for HB 2075 would have directed the KHPA to study the impact of providing coverage for colorectal cancer screening in the State Employee Health Plan, the affordability of the coverage in the small business employer group, and the state high risk pool (corresponding legislation in 2009: SB 288; introduced HB 2075). The study bill was re-referred to the House Insurance Committee and no action was taken by the 2010 Legislature.

During the 2010 Session, the House Insurance Committee again considered the reimbursement of services provided by certain BSRB licensees (SB 104; HBs 2088, 2546). The House Committee recommended a study by KHPA on the topic of requiring this reimbursement. The study design would have included determining the impact that coverage has had on the State Employee Health Plan, providing data on utilization of such professionals for direct reimbursement for services provided, and comparing the amount of premiums charged by insurance companies which provide reimbursement for these provider services to the amounts of premiums charged by insurers who do not provide direct reimbursement. Under SB 388, KHPA also would have been required to conduct an analysis to determine if proactive mental health treatment results in reduced expenditures for future mental and physical health care services. SB 388 died in conference committee. The study requirement also was included as a proviso to the Omnibus appropriations bill (SB 572, section 76). The provision was vetoed by the Governor; the veto was sustained.

Finally, the 2010 Legislature again considered mandating coverage for certain services associated with the treatment of Autism Spectrum Disorders (ASD). Senate Sub. for HB 2160 requires the Health Care Commission, which administers the State Employee Health Plan, to provide for the coverage of services for the diagnosis and treatment of ASD in any covered individual whose

age was less than 19 years during the 2011 Plan Year. Services provided by the autism services provider must include applied behavioral analysis when required by a licensed physician, licensed psychologist, or licensed specialist clinical social worker. Benefits limitations were applied for two tiers of coverage: a covered person whose age is between birth and age seven, cannot exceed $36,000 per year; and a covered person whose age is at least seven and less than nineteen, cannot exceed $27,000 per year. The Health Care Commission was required to submit on or before March 1, 2012, a report to the Senate President and the Speaker that included information (*e.g.* cost impact utilization) pertaining to the mandated ASD benefit coverage provided during the 2011 Plan Year. The Legislature was permitted to consider in the next session following the receipt of the report whether to require the coverage for autism spectrum disorder to be included in any individual or group health insurance policy, medical service plan, HMO, or other contract which provides for accident and health services and which is delivered, issued for delivery, amended, or renewed on or after July 1, 2013.

Senate Sub. for HB 2160 also required all individual or group health insurance policies or contracts (including the municipal group-funded pool and the State Employee Health Plan) that provide coverage for prescription drugs, on and after July 1, 2011, to provide coverage for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits. The Health Care Commission, pursuant to KSA 40-2249a, was required to submit a report to the Senate President and the House Speaker that indicates the impact the provisions for orally administered anticancer medications have had on the State Health Care Benefits Program, including data on the utilization and costs of such coverage. The report also was required to include a recommendation on whether the coverage should continue for the State Health Care Benefits Program or whether additional utilization and cost data is required. The report was required to be provided to the legislative representatives on or before March 1, 2011.

The 2012 Legislature considered legislation (HB 2764 and SB 226) to enact ASD coverage requirements for covered individuals under the age of 19, similar to those requirements specified in 2010 Senate Sub. for HB 2160; the proposed requirements, however, would have applied to all individual and group health insurance policies, plans, and contracts subject to state law. The 2012 bills exempted the proposed ASD coverage from the test track requirements specified in KSA 40-2249a. HB 2764, as amended by the House Committee of the Whole, also would have required coverage in the State's Medicaid Autism Waiver, Children's Health Insurance Program (CHIP), and other Medicaid programs covering children. The bill, among other things, also would have required a study to determine the actual cost of providing coverage for the treatment and diagnosis of ASD in any individual living in Kansas who is under the age of 19. HB 2764, as amended, passed the House and was referred to a Senate Committee. Attempts to advance the bill to Senate General Orders failed and the bill died in Committee. ASD legislation has been introduced during the 2013 Session (SB 175; HB 2317; HB 2395.)

The Health Care Commission has opted to continue ASD coverage in the State Employee Health Plan, as had been required under the 2010 law for Plan Year 2011, for both Plan Year 2012 and Plan Year 2013. In June 2013, the Health Care Commission authorized a permanent ASD benefit.

The 2014 Legislature again considered ASD coverage in HB 2744. Following amendments in the House Committee and House Committee of the Whole, the bill passed the Senate and was signed into law on April 16. The bill required health insurance coverage for the diagnosis and treatment of ASD in children under the age of 12 years and also creates the Applied Behavior Analysis (ABA) Licensure Act. The bill required large health insurance plans to provide ASD coverage effective January 1, 2015; extended this autism coverage requirement to grandfathered individual or small group plans effective July 1, 2016; placed limits on ABA coverage, with higher limits for the first four years beginning with the later of the date of diagnosis or January 1, 2015, for children diagnosed with ASD between birth and 5 years of age and then reduced limits for children

less than 12 years of age; defined terms related to ASD; phased in licensure requirements for ABA providers and allows for exemption from licensure for certain providers; required the BSRB to adopt rules and regulations for the implementation and administration of the Act; authorized the BSRB to take disciplinary action as to the licenses of licensees and applicants for licensure; and applied the ASD coverage requirement to all insurance policies, subscriber contracts or certificates of insurance available to individuals residing or employed in Kansas and to corporations organized under the Nonprofit Medical and Hospital Service Corporation Act. (The 2015 Legislature modified the definitions of "small employer" and "large employer.")

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

Affordable Care Act Requirements — Essential Benefits

The Affordable Care Act (ACA) does not directly alter or preempt Kansas or other states' laws that require coverage of specific benefits and provider services. However, the law (Section 1302(b) of the ACA and subject to future federal regulations by the U.S. Department of Health and Human Services [HHS]), directed the Secretary of HHS to determine the "essential health benefits" to be included in the "essential health benefits" package that Qualified Health Plans (QHPs) in the Exchange marketplaces are required to cover (coverage effective beginning in 2014). "Essential health benefits", as defined in Section 1302(b), include at least the following general categories:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness and chronic disease management; and
- Pediatric services, including oral and vision care.

Insurance policies are required to cover these benefits in order to be certified and offered in Exchanges; additionally, all Medicaid State plans must cover these services by 2014. Women's preventive health services were separately defined by federal regulation in August 2011 (Federal Register Vol. 76, No. 149: 46621-46626) and required that "a group health plan or health insurance issuer must cover certain items and services, without cost-sharing." Coverages included annual preventive-care medical visits and exams, contraceptives (products approved by the Food and Drug Administration), mammograms, and colonoscopies.

Under the ACA, QHPs are not barred from offering additional benefits. However, starting in 2014, if a state law mandates coverage not included in the final HHS "essential benefits" list of coverages, the state must pay any additional costs for those benefits for Exchange enrollees.

Benchmark. HHS issued a bulletin on December 16, 2011, to provide information about the approach the agency plans to take in its rulemaking for defining "essential benefits." The bulletin outlined a "benchmark approach" which would allow states the ability to choose from the following benchmark health plans (a benchmark plan would reflect the scope of benefits and services offered by a "typical employer plan"):

- One of the three largest small group health plans in the state by enrollment;
- One of the largest state employee health plans by enrollment;
- One of the three largest federal employee health plans by enrollment; or
- The largest HMO plan offered in the state's commercial market by enrollment.

Should a state choose not to select a benchmark, the default option would become the small group plan with the largest enrollment. In 2010, the Insurance Department contracted with Milliman, Inc., to analyze plans and related benefits and

services available in Kansas. The Milliman Report analyzed nine plans, and its findings were included in a September 2012 public hearing on essential benefits and selection of a benchmark for Kansas. The Insurance Commissioner submitted the following recommendations and conclusions to the Governor for consideration of a state Essential Health Benefit benchmark:

- Recommend: Selection of the largest small group plan, by enrollment; the Blue Cross Blue Shield of Kansas Comprehensive Plan.
- Recommend: Supplementing the recommended benchmark plan with the required pediatric oral and vision benefits available in the Kansas CHIP.
- Conclusion: Anticipate further guidance from HHS on the definition of "habilitative services" later in the fall of 2012. No specific recommendation was made by the Commissioner.

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

For more information, please contact:

Melissa Renick, Assistant Director for Research
Melissa.Renick@klrd.ks.gov

Iraida Orr, Principal Research Analyst
Iraida.Orr@klrd.ks.gov

Whitney Howard, Research Analyst
Whitney.Howard@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Melissa Renick
Assistant Director for Research
785-296-3181
Melissa.Renick@klrd.ks.gov

Financial Institutions and Insurance

J-2 Payday Loan Regulation

The Legislature first began its review of payday lending during its 1991 Session. At that time, the Consumer Credit Commissioner requested legislation, citing a concern that check cashing for a fee had become a prevalent practice in Kansas and was being conducted in a manner that would be considered a violation of the Uniform Consumer Credit Code (UCCC). The unregulated entities were advancing money and agreeing to hold a post-dated check for a specified, short period of time, and were collecting charges exceeding those allowed under the UCCC. The Commissioner indicated to the Senate Committee on Financial Institutions and Insurance that as it appeared there was a need for this type of service, there existed a need to regulate the activity in a manner that allowed the activity to take place lawfully while at the same time providing protection to consumers utilizing the check cashing service. The Attorney General also had concurred that such practice violated the UCCC and, consequently, had taken action to enforce the law against the payday lenders. The financial records of seven companies were subpoenaed and examined, and all but one of those companies closed their businesses in Kansas.

SB 363 addressed the concern about excessive interest charges and fees, and the Attorney General supported its passage. In some instances, the annual percentage rate (APR) on these short-term loans ranged from 600 percent to 1600 percent. Despite these rates, neither the Commissioner nor the Attorney General's Office had received many complaints. When the companies closed, the Attorney General received a number of telephone calls from consumers asking when those companies would reopen. Although the bill was recommended favorable for passage by the Senate Committee, it was defeated on final action by a vote of 6-32. The Senate later reconsidered its action and sent the bill back to Committee for possible action at a later date.

Review of payday loan regulation continued for a second year. During the 1992 Session, the Senate Committee further considered SB 363, and the House Committee on Commercial and Financial Institutions reviewed HB 2749. The House Committee recommended its bill favorable for passage. On final action (initial vote had been 80 to 35), however, a member reported in his vote explanation that passage of such legislation would burden poor consumers as it would raise the interest rate tenfold from 36 percent to 360 percent. Fifty members changed their votes, and the legislation was killed. When the Senate returned to its consideration of payday loan regulation, the Consumer Credit Commissioner explained the House action on HB 2749 and

rebutted the conclusion that the bill raised interest rates. The Senate Committee received favorable testimony from both the Attorney General's Office and the payday loan industry and voted to amend SB 363 by inserting the provisions of HB 2749. SB 363, as amended, passed the Senate 40-0 and was referred to the House Committee, which recommended it favorable for passage after considerable discussion. Ultimately, the bill died at the end of the Session.

In the Legislature's third year of consideration of payday loan legislation, both the House and Senate agreed on 1993 HB 2197, and the bill was signed by the Governor with an effective date of April 8, 1993. This new law, made supplemental to and a part of the UCCC, applied to short-term consumer loan transactions with a single repayment schedule, for which cash is advanced in an amount equal to or less than the maximum allowed to a supervised lender ($680) and subject to the following conditions:

- On any amount up to and including $50, a finance charge of $5.50 could be charged; on amounts in excess of $50 but not more than $100, the finance charge could be 10 percent of the amount plus a $5 administrative fee;
- On amounts in excess of $100 but not more than $250, the finance charge could be 7 percent of the amount with a $10 minimum plus a $5 administrative fee; and
- For amounts in excess of $250 but less than the maximum amount, the finance charge could be 6 percent of the amount with a minimum of $17.50 plus a $5 administrative fee.

The law also provided that:

- The maximum term of the loan cannot exceed 30 days;
- The contract interest rate after maturity cannot be more than 3 percent per month;
- No charge for insurance or any other charge can be made of any nature except as provided, including cashing the loan proceeds if given in a check;
- No loan made under this section may be repaid with the proceeds of another loan made by the same lender;
- If cash is advanced in exchange for a personal check and the check is returned for insufficient funds, only a return check charge provided in the UCCC is allowed; and
- Certain loans made under this section may be unconscionable conduct—the Commissioner is to consider in making such a finding the ability of the borrower to repay the loan and whether the loan meets the amount and terms limitations of this section.

Kansas was one of the first states to enact legislation specific to the regulation of payday loans. The payday loan statute remained substantively unchanged for a number of years. There have been attempts, however, to amend the law. In 1999, for example, a model act drafted by the Consumer Federation of America was introduced in Kansas as SB 272. The proponent of SB 272 explained at the time of its introduction that it was "legislation addressing the exorbitant interest rates charged by payday loan companies and how such consumer issues fall under the auspices of the UCCC." At the time of the hearing on the bill, other than the sponsor, there were no proponents present to testify on its behalf. The Acting Consumer Credit Commissioner commented to the Senate Committee on Financial Institutions and Insurance the bill "would substantially alter the rates charged by payday loan companies." In testimony on another UCCC bill (SB 301) before the Committee, the Attorney General advised the Committee that while that "office does not take complaints on consumer credit, the Attorney General is of the opinion that the payday loan industry is not in the best interest of society as it spirals people into bankruptcy." Opponents of the bill, several operators of payday loan shops in the state, argued that reducing the allowable interest rate charge to 36 percent would have the effect of putting them out of business. Having heard the issues raised by SB 272, the Committee took no action on the measure.

SB 301, as enacted in 1999, made several significant changes in the UCCC. Among those changes was the transfer for the enforcement of the UCCC from the Consumer Credit Commissioner to a newly designated position of Deputy Commissioner for Consumer and Mortgage Lending and the elimination of interest rate caps on consumer loans. One effect of the interest rate amendment was to remove the escalator provision, which adjusted the dollar amount of consumer loans subject to the then highest allowed interest rate. Since that dollar amount also was the cap for payday loans, the bill established that amount, $860, as the new cap on payday loans.

During the 2001 Session, the Deputy Commissioner (Code Administrator) requested the passage of HB 2193, which would limit the number of loans a consumer could have from a single payday lender to two at any one time and require a "Notice to Borrower" appear on each loan agreement stating that Kansas law prohibits a lender and its related interest from having more than two loans outstanding to the same borrower at any one time. While the bill was amended by the House Committee of the Whole, those amendments were removed from the bill, and the bill passed as proposed by the Deputy Commissioner.

During the 2002 Session, HB 2877 was introduced and would have reduced the allowable charges permitted on payday loans. On loan amounts up to and including $50, the charge would have been reduced from $5.50 to $4.00; on amounts in excess of $50 but not more than $100, the charge would have been reduced from 10 percent to 8 percent; on amounts in excess of $100 but not more than $250, the charge would have been reduced from 7 percent to 5 percent and the minimum allowable charge would have been reduced from $10 to $8; and on amounts of $250 but not greater than $860, the charge would have been reduced from 6 percent to 4 percent and the minimum reduced from $17.50 to $12.50. HB 2877 did not have a hearing and died in the House Committee on Financial Institutions at the end of the 2002 Session. The Chairpersons of the House Committee on Financial Institutions and the Senate Committee on Financial Institutions and Insurance requested and the Legislative Coordinating Council created an interim Special Committee on Financial Institutions and Insurance to study, among other topics:

> Regulation of "payday" loans and entities making such loans, including allowable loan rates and charges; loan terms and conditions and collection issues; and appropriate levels of regulation of lenders, including the activities of some lenders to associate with federally chartered financial institutions and then claim exemption from state regulation.

The Special Committee on Financial Institutions and Insurance did not meet during the 2002 Interim nor complete a report on its assigned subject matter.

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

- Established a seven-day minimum term for any loan;
- Limited the number of loans to three for any borrower within a 30-day period and required lenders to keep a journal of all loan transactions which includes the name, address, and telephone number of the borrower, and the date each loan is made and the date each is due;
- Required the lender, upon receipt of a check from the borrower, to immediately stamp the check with an endorsement that states: "Negotiated as part of a loan made under KSA 16a-2-404. Holder takes subject to claims and defenses of maker. No criminal prosecution";
- Allowed a borrower, under the terms specified, to rescind the transaction without cost not later than the end of the business day following the day on which the transaction was made; and
- Outlined a list of acts or practices prohibited in connection with a payday loan.

The Senate Committee on Financial Institutions and Insurance also had reviewed a payday loan bill, SB 439, that would have created a maximum loan amount ($500, rather than $860) and a flat fee (not more than $15 per $100 loaned). The bill

received a hearing, but no action was taken on the bill and the bill died in Committee.

Finance Charge, Protections for Military Borrowers

The Office of the State Bank Commissioner's representatives brought legislation to the 2005 Legislature to enhance enforcement of both mortgage brokers under the Kansas Mortgage Business Act and supervised lenders under the Code. Senate Sub. for HB 2172 contained the provisions of another measure, Sub. for SB 223, a bill which included provisions for both mortgage brokers and supervised lenders. In addition to the additional enforcement powers and penalties created by the bill, the legislation also amended the finance charges for payday loans under the UCCC (KSA 16a-2-404). The finance charge for cash advances equal to or less than $500 is to be an amount not to exceed 15 percent of the amount of the cash advance. The bill also required publication of the notice in payday loan agreements in Spanish.

In addition, Senate Sub. for HB 2172 enacted new law concerning military borrowers, with lender provisions to:

- Not garnish any wages or salary for service in the armed forces;
- Defer all collection activity against a borrower who is deployed to combat or combat support posting for the duration of such posting;
- Not contact any person in the military chain of command of a borrower in an attempt to make collection;
- Honor all terms of the repayment agreement; and
- Not make any loan to any military borrower whenever the base commander has declared such person's place of business off limits to military personnel.

A military borrower is defined as any member of the Armed Forces of the United States, any member of the National Guard, or any member of the Armed Forces Reserve.

More recently, the Special Committee on Financial Institutions and Insurance convened during the 2005 Interim to study topics that included a broad review of the Uniform Consumer Credit Code. A proposed nondepository lending model, a closed-end installment loan (proposed in 2005 HB 2278, 2006 SB 376), was reviewed by the Committee. A hearing was held on SB 376 during the 2006 Session, but no action was taken on the bill and it died in Committee.

Recent Legislative Proposals

The regulation of payday lending again was addressed during the most recent legislative sessions. 2007 SB 217 and HB 2244 would have added requirements to the law regulating payday lenders. Under the proposals, consumers would not be allowed to have more than two outstanding loans at any one time, and they would not be allowed more than five consecutive loans with the same lender. Under terms of both bills, a statewide database would have been developed to ensure compliance. The House Committee on Insurance and Financial Institutions held a hearing on HB 2244 and a related bill, HB 2245 (addressing vehicle title loans), during the 2007 Session; no action was taken on either bill at the time of the hearing. The 2008 Legislature introduced an additional measure to address payday lending, HB 2717, (a bill similar to HB 2244), without the database requirements. No action was taken on the payday lending legislation or the vehicle title legislation during the 2007-2008 biennium. Similar legislation was not introduced during the 2009 Session.

The 2010 Legislature introduced legislation (SB 503) that would have required a $1 surcharge to be assessed on each payday and title loan. The surcharge would have been paid by the borrower to the lender and then remitted to the Office of the State Bank Commissioner (OSBC). The moneys would then have been transferred to the Professional Development Fund (Department of Education) and expended to fund professional development programs or topics that dealt with personal financial literacy. The OSBC had indicated in the fiscal note that the bill would generate approximately $1.2 million from the estimated 1.2

million payday and title loans that will be issued in FY 2011. The bill was referred to the Senate Financial Institutions and Insurance Committee; the bill died in Committee.

More recently, SB 30 and HB 2036 were introduced during the 2013 Session. The bills would amend the UCCC to prevent lenders from making payday loans to a consumer that already has two outstanding loans with any lender. Restrictions would also be established on the amount of consecutive loans allowable between a particular borrower and lender. Additionally, the bill would permit the Code Administrator (OSBC) to establish an Internet database; a verification fee of up to $1.00 could be charged by the OSBC/vendor to each lender that would be required to access the database prior to making a new loan. SB 30 was referred to the Senate Financial Institutions and Insurance Committee, and HB 2036 was referred to the House Financial Institutions Committee.

Payday Lending Activity – Kansas

The Office of the State Bank Commissioner (the Division of Consumer and Mortgage Lending) maintains an on-line database available to the public, of entities that are authorized to engage in the practice of consumer lending or mortgage business entities, as well as those lenders. The searchable database contains the license number, company name, company location, and date of next renewal and is with surrendered or inactive licenses. Both lists are accessible on the OSBC's website at: https://online.osbckansas.org/Lookup/LicenseLookup.aspx.

In January 2014, the Deputy Commissioner for Consumer and Mortgage Lending provided testimony to the House Financial Institutions Committee on financial products and regulation. Data provided by the Deputy Commissioner (Code Administrator) indicated that as of June 30, 2015, the OSBC had issued supervised loan licenses to 65 companies and 326 locations (includes 11 on-line lenders). Calendar Year 2014 reports submitted by payday lenders indicated 1,006,388 payday loans were made to Kansas consumers for a total amount of $391.2 million. The average payday loan amount was $388. In 1995, 36 locations offered payday loans in Kansas.

Federal Financial Regulatory Reform, Consumer Protections and Payday Loans

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law ("Dodd-Frank Act", PL 111-203). Title X of the Dodd-Frank Act, entitled the Consumer Financial Protection Act of 2010, established a Bureau of Consumer Financial Protection (the CFPB) within the Federal Reserve System with rulemaking, enforcement and supervisory powers over a number of financial products and services and the entities selling them (including payday and student loans). The law also transferred to the CFPB the primary rulemaking and enforcement authority over several federal consumer protection laws, including the Truth in Lending Act. The CFPB does not, however, have the authority to establish usury limits (such as a cap on interest rates) on payday loans. Among the provisions applicable to the use of payday loans (short-term loan products) is Title XII of the Dodd-Frank Act, the Improving Access to Mainstream Financial Institutions Act of 2010. Rather than specific regulations affecting payday lending, the Act provides incentives to financial institutions to offer low-cost alternatives – small-dollar loan products with lower interest rates and less predatory practices. The Act authorizes the Secretary of the Treasury to establish grants to provide these low-cost loans.

The CFPB is evaluating what rules may be appropriate to address the "sustained use of short-term, high-cost credit products" (various types of small dollar loans). Rulemaking, according to comments published by the CFPB, might include "disclosures or address acts of practices in connection with these products." A final rule is not anticipated until late 2016 or early 2017. It is unclear, at this point, how the rule might impact the Kansas UCCC, the regulatory role assigned to the Code Administrator and the OSBC, and supervised lenders.

For more information, please contact:

Melissa Renick, Assistant Director for Research
Melissa.Renick@klrd.ks.gov

Whitney Howard, Research Analyst
Whitney.Howard@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Whitney Howard
Research Analyst
785-296-3181
Whitney.Howard@klrd.ks.gov

Financial Institutions and Insurance

J-3 Kansas Transportation Network Company Services Act

On May 5, 2015, the Kansas Legislature voted to override Governor Brownback's veto of House Sub. for SB 117. The bill, known as the Kansas Transportation Network Company Services Act (Act), became effective on publication in the *Kansas Register* on May 14, 2015. The Legislature subsequently passed a second bill, SB 101, to amend the new Act. Governor Brownback signed SB 101 into law, which became effective on July 1, 2015. The majority of the provisions are already in effect, but the sections addressing lienholders' interests and insurance requirements take effect on and after January 1, 2016. The intent of this article is to serve as a comprehensive guide to Kansas ridesharing law.

Applicable Definitions

First and foremost, it is important to note the terms defined in the Act. These terms are defined as follows:

- "Transportation network company" or "TNC" means a corporation, partnership, sole proprietorship or other entity operating in Kansas that uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides. A TNC is not deemed to control, direct or manage the personal vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract;
- "Digital network" is defined as any online-enabled application, software, website or system offered or utilized by a TNC that enables the prearrangement of rides with TNC drivers;
- "Personal vehicle" means a vehicle that is used by a TNC driver in connection with providing a prearranged ride and is:
  - Owned, leased or otherwise authorized for use by the TNC driver; and
  - Not a taxicab, limousine or for-hire vehicle.
- "Prearranged ride" means the provision of transportation by a driver to a rider that begins when a driver accepts a ride requested by a rider through a digital network controlled by a TNC, continues through the transportation of a requesting rider, and ends when the last requesting rider departs from the personal vehicle. Transportation by taxi, limousine, or other for-hire vehicle is not included;
- "TNC driver" or "driver" is an individual who:

  - Receives connections to potential passengers and related services from a TNC in exchange for payment of a fee to the TNC;
  - Uses a personal vehicle to provide services for riders matched through a digital network controlled by a TNC; and
  - Receives, in exchange for providing the passenger a ride, compensation that exceeds the individual's cost to provide the ride;

- "TNC rider" or "rider" is an individual who uses or persons who use a TNC's digital network to connect with a TNC driver for prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider; and
- "Vehicle owner" is the owner of a personal vehicle.

Requirements and Responsibilities of a TNC

The TNC, such as Uber, Lyft, and other companies that fall under the definition of a TNC, must adhere to certain requirements to provide ridesharing services in the state. TNCs or drivers meeting the requirements of the Act are not considered motor carriers, private motor carriers, or public motor carries of passengers, nor are they determined to provide taxicab or for-hire vehicle service. A driver is not required to register a personal vehicle used for prearranged rides as a commercial or for-hire vehicle. Therefore, commercial and for-hire vehicle laws are not applicable to TNCs or TNC drivers under the Act. However, the Act does place a variety of requirements and responsibilities on the TNC, including maintaining an agent for service in the state. The TNC's responsibilities to both riders and drivers are described below.

TNC Requirements and Responsibilities—Riders

A TNC is required to provide a rider with certain disclosures and to protect the confidentiality of rider information.

Required Disclosures to Riders

A TNC is required to provide the rider with the following:

- Fare calculation method, disclosed on its digital network, for any fare charged;
- Applicable rates being charged;
- The option to receive an estimated fare before the rider enters the driver's personal vehicle;
- Driver's picture and the license plate number of the personal vehicle used for providing prearranged rides, displayed on the TNC's digital network, prior to the rider entering the driver's vehicle; and
- An electronic receipt, within a reasonable time after completion of a trip, that lists the following information regarding the trip:
  - Origin and destination;
  - Total time and distance; and
  - An itemization of the total fare paid, if any.

Confidentiality of Rider Information

The TNC is prohibited from disclosing a rider's personally identifiable information to a third party unless the rider consents or a legal obligation to disclose exists, or disclosure is required to protect or defend the terms of the use of the service or to investigate violations of terms. The TNC is allowed to share a rider's name or telephone number with the driver providing prearranged rides for the purpose of facilitating correct identification of the rider or communication between the rider and the driver.

TNC Requirements and Responsibilities—Drivers

The Act outlines the actions a TNC must take prior to permitting an individual to act as a TNC driver, which include reviewing the individual's application and driving history report. Individuals who meet certain conditions are disqualified from becoming a TNC driver. The Act specifies it is the TNC's responsibility to bar an individual from acting as a

driver on its digital network if he or she meets any of the disqualifying events.

Required Actions Prior to Permitting and Individual to Act as a TNC Driver

The TNC is required to take the following actions prior to allowing an individual to act as a driver on its digital network:

- Require the individual to submit an application to the TNC, including information regarding the applicant's address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC; and
- Obtain and review the applicant's driving history research report.

SB 101 removed the requirement for a TNC to obtain a local and national criminal background check on the individual conducted by the Kansas Bureau of Investigation. (H. Sub. for SB 117, as enacted, did not provide for a state regulatory agency; the Insurance Conference Committee was advised the criminal history record check could not be completed without a designated agency.)

Driver Disqualifications

The Act contains a list of disqualifying events that prohibit a TNC from permitting an individual to act as a driver on its digital network. The list of disqualifying events includes permanent disqualifications and disqualifications occurring within an established period of time.

A TNC is prohibited from permitting an individual to act as a TNC driver on its digital network who:

- Does not possess a valid driver's license;
- Does not possess proof of registration for the motor vehicle or motor vehicle used to provide a prearranged ride;
- Does not possess proof of automobile liability insurance for the personal vehicle or personal vehicles used to provide a prearranged ride;
- Is not at least 19 years of age;
- Has a permanent disqualification, as described below; or
- Has a disqualification that occurred within a specified time frame, described below as staged disqualifications.

Permanent Disqualifications

An individual is permanently disqualified as a TNC driver if he or she:

- Has been convicted of:
  - Any person felony described in statute in Article 34 or Article 54 of Kansas Statutes Annotated Chapter 21 (*i.e.*, capital murder, first or second degree murder, voluntary or involuntary manslaughter, assisting suicide, kidnapping or aggravated kidnapping, or aggravated assault);
  - Any sex offense described in statute in Article 35 or Article 55 of KSA Chapter 21 (*i.e.*, rape, criminal or aggravated criminal sodomy, sexual or aggravated sexual battery, indecent or aggravated indecent liberties with a child, indecent or aggravated indecent solicitation of a child, unlawful sexual relations, electronic solicitation, sexual exploitation of a child), or KSA 2014 Supp. 21-6419 through 21-6422 (*i.e.*, any sexual offense that is a crime against the public morals);
  - Identity theft, as described in KSA 2010 Supp. 21-4018, or KSA 2014 Supp. 21-6107;
  - Any attempt, conspiracy, or solicitation of any crime described above; or
  - A crime under the law of another jurisdiction that is substantially the same as the crimes described above; or
  - Is registered on the National Sex Offender Registry, the Kansas Offender Registry, or any similar registry of any other jurisdiction.

Staged Disqualifications

An individual is disqualified as a TNC driver for a set period of time if he or she has:

- A combined total of more than three moving violations in Kansas or any other jurisdiction within the past three years;
- A traffic violation in Kansas or any other jurisdiction within the past three years of attempting to evade the police, reckless driving, or driving on a suspended license; or
- A conviction, adjudication, or placement on diversion, within the past seven years, of:
  - Driving under the influence of drugs or alcohol in Kansas or any other jurisdiction;
  - Any crime involving controlled substances, as described in KSA 2010 Supp. 21-36a01 through 21-36a17 or in statute in Article 57 of Chapter 21, or any violation of any provision of the Uniform Controlled Substances Act prior to July 1, 2009;
  - Theft, as described in KSA 2009 Supp. 21-3701 or KSA 2014 Supp. 21-5801;
  - Any crime involving fraud, dishonesty, or deceit, as described by the Kansas Criminal Code;
  - Any attempt, conspiracy, or solicitation of any crime described above; or
  - A violation of the law or ordinance of another jurisdiction, including any municipality, which is substantially the same as the crimes described above.

Other Requirements

The Act requires the motor vehicle used by a driver to provide prearranged rides to meet the equipment requirements applicable to private motor vehicles under the state Uniform Act Regulating Traffic. The driver is allowed to provide only prearranged rides and is not allowed to solicit or accept street hails.

TNC Required Policies

The TNC is required to set forth various policies, including a zero tolerance policy on the use of drugs or alcohol, a prohibition on soliciting or accepting cash payments, a non-discrimination policy, and a records maintenance policy.

Zero Tolerance Policy on Use of Drugs or Alcohol

The TNC is required to implement a zero tolerance policy on the use of drugs or alcohol while a driver is providing a prearranged ride or logged into the digital network, but not providing a prearranged ride. The TNC is required, on its website, to provide notice of the zero tolerance policy and procedures for a rider to report a complaint about a driver with whom the rider is matched and reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

Upon receipt of a complaint regarding an alleged violation of the zero tolerance policy, the TNC is required to immediately suspend the driver's access to the digital network and to conduct an investigation. The suspension lasts the duration of the investigation. The TNC is required to maintain records pertaining to the enforcement of the zero tolerance policy for at least two years from the date of receipt of a passenger complaint.

Policy Prohibiting Solicitation or Acceptance of Cash Payments

The TNC is required to adopt a policy prohibiting solicitation or acceptance of cash payments from riders and notify the drivers of the policy, and the drivers are required to follow the policy. Only electronic payments using the TNC's digital network are allowed.

Policy of Non-Discrimination

The TNC is required to adopt a policy of non-discrimination with respect to riders and potential riders and notify the drivers of the policy. The drivers are required to comply with all applicable laws regarding non-discrimination against riders

or potential riders and relating to accommodation of service animals. The driver is not allowed to impose additional charges for providing services to individuals with physical disabilities because of those disabilities.

The TNC is required to provide riders an opportunity to indicate the need for a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC services, it is required to direct the rider to an alternate provider of such service, if available.

Records Maintenance

The TNC is required to maintain individual trip records for at least one year from the date the trip is provided. In addition, the TNC is required to maintain driver records at least until the one-year anniversary of the date on which the driver's activation on the digital network ends.

Automobile Insurance Provisions

A major focus of the Kansas ridesharing law concerns automobile insurance. Insurance requirements, the responsibilities of the parties, disclosures by the TNC to drivers regarding insurance, and allowable exclusions by insurance companies are described below.

Insurance Requirements

On and after January 1, 2016, a TNC driver or vehicle owner or TNC on the driver's behalf is required to maintain primary automobile insurance that recognizes the driver is a TNC driver and covers the driver while logged on to the TNC's digital network, engaged in a prearranged ride, or transporting a passenger for compensation.

The coverage requirements for Periods 1 and 2, as described below, are satisfied by automobile insurance maintained by the TNC driver or vehicle owner or by the TNC, or by a combination of both. [*Note:* According to a representative of the Kansas Association of Insurance Agents (KAIA), the KAIA understands the law to provide that a driver's individual automobile insurance policy covers the described Period 1, as long as the driver maintains an endorsement for ridesharing. Additionally, the representative indicated the TNC's insurance policy would cover Period 2.]

Period 1

While a TNC driver is logged on to the digital network and available to receive transportation requests but not engaged in a prearranged ride, the following automobile insurance requirements apply:

- Primary automobile insurance of at least $50,000 for death and bodily injury per person and $100,000 per incident, and $25,000 for property damage; and
- Primary automobile liability insurance that meets the minimum coverage requirements where required by statutes relating to uninsured and underinsured motorist coverage and motor vehicle liability insurance coverage.

Period 2

While a TNC driver is engaged in a prearranged ride, the following automobile insurance requirements apply:

- Primary automobile insurance that provides at least $1,000,000 for death, bodily injury, and property damage; and
- Primary automobile liability insurance that meets the minimum coverage requirements where required by statutes relating to uninsured and underinsured motorist coverage and motor vehicle liability insurance coverage.

If the insurance maintained by the driver or vehicle owner, as described in Periods 1 and 2 above, has lapsed or does not provide the required coverage, the insurance maintained by the TNC provides the coverage required beginning with the first dollar of a claim, and the TNC has the duty to defend the claim. Coverage by an automobile insurance policy maintained by the TNC does not depend on a personal automobile insurer first denying a claim, nor is a personal automobile insurance policy required to first deny a claim.

The Act provides that the required insurance may be placed with an insurer licensed under state law or with an eligible surplus lines insurer. Insurance meeting the requirements of the Act is deemed to satisfy the financial responsibility requirement for a personal vehicle under the Kansas Automobile Injury Reparations Act.

At all times during the use of a vehicle in connection with a TNC's digital network, the driver is required to carry proof of insurance meeting the requirements of the Act. In the event of an accident and upon a request pursuant to statutes relating to insurance verification, the driver is required to provide to the directly interested parties, automobile insurers, and investigating police officers the insurance coverage information and whether the driver was logged on to the digital network or on a prearranged ride at the time of the accident.

TNC Required Disclosures to Drivers Regarding Insurance

The following information is required to be disclosed in writing by the TNC to the driver before the driver is allowed to accept a request for a prearranged ride on the digital network:

- Insurance coverage, including the types of coverage and limits for each coverage, provided by the TNC to the driver using a personal vehicle in connection with the digital network; and
- Notice that the driver's own automobile insurance policy, depending on its terms, might not provide any coverage while the driver is logged on to the digital network and available to receive transportation requests or is engaged in a prearranged ride (Periods 1 and 2).

Insurers' Allowable Exclusions

Insurers writing automobile insurance in the state are allowed to exclude any and all coverage under the driver's or vehicle owner's insurance policy for any loss or injury occurring while the driver is logged on to a TNC's digital network or providing a prearranged ride. The Act provides a list of the coverage included in the automobile insurance policy an insurer is allowed to exclude. The exclusions apply regardless of any requirement under the Kansas Automobile Injury Reparations Act.

The Act does not imply or require a personal automobile insurance policy to provide coverage while the driver is logged on to a digital network, engaged in a prearranged ride, or otherwise using a vehicle to transport passengers for compensation. An insurer is allowed to provide coverage for the TNC driver's vehicle, if the provider chooses to do so by contract or endorsement.

Automobile insurers excluding coverage have no duty to defend or indemnify any claim expressly excluded. The Act is not deemed to invalidate or limit an exclusion contained in a policy. An automobile insurer defending or indemnifying a claim against a driver excluded under the terms of its policy, as allowed under the Act, has the right of contribution against other insurers providing automobile insurance to the same driver in satisfaction of the required coverage under the automobile insurance requirements portions of the Act at the time of loss.

In a claims coverage investigation, the Act requires TNCs and any insurer potentially providing coverage under the Act's automobile insurance requirements to cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the TNC driver if applicable, including precise times the driver logged on and off the digital network in the 12-hour period immediately preceding and the 12-hour period immediately following the accident and to disclose to one another a clear description of the coverage, exclusions, and limits provided under any automobile insurance maintained under the Act.

Lienholders' Interest

House Sub. for SB 117 contains a requirement that if an individual's personal vehicle is subject to a lien, the individual must provide proof to the lienholder and the TNC of comprehensive and collision insurance coverage on the vehicle that would cover the period when the individual

is logged on to a TNC's digital network but not engaged in a prearranged ride (Period 1) and when the individual is engaged in a prearranged ride (Period 2).

The provision requiring an individual whose personal vehicle is subject to a lien to provide proof to the lienholder and the TNC of comprehensive and collision insurance coverage for Periods 1 and 2 is no longer required because SB 101 amended the Act to strike this provision. Current law requires a TNC to disclose prominently, with a separate acknowledgment of acceptance, to its drivers in the prospective TNC drivers' written terms of service the following before the drivers are allowed to accept a request for TNC services on the TNC's digital platform: "If you are required by agreement with the lienholder to maintain comprehensive and collision insurance on the vehicle, using the vehicle for TNC services without such insurance coverage may violate your legal obligation to the lienholder under Kansas law."

In addition, if the vehicle used by a TNC driver is subject to a lien and the lienholder requires comprehensive and collision insurance in its agreement, the Act requires the TNC driver to ensure that such insurance is in effect and covers the periods when the TNC driver is logged on to a TNC's digital network but not engaged in a prearranged ride (Period 1) and when the TNC driver is engaged in a prearranged ride (Period 2).

For more information, please contact:

Whitney Howard, Research Analyst
Whitney.Howard@klrd.ks.gov

Iraida Orr, Principal Research Analyst
Iraida.Orr@klrd.ks.gov

Melissa Renick, Assistant Director for Research
Melissa.Renick@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

K-1
Concealed Carry

Natalie Nelson
Research Analyst
785-296-3181
Natalie.Nelson@klrd.ks.gov

Firearms and Weapons

K-1 Concealed Carry

The Legislature passed the Personal and Family Protection Act in 2006, allowing licensed persons to carry concealed weapons on and after January 2, 2007. Kansas is a state wherein a person who meets concealed carry qualifications cannot be denied a license. In addition, Kansas is a state where a person who has a concealed carry license from another jurisdiction is allowed to carry a concealed handgun in Kansas if complying with Kansas law.

Under this Act:

- To qualify for a concealed carry license in Kansas, a person must:
  - Be at least 21 years of age;
  - Be a Kansas resident of the county where the application is made; and
  - Not be prohibited by either federal or state law from possessing any firearm.
- Furthermore, even if the above pre-qualifications are met, a person may be disqualified from licensure if such person:
  - Is deemed to pose a significantly greater threat to law enforcement or the public at large than the average citizen if presented in a voluntary report by the county sheriff or chief law enforcement officer;
  - Has been convicted of any crime or has been the subject of any restraining order or any mental health finding that would disqualify the applicant; or
  - Does not meet any of the pre-qualification requirements or fails to be recommended after firearms training.
- Applicants for concealed carry licensing are required to complete an approved training course and to provide a certificate or affidavit of successful completion that is signed by an instructor who has been approved by the Attorney General to offer such training. The applicants must pay an initial license fee of $100 to the Attorney General, submitted with a formal written application, and a $32.50 fee to the county sheriff. The sheriff will take fingerprints to initiate a criminal records check as part of the application process. The Attorney General then issues a concealed carry handgun license following successful completion of the training course and application requirements.
- Possession of a Kansas concealed carry license will allow a Kansas citizen to lawfully carry a concealed handgun in 36

states in the United States that have agreed to recognize Kansas' concealed carry handgun licenses.

Kansas law regarding the concealed carry of handguns has been revised many times since its enactment in 2006. The changes generally have streamlined the process of applying for a license by modifying the basic requirements for licensing and renewing licensure.

2015 Changes to Concealed Carry Laws

In the 2015 Session, the Legislature voted to allow the concealed carrying of a firearm without a concealed carry license issued by the State, as long as the individual is not prohibited from possessing a firearm under federal or state law. This type of measure is often referred to as "constitutional carry." The legislation specified the carrying of a concealed handgun cannot be prohibited in any building unless the building is posted in accordance with rules and regulations adopted by the Attorney General.

While concealed carry licenses will continue to be issued by the State, the availability of those licenses may not be construed to prohibit the carrying of handguns without a license. Further, as noted in hearings on 2015 SB 45, possessing a concealed carry license would allow a Kansas citizen to carry a concealed weapon in 36 other states pursuant to reciprocity agreements.

Another recent change to the laws regarding the concealed carry of handguns passed in 2015 HB 2331, which removed a provision in the Personal and Family Protection Act that permanently prohibited any person convicted of certain crimes from qualifying for a concealed carry license.

For more information, please contact:

Natalie Nelson, Research Analyst
Natalie.Nelson@klrd.ks.gov

Joanna Dolan, Principal Research Analyst
Joanna.Dolan@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Jennifer Ouellette
Fiscal Analyst
785-296-3181
Jennifer.Ouellette@klrd.ks.gov

Health

L-1 Creation of Operator Registration Act and Changes in Adult Care Home Licensure Act

The Adult Care Home Licensure Act (KSA 39-923 *et seq.*) was created to develop, establish, and enforce standards for the care, treatment, health, safety, welfare, and comfort of individuals in adult care homes licensed by the Secretary for Aging and Disability Services; and for the construction, general hygiene, maintenance, and operation of adult care homes to promote safe and adequate accommodation, care, and treatment of individuals in adult care homes (KSA 2015 Supp. 39-924). Under the Act, "adult care home" means any nursing facility, nursing facility for mental health, intermediate care facility for persons with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home, and adult day care facility.

During the 2014 Session, the Operator Registration Act was enacted by the passage of HB 2418, effective July 1, 2014, and is found at KSA 2015 Supp. 39-973 through 39-980. The bill creating the Operator Registration Act was filed as 2014 HB 2717, but its contents were inserted in HB 2418.

The purpose stated by the Kansas Department for Aging and Disability Services (KDADS) for the creation of the Operator Registration Act was to require operators to be registered so the State could set reasonable requirements to assure operators remained current with the knowledge and standards of practice necessary to effectively operate the adult care homes. By requiring registration of operators, KDADS may take disciplinary actions to protect adult care home residents from operators who have been found to have abused, neglected, or exploited a resident in an adult care home, or have committed crimes rendering them unfit for the role of an operator. Others conferees testifying on HB 2717 indicated the bill would strengthen consumer protection by adding education and accountability for operators in the state.

Adult Care Home Licensure Act Changes

The Adult Care Home Licensure Act was amended by 2014 HB 2418 to update state agency references in accordance with 2012 Executive Reorganization Order No. 41 that moved the operations of the Health Occupations Credentialing (HOC) unit from the Kansas Department for Health and Environment (KDHE) to KDADS, to amend two definitions, to remove an outdated rule and regulation reference, and provide for the

KDHE regulations administered by the HOC unit to be transferred to KDADS.

HB 2418 amended the definition of "operator" in the Adult Care Home Licensure Act to mean an individual registered pursuant to the Operator Registration Act, who may be appointed by a licensee to have the authority and responsibility to oversee an assisted living facility or residential health care facility with fewer than 61 residents, a home-plus, or an adult day care facility. The bill also amended "licensee" to mean any person or persons acting jointly or severally who are licensed by the Secretary for Aging and Disability Services pursuant to the Adult Care Home Licensure Act.

The 2015 Legislature passed HB 2043 to exclude from the statutory definition of the term "adult care home" any center approved by the Centers for Medicare and Medicaid Services (CMS) as a Program for All-Inclusive Care for the Elderly (PACE), which provides services only to PACE participants. This exempts PACE programs from the Adult Care Home Licensure Act.

Proponents of HB 2043 stated the exemption would assist in the expansion of PACE programs in new regions, streamline the process for developing new PACE centers in Kansas by removing the requirement that landlords who lease to PACE programs be co-holders of licenses (resulting in extending liability for adult care home operations to the landlords), and reduce duplications in the state inspection process.

Additionally, the passage of 2015 SB 113 amended the Adult Care Home Licensure Act to prohibit a person from knowingly operating an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of mistreatment of an elder person, human trafficking, aggravated human trafficking, commercial exploitation of a child, or an attempt, conspiracy, or solicitation to commit any of these crimes.

Operator Registration Act

On or after July 1, 2014, an adult care home cannot be operated without the supervision of an operator who is registered under the Operator Registration Act (Act) or a licensed adult care home administrator under the Adult Care Home Licensure Act. Persons representing themselves as operators who are not registered under the Act are guilty of a class C misdemeanor. The Act defines an "operator," "adult care home," and "licensee" as these terms are defined in the Adult Care Home Licensure Act.

The Secretary for Aging and Disability Services (Secretary) is required to adopt, by rules and regulations, a system for registering operators. Rules and regulations, at a minimum, need to require that an applicant seeking registration as an operator meet the following qualifications:

- Be at least 21 years of age;
- Possess:
  - A high school diploma or equivalent, with one year relevant experience as determined by the Secretary;
  - An associate's degree in a relevant field as determined by the Secretary; or
  - A bachelor's degree;
- Successfully complete a course approved by the Secretary on the principles of assisted living;
- Pass an examination approved by the Secretary on the principles of assisted living and any other requirements established by the Secretary by rules and regulations;
- File an application; and
- Pay the required application fee.

For applications made within two years of July 1, 2014, the Secretary may waive the education, experience, and application fee requirements and grant registration as an operator to an applicant who completes the operator course approved by the Secretary and passes an examination approved by the Secretary prior to July 1, 2014. However, individuals meeting these requirements who do not apply for registration as an operator

within two years of July 1, 2014, are considered to have a lapsed registration for failure to renew.

The Secretary is to adopt rules and regulations to address the renewal of valid registrations, renewal fees, continuing education requirements, late fees for renewals submitted within 30 days after the expiration date, the requirements for reinstatement of individuals whose registration has lapsed due to submitting a renewal application after the 30-day period following the date of expiration, and the expiration dates for registrations issued or renewed.

Registrations are renewable biennially by filing a renewal application prior to the expiration of an existing registration and upon payment of the renewal fee, except as otherwise provided. A registration is issued by KDADS to an applicant when all registration requirements are met.

To allow for a system of biennial registration, the Secretary is authorized to provide, by rules and regulations, that registrations issued or renewed for the first time after July 1, 2014, may expire less than two years from the date of issuance or renewal. The Secretary is required to prorate to the nearest whole month the registration or renewal fee set by rules and regulations. Delinquent registration renewals are not prorated. All fees are to be credited to the State Licensure Fee Fund administered by KDADS.

The Secretary may deny, refuse to renew, suspend or revoke a registration if the operator or applicant has committed any of the following:

- Has obtained, or attempted to obtain, a registration by means of fraud, misrepresentation, or concealment of material facts;
- Has a finding of abuse, neglect, or exploitation against a resident of an adult care home;
- Has been convicted of a crime found by the Secretary to have direct bearing on whether the registrant or applicant can be trusted to serve the public in the position of an operator;
- Has violated a lawful order, rule, or regulation of the Secretary;
- Has had disciplinary action taken against the operator on a professional or occupational healthcare credential issued by Kansas or another jurisdiction; or
- Has violated any provisions of the Act.

The Secretary is authorized to order a denial, refusal to renew, suspension, or revocation of a registration based on any of the above conditions after notice and hearing on the matter according to the provisions of the Kansas Administrative Procedure Act.

A person whose registration has been revoked is allowed to apply for reinstatement. Acceptance or rejection of an application for reinstatement is at the Secretary's discretion, and a hearing is allowed to consider the reinstatement. An individual seeking reinstatement is required to submit an application for reinstatement, pay a reinstatement fee, and meet the requirements for an individual seeking reinstatement of a registration that lapsed for failure to renew.

For more information, please contact:

Jennifer Ouellette, Fiscal Analyst
Jennifer.Ouellette@klrd.ks.gov

Iraida Orr, Principal Research Analyst
Iraida.Orr@klrd.ks.gov

Erica Haas, Principal Research Analyst
Erica.Haas@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Melissa Renick
Assistant Director for Research
785-296-3181
Melissa.Renick@klrd.ks.gov

Health

L-2 Health Care Stabilization Fund and Kansas Medical Malpractice Law

The 1976 Health Care Providers Insurance Availability Act (HCPIAA) created the Health Care Stabilization Fund (Fund) in an effort to stabilize the availability of medical professional liability coverage for health care providers. The law created a basic liability requirement for certain health care providers (identified below) and established an availability plan in order to provide required basic professional liability insurance coverage for those providers of health care in Kansas unable to obtain such coverage from the commercial market. The Fund receives revenue from professional liability coverage surcharge payments made by health care providers. A summary of recent changes to the HCPIAA is provided later in this article.

Health Care Providers

The Health Care Stabilization Fund was created, in part, to provide excess liability coverage for the following specified Health Care Providers in KSA 2014 Supp. 40-3401(f):

- Medical Doctors and Doctors of Osteopathy who are licensed or hold temporary permits with the State Board of Healing Arts;
- Chiropractors;
- Podiatrists;
- Physician Assistants*;
- Persons engaged in a postgraduate training program approved by the State Board of Healing Arts;
- Registered Nurse Anesthetists;
- Certain Advance Practice Registered Nurses (Nurse Midwives)*;
- Dentists certified by the State Board of Healing Arts;
- Medical care facilities;
- Mental health clinics and centers;
- Psychiatric hospitals (certain facilities);
- Licensed nursing facilities, assisted living facilities, and residential health care facilities*;
- Kansas professional corporations or partnerships of defined health care providers;
- Kansas limited liability companies organized for the purpose of rendering professional services by their health care providers; and
- Kansas not-for-profit corporations organized for the purpose of rendering professional services by persons who are health care providers; and a not-for-profit corporation organized to administer the graduate medical education programs affiliated with the University of Kansas School of Medicine.

* Providers and facilities were eligible for coverage, as of January 1, 2015.

Health care providers whose practice includes the rendering of professional services in Kansas are subject to the basic professional liability coverage and Fund surcharge requirements. In addition, the coverage and surcharge requirements also apply to health care providers who are Kansas residents and to non-resident health care providers whose practice includes the rendering of professional services in Kansas.

Fund coverage, through basic professional liability coverage, is available from insurers authorized to write business in Kansas or through the Health Care Provider Insurance Availability Plan. The Fund coverage limits currently include three options: $100,000/$300,000; $300,000/$900,000; and $800,000/$2,400,000. (The first dollar amount indicates the amount of loss payment available for each claim, while the second indicates the total annual amount of loss payments for all claims made during a Fund coverage year.) For Kansas health care providers, the insurer is responsible for:

- Calculation of the amount of the surcharge based on the Fund coverage limit selected by the health care provider;
- Development of the rating classification code of the provider and the number of years the provider has been in compliance with the Fund; and
- Collection of the Fund surcharge payment along with the basic professional liability coverage and remitting the surcharge to the Fund without any reductions for commissions, collections, or processing expenses.

With a primary function of excess professional liability coverage, the Fund is "triggered" when the basic professional liability insurer's projected loss exposure exceeds $200,000.

The Fund's legal staff monitor all claims and suits filed against Kansas health care providers, including attending claim settlement conferences where the Fund's coverage has not yet been triggered. In addition to claims protection, the law also requires all basic professional liability insurers to include prior acts coverage which eliminates the need for Kansas health care providers to purchase tail coverage when changing insurers; requires all basic professional liability insurers to provide professional liability insurance for the overall or total professional services rendered by Kansas health care providers; funds tail coverage for qualified inactive health care providers in Kansas; and provides special self-insurance coverage for the full-time faculty, private practice foundations and corporations, and the residents of the University of Kansas School of Medicine (KUMC) and the Wichita Center for Graduate Medical Education (WCGME). (University of Kansas School of Medicine students are covered under the Kansas Tort Claims Act—KSA 75-6102(j)).

Fund Administration

The Board of Governors, as defined in KSA 2015 Supp. 40-3403 as the "Board", consists of eleven members appointed by the Insurance Commissioner in the manner prescribed by statute. Three members are medical doctors in Kansas nominated by the Kansas Medical Society; three members serve as representatives of Kansas hospitals, nominated by the Kansas Hospital Association; two members are doctors of osteopathic medicine, nominated by the Kansas Association of Osteopathic Medicine; one member is a chiropractor in Kansas, nominated by the Kansas Chiropractic Association; one member is a Registered Nurse Anesthetist, nominated by the Kansas Association of Nurse Anesthetists; and one member serving as a representative of adult care homes, selected by the Commissioner from a list of nominees submitted by adult care homes' statewide associations.

Prior to 1995, the Insurance Commissioner administered the Fund. Beginning in 1995, the administration of the Fund became the responsibility of the Health Care Stabilization Fund Board of Governors, and the Board was recognized as an independent State agency. The following table illustrates the agency expenditures for administration of the Fund and total paid claims, by fiscal year.

OPERATING EXPENDITURES
(by Major Object of Expenditure)
Health Care Stabilization Fund
FY 2008-FY 2017

Fiscal Year	State Operations	% Change	Claims Paid	% Change	FTE
2008	$5,928,742	1.3 %	$24,508,355	9.1 %	17.0
2009	6,655,856	12.3	25,236,640	3.0	17.0
2010	7,164,696	7.6	28,314,866	12.2	17.0
2011	5,373,243	(25.0)	19,207,586	(32.2)	18.0
2012	6,292,258	17.1	21,910,074	14.1	18.0
2013	6,250,365	(0.7)	28,405,415	29.6	18.0
2014	7,722,355	23.6	25,029,266	(11.9)	19.5
2015 Actual	5,099,207	(34.0)	26,654,184	6.5	19.5
2016 Approved	6,961,551	36.0	25,989,410	(2.5)	20.0
2017 Approved	7,718,475	10.9	29,601,940	13.9	20.0
Ten-Year Change					
Dollars/Percent	$1,789,733	30.2 %	$5,093,585	20.8 %	3.0

The Fund also receives interest on the state agency investments in addition to the surcharge paid by health care providers in Kansas. The investments for the Board of Governors are administered by the Pooled Money Investment Board (PMIB).

Budget Issue: Reimbursements from the State General Fund

2009 Session. In FY 2009 and FY 2010, transfers from the State General Fund (SGF) to the Health Care Stabilization Fund (HCSF) for payments on behalf of the KU residents, faculty, and graduate medical education students were suspended. The moratorium on reimbursements from the SGF reduced the fund balance by a projected $6.0 million over the two-year period. (The FY 2010 transfer payments were suspended by the Governor's agency allotment authority in July 2009.)

KSA 40-3403(j) pertained to the reimbursement for the costs and expenses associated with the administration of a self-insurance program for the full-time faculty, private practice foundations and corporations, and the residents of the University of Kansas School of Medicine and the Wichita Center for Graduate Medical Education. (When the costs, including claims and legal expenses, exceed the amount paid by the Faculty Foundations [Private Practice Foundation Reserve Fund], the SGF, upon certification of the amount of the payments made by the HCSF, transfers the difference to the HCSF.) A 2009 Attorney General's opinion [2009-16] made, among other conclusions, the finding that, "nothing in the allotment system statute nor in the Health Care Provider Insurance Availability Act indicates that the statutory transfers of funds in KSA 40-3403 are exempt from the allotment system."

2010 Session. The Senate Financial Institutions and Insurance Committee introduced SB 414 at the request of the Kansas Medical Society as a bill to amend the HCPIAA and to exempt transfers from the SGF to the HCSF as required by KSA 2009 Supp. 40-3403(j) from the allotment authority delegated by statute (KSA 75-3722) to the Secretary of Administration. The bill further amended the Act to provide that the funds required to be transferred to the Health Care Stabilization Fund for the payments specified in law (KSA 2009 Supp. 40-3403(j)) for state Fiscal Years 2010, 2011, 2012, and 2013 shall not be transferred prior to July 1, 2013. The then-Director of Accounts and Reports is required to maintain a record of the amounts certified by the HCSF Board of Governors for the specified fiscal years. The bill also established a

process for the repayment of the deferred SGF payments, as follows: beginning on July 1, 2013, and on an annual basis through July 1, 2017, 20.0 percent of the total amount of the SGF deferred transfers are to be transferred to the HCSF. No interest may accrue on the deferred payments. SB 414 was signed into law on March 31, 2010.

Oversight

The Health Care Stabilization Fund Oversight Committee was created by the 1989 Legislature. The composition of the Committee is detailed in KSA 40-3403b. The eleven-member Committee consists of:

- Four legislators;
- Four health care providers;
- One representative of the insurance industry;
- One person from the general public with no affiliation to health care providers or with the insurance industry; and
- The chairperson of the Board of Governors of the Health Care Stabilization Fund or another Board member designated by the Board chairperson.

The law requires the Committee to report its activities to the Legislative Coordinating Council and make recommendations to the Legislature regarding the Health Care Stabilization Fund. Committee annual reports are filed with and published by the Legislative Research Department.

Fund Status

The actuarial report provided to the Oversight Committee at its 2015 meeting addressed the Fund's forecast position at June 30, 2015: The Fund held assets of $271.31 million and liabilities (discounted) of $223.03 million, with $48.28 million in reserve. Projections for June 2016 include $278.22 million and liabilities (discounted) of $230.02 million, with $48.20 million in reserve.

Miller v. Johnson Decision — Legislative Authority to Establish a Cap on Noneconomic Damages

The Kansas Supreme Court upheld a $250,000 cap on non-economic damages in a 5-2 decision. The decision cited, among other things, four constitutional issues to be resolved in this case. The majority of the Court upheld KSA 60-19a02 as it applied to *Miller* (personal injury Plaintiff, medical malpractice); the statute provides for a $250,000 cap on non-economic damages and applies to all personal injury actions, including medical malpractice claims, accruing on or after July 1, 1988. The opinion also cited the HCIPAA by indicating, "As noted in several of our prior cases, the legislature's expressed goals for the comprehensive legislation comprising the Health Care Provider Availability Act and the noneconomic damages cap have long been accepted by this court to carry a valid public interest objective." The opinion also noted the Legislature enacted KSA 60-19a02 "in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of noneconomic damages awards and the possibility of large noneconomic damage awards."

2014 Changes to the HCPIAA and Medical Malpractice Tort Law

In 2014, the Kansas Legislature responded to the *Miller v. Johnson* decision through the enactment of two bills – HB 2516 and SB 311. Among the amendments made to the HCPIAA in HB 2516 is amending the definition of "health care provider" to include certain professionals and facilities (described in the table on page 1); making continued coverage for inactive health care providers ("tail coverage") immediate upon cancellation or inactivation of a Kansas license and professional liability insurance and increasing the level of tail coverage available; making tail coverage available for new professionals and facilities for prior acts; limiting the disclosure of HCSF claims information to the public; and updating the membership of the Board of Directors and the Board of Governors. SB 311 amended the Code of Civil Procedure to

increase the limits to be applied for non-economic damages in personal injury actions as follows:

- $250,000 for causes of action accruing from July 1, 1988, to July 1, 2014;
- $300,000 for causes of action accruing on and after July 1, 2014, to July 1, 2018;
- $325,000 for causes of action accruing on and after July 1, 2018, to July 1, 2022; and
- $350,000 for causes of action accruing on and after July 1, 2022.

The bill also made amendments to the rule of evidence governing opinion testimony and repealed statutes allowing evidence of collateral source benefits to be admissible in actions for personal injury or death and provided a procedure for determination of net collateral source benefits and the reduction of a judgment by such amount. The Kansas Medical Society requested the introduction of both bills.

The 2015 Legislature made technical amendments to the HCPIAA (clarifying certain exemptions from the definitions of "health care provided") and modified this act to allow certain health care systems to aggregate premium for the purpose of obtaining a certificate of self-insurance.

Following is a brief summary of additional Kansas laws that address medical malpractice and the legal proceedings.

Kansas Medical Malpractice Tort Laws

Statute of Limitations	*Damage Awards' Limits*	*Pre-trial Screening, Arbitration*	*Joint and Several Liability*	*Expert Witnesses*	*Attorney Fees*	*Health Care Stabilization Fund*
KSA 60-513. Two years from act or reasonable discovery. Is permitted up to ten years after reasonable discovery.	**KSA 60-19a02.** Limit on noneconomic damages recoverable by each party from all Defendants until July 1, 2014, and increases by $50,000 every four years to a maximum of $350,000 on and after July 1, 2022. **KSA 60-3702.** Punitive damages limited to the lesser of Defendant's highest gross income for prior five years or $5 million. If profitability of misconduct exceeds limit, court may award 1.5 times profit instead. Judge determines punitive damages.	**KSA 65-4901; 60-3502.** Voluntary submission to medical screening panel upon request of party; panelists must include medical professional of same specialty was Defendant.	No separation of joint and several liability.	**KSA 60-3412.** Fifty percent of the expert's professional time over preceding two years must have been devoted to clinical practice in same field as Defendant.	**KSA 7-121b.** Attorney fees must be approved by the court.	**KSA 40-3403.** (discussed above).

For more information, please contact:

Melissa Renick, Assistant Director for Research
Melissa.Renick@klrd.ks.gov

David Fye, Principal Fiscal Analyst
David.Fye@klrd.ks.gov

Iraida Orr, Principal Research Analyst
Iraida.Orr@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Erica Haas
Principal Research Analyst
785-296-3181
Erica.Haas@klrd.ks.gov

Health

L-3 Massage Therapy

Although Kansas does not have a massage therapy licensure requirement, several recent attempts have been made to institute such a requirement. This paper summarizes Kansas law and practice, as well as laws from other states.

Kansas Law

Kansas does not have a massage therapy licensure requirement; individuals in Kansas can engage in the practice of massage therapy without fees, state standards, or state oversight. There are statutes that define what massage therapy is not. KSA 65-2872 and KSA 65-2913 expressly exclude from the practice of healing arts and from representing oneself as a physical therapist, respectively, persons who massage for the purpose of relaxation, muscle conditioning, or figure improvement, so long as no drugs are used and such persons do not hold themselves out to be physicians or healers.

Some local governments have zoning requirements restricting where a massage therapist may be located.

Kansas Massage Therapy Programs

There are at least nine massage therapy programs offered in Kansas at community colleges, technical schools, and private companies. The programs range in duration from 12 to 24 months. Most programs claim to prepare students to take a national massage therapy examination. There are at least five national massage therapy examinations. These examinations are listed in Table 1.

Other States

All 50 states either require massage therapy licensure or have introduced or drafted legislation requiring licensure of massage therapists. The majority of states have a massage therapy board that regulates massage therapy licenses. The biennial licensing fees range from $60 to $300. Most states require 500 to 600 hours of message therapy education, although some states require up to 1,000 hours. Most states require applicants to pass a state or national examination, as well as some level of background check.

Table 1 compares the specific licensing requirements of HB 2187, which was introduced during the Kansas 2013 Session, to requirements in Iowa and the states geographically surrounding Kansas.

History of Bills Introduced in Kansas

Bills to enact licensure for massage therapists were introduced in 2008 (SB 572), 2012 (HB 2564), and 2013 (HB 2187), and 2015 (2123 and SB 40). The bills introduced during the 2015 Session are identical to each other and are similar to 2013 HB 2187. The one notable difference between the 2015 bills and HB 2187 is the background check of a new applicant is a requirement in the 2015 bills and optional in HB 2187. Both 2015 bills had a hearing and are pending, HB 2123 in the House Committee on Health and Human Services and SB 40 in the Senate Committee on Public Health and Welfare.

In January 2014, HB 2187 received a hearing in the House Committee on Health and Human Services; however, no further action was taken on the bill. Table 2 highlights some of the differences and similarities between the three bills.

HB 2187 would have given oversight of massage therapy licensure to the Board of Nursing (Board). The Board estimated licensing of massage therapy would have increased its expenditures for the first year by $217,883 and would have increased fee fund revenue by $180,000, assuming 2,400 people would have applied for a massage therapy license. There would have been a $30,000 one-time start-up fee for capital outlay expenditures for the first year. The Board anticipated hiring 3.0 FTEs to handle the increased workload.

Proponents of HB 2187 stated it would not over-regulate the practice of massage therapy but would protect the practitioners and the public. Proponents also stated the bill would benefit public interest by assuring clients that a licensed massage therapist had a clear scope of practice, a required education and training level, and continuing education requirements; that a means of filing a complaint or grievance was available; and that a state regulatory body was empowered to enforce sanctions against those who violated public trust. Without state licensure the only recourse for the public is filing a criminal or civil complaint.

Opponents of the bill stated massage therapy practice is operating well without government involvement. Opponents also voiced concern about the ability to comply with record-keeping standards. While massage therapy schools teach record-keeping as part of a 500-hour program there are not record-keeping classes available for practicing massage therapists not enrolled in a full training program.

The League of Kansas Municipalities (LKM) opposed the section of the bill that would have preempted the municipal ordinances relating to massage therapists. The LKM suggested a dual regulation system.

A subcommittee of the House Committee on Health and Human Services was formed during the 2013 Legislative Session to gather additional information about massage therapy. The first meeting was on March 14, 2013, and a second meeting was held on May 9, 2013.

Table One

Massage Therapy Laws								
State	**State Licensure**	**Regulatory Oversight Body**	**License Fees (maximum allowable)**	**Age Requirement**	**Education Requirements**	**Other Licensing Requirements**	**Exam Requirements**	**Continuing Education**
Kansas (proposed)	2013; HB 2187 proposed in 2013: not enacted	State Board of Nursing	Application: $80 Temp. Permit: $25 Renewal: $75 Late Renewal: $75 Reinstatement: $80	18 years of age (yoa)	High school diploma/ equivalent; 500 in-classroom hours	No disqualifying conduct (as defined by the Board); criminal background check (optional)	Nationally recognized competency exam in massage	12 hours biennially
Colorado	yes	Regulatory Board	Application & Initial Licenses: $80 Renewal: $59 Fingerprint Check: $39.50		500 hours	Background check	MBLEx*	N/A
Missouri	yes	Missouri State Board of Therapeutic Massage	Student License: $25 Provisional: $50 Permanent License: $125 Renewal: $100	18 yoa	500 hours	Good moral character	NCBTMB*; NCCAOM*; MBLEx*; or AMMA NBCE*	12 hours biennially
Nebraska	yes	Nebraska Massage Therapy Board	License: $110 Temp. License: $25 Renewal: $110	19 yoa	1,000 hours	Good character	NCETMB*; or MBLEx*	24 hours biennially
Oklahoma (proposed)	2015; SB 687: pending	Board of Medical Licensure and Supervision	License $50; Temp. license $25	18 yoa	To be addressed in rules and regulations	Disclose all criminal history	Standardized national massage therapy examination	To be addressed in rules and regulations
Iowa	yes	Iowa Board of Massage Therapy Examiners	Application: $120 Biennial Renewal: $60		600 hours		MBLEx*	24 hours biennially

*NCETMB: National Certification Examination for Therapeutic Massage & Bodywork
MBLEx: Federation of State Massage Therapy Boards
NCCAOM: National Certification Commission for Acupuncture and Oriental Medicine
NCBTMB: National Certification Board for Therapeutic Massage & Bodywork
AMMA NBCE: American Medical Massage Association National Board Certification Exam

Table Two

Comparison of Massage Therapy Licensure Bills 2001-2013

Provisions	2013 HB 2187	2012 HB 2564	2008 SB 572
Named Act	Massage Therapist Licensure Act	Same as 2013 bill	Massage Therapy Practice Act
Regulatory Oversight Body	State Board of Nursing	State Board of Healing Arts	Board of Massage Therapy established by the Act
Included in Practice of Massage Therapy	Care and services in a system of therapeutic, structured touch, palpitation or movement of soft tissue to enhance or restore general health and well-being. The system includes, but is not limited to: effleurage (stroking or gliding); petrissage (kneading); tapotement or percussion; friction, vibration, compression; passive and active stretching within the normal anatomical range of movement; hydromassage; thermal massage; or application of these techniques with or without the aid of lubricants, salt or herbal preparations, water, heat, or a massage device mimicking or enhancing actions by human hands.	Does not refer to services by a "licensed" massage therapist, but other provisions are identical to the 2013 bill.	Does not refer to services by a "licensed" massage therapist, but other provisions are identical to 2013 bill.
Applicant Requirements for Licensure	The applicant may be licensed if they have a high school diploma or equivalent, 18 years of age or older, no other disqualifying conduct as defined by the Board, completion of 500 hours of instruction, and passed a nationally recognized competency examination approved by the Board.	The applicant "is of good moral character as defined by the Board according to this Act."	Same as 2013 except proof of U.S. citizen or permanent resident and good moral character were required. Two options available to license individuals who do not meet the standard requirements.
Detailed License Standards for Practice of Massage Therapy	Not in statute	Not in statute	Detailed licensed standards for practice set out in statute.
Temporary Permits	May be issued for not more than 120 days for a graduate of a massage therapy school in a foreign country (requires licensure verification and approval of educational credentials).	Not in statute	Not in statute
Identification as Licensed Massage Therapist	Use of "LMT" in identifying self to patient or public; use of words including "massage therapist," "massagist," "massotherapist," "myotherapist," "body therapist," "massage technician," "massage practitioner," " masseur," " masseuse," or any derivation of these terms.	Same as 2013 bill	Includes terms identifying individual as a massage therapist similar to 2013 bill.
Advisory Committee or Advisory Council	Advisory Committee established by the Board	Massage Therapy Advisory Council	None. Instead, the bill outlines the creation of the Board of Massage Therapy.
License Expiration	Expires every two years on the date established by Board rules and regulations. Renewal application and prescribed biennial renewal fee required.	Expires on the date of expiration established by rules and regulations of the Board unless the license is renewed in the manner prescribed by the Board.	Expires annually unless renewed.

Table Two, continued

Comparison of Massage Therapy Licensure Bills 2001-2013			
Provisions	**2013 HB 2187**	**2012 HB 2564**	**2008 SB 572**
Named Act	Massage Therapist Licensure Act	Same as 2013 bill	Massage Therapy Practice Act
Continuing Education Requirement on License Renewal	No more than 12 hours of continuing education required biennially for license renewal.	No more than six hours of continuing education annually.	Continuing education requirements not to exceed 16 hours per biennium.
Fingerprinting - State and National Criminal History Record Check	The Board may require fingerprinting of an initial applicant for licensure for identification and to determine whether applicant has criminal record in state or other jurisdictions, and may use such information to determine character and fitness for practice in state.	Not in statute	New applicant for license agrees to provide the Board with any and all information needed to perform a criminal background check and expressly consents and authorizes the Board or its representative to perform such a check.
Disciplinary Action	The Board may deny, suspend, revoke, or limit a license or the licensee may be publicly or privately censured if guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Civil fines also may be assessed for unprofessional conduct in an amount not to exceed: $1,000 for first violation, $2,000 for second violation, and $3,000 for third and each subsequent violation.	Same as 2013 bill. Also mentions the Board may refuse to renew; if applicant is found guilty of a felony, mentions acts for which convicted must be found by the Board to have a direct bearing on whether the individual should be entrusted to serve the public in the capacity of a naturopathic doctor. Civil fines may be assessed for unprofessional conduct in an amount not to exceed $5,000 for first violation, $10,000 for second violation, and $15,000 for third and each subsequent violation.	The Board may examine and determine the qualifications and fitness of applicants to practice massage therapy. The Board may issue, renew, refuse to renew, deny, suspend, or revoke licenses to practice massage therapy or otherwise discipline massage therapists. The Board may assess civil penalties. Fines for practice without a license: not more than $1,000 for each offense; conviction of second or subsequent offense would include a fine of not more than $1,000 for each offense, imprisonment for not more than 12 months, or both. The Board also may impose fines of not more than $1,000 for each offense for a detailed list of 13 additional offenses, including unprofessional conduct. The factors the Board is to consider before imposing civil penalties also are provided in the bill.
Restriction on Local Units of Government	On and after July 1, 2015, local units of government cannot establish or maintain professional licensing requirements for massage therapists licensed under the Act. Local zoning requirements are not affected by the Act.	Same as 2013 bill, except a one year delay in application of restriction and 2013 bill applies a one to two year delay depending on the date of bill passage and publication in statute book.	Local jurisdictions may adopt or enforce any local ordinance that is not in conflict with provisions of the Act.

For more information, please contact:

Erica Haas, Principal Research Analyst
Erica.Haas@klrd.ks.gov

Iraida Orr, Principal Research Analyst
Iraida.Orr@klrd.ks.gov

Whitney Howard, Research Analyst
Whitney.Howard@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Whitney Howard
Research Analyst
785-296-3181
Whitney.Howard@klrd.ks.gov

Health

L-4 Medicaid Waivers in Kansas

This article provides information related to the history of Medicaid waivers in the United States and those waivers specific to Kansas.

The History of Medicaid

In the United States

Medicaid is a partnership between the federal government and the states with shared authority and financing, created by Congress in 1965 (Title XIX of the Social Security Act). The program was designed to finance health care services for low-income children, their parents, the elderly, and people with disabilities. Medicaid has become the nation's largest source of funding to provide health services to low-income people.

State participation in Medicaid is optional. However, the federal government's financial share of Medicaid financing creates an incentive for the states. To date, no state has declined to participate. All 50 states, American Samoa, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands participate and administer their own Medicaid plans. Although all states participate, eligibility varies widely because the states can choose to cover additional people and services above and beyond the federal minimum requirements.

Medicaid Expansion

Provisions of the Patient Protection and Affordable Care Act (PPACA) expanded Medicaid to all Americans under age 65 whose family income is at or below 133 percent of federal poverty guidelines by January 1, 2014. Under the provisions of the PPACA, if a state did not expand Medicaid, the state risked losing its entire federal Medicaid allotment. The Medicaid expansion provision led to challenges to the Supreme Court of the United States. On June 28, 2012, the Supreme Court ruled in *National Federation of Independent Business v. Sebelius* that Congress may not make a state's entire existing Medicaid funding contingent upon the state's compliance with the PPACA provision regarding Medicaid expansion. Consequently, Medicaid expansion is voluntary and has become a highly discussed topic in state legislatures across the country. As of November 3, 2015, 25 states and the District of Columbia have expanded Medicaid, 5 states are currently implementing expansion alternatives, and 20 states have not expanded Medicaid.

Interstate Health Care Compact

In response to federal regulation of health care, nine states (Alabama, Georgia, Indiana, Kansas, Missouri, Oklahoma, South Carolina, Utah, and Texas) have enacted and signed Interstate Health Care Compact (Compact) legislation. Utah repealed most of its Compact statute in 2014. The Compact allows Member States to establish broad health care programs that operate outside of the PPACA or other federal law. The U.S. Congress would have to consent to the Compact because it would substitute state control where federal law and regulations exist. If approved by Congress, the Compact would become effective on its adoption by at least two Member States. The Compact includes statements on the importance of the separation of powers, including federal and state authority, and the preservation of individual liberty and personal control over health care decisions. The Compact contains nine articles. For more information on the Interstate Health Care Compact, see the 2015 Briefing Book article.

KanCare: Medicaid in Kansas

Kansas participates in Medicaid, but chose not to participate in Medicaid expansion under the PPACA. Kansas administers Medicaid through the program known as KanCare. KanCare was launched in January 2013 and currently serves more than 400,000 Kansans. Under KanCare, eligible Kansans receive doctor visits and hospital care, mental health therapy, dental and eye care, medicine, non-emergency medical transportation, nursing home care, and contractor specific value-added services.

The Kansas Department of Health and Environment (KDHE) and the Kansas Department for Aging and Disability Services (KDADS) administer the KanCare program. KDHE maintains financial management and contract oversight as the single state Medicaid agency, while KDADS administers the Medicaid waiver programs for disability services, mental health, and substance abuse; and operates the state hospitals and institutions. Additionally, Kansas contracts with three managed care organizations (MCOs) to coordinate health care for nearly all Medicaid beneficiaries. The MCOs are Amerigroup of Kansas, Inc. (Amerigroup), Sunflower State Health Plan (Sunflower), and UnitedHealthcare Community Plan of Kansas (United).

Each Medicaid consumer in the state is enrolled with one of the KanCare health plans. Consumers have the option during open enrollment once a year to change to a different KanCare health plan if they wish to do so.

Types of Medicaid Waivers Approved by CMS

Sections 1115 and 1915 of the Social Security Act give the U.S. Secretary of Health and Human Services (HHS) authority to waive provisions of the law to encourage states to test new or existing ways to deliver and pay for health care services in Medicaid and the Children's Health Insurance Program (CHIP). A state must apply for and receive approval from the Centers for Medicare and Medicaid Services (CMS) in order to operate a waiver. There are three primary types of waivers and demonstration projects: Section 1115 Research and Demonstration Projects, Section 1915(b) Managed Care Waivers, and Section 1915(c) Home and Community-Based Services Waivers. Additionally, states can apply to simultaneously implement two types of waivers through the Concurrent Section 1915(b) and 1915(c) waivers.

Section 1115 Research & Demonstration Projects

Section 1115 of the Social Security Act gives the Secretary of HHS authority to approve experimental, pilot, or demonstration projects. The purpose of these demonstrations is to give states additional flexibility to design and improve their Medicaid programs. These demonstrations can expand eligibility to individuals who are not otherwise Medicaid or CHIP eligible, provide services not typically covered by Medicaid, and use innovative service delivery systems that improve care, increase efficiency, and reduce costs.

CMS uses general criteria to determine whether Medicaid or CHIP program objectives are met.

These criteria include whether the demonstration will:

- Increase and strengthen overall coverage of low-income individuals in the state;
- Increase access to, stabilize, and strengthen providers and provider networks available to service Medicaid and low-income populations in the state;
- Improve health outcomes for Medicaid and other low-income populations in the state; or
- Increase the efficiency and quality of care for Medicaid and other low-income populations through initiatives to transform service delivery networks.

In general, Section 1115 demonstrations are approved for a five-year period and may be renewed typically for an additional three years. Demonstrations must be "budget neutral" to the federal government, which means that during the course of the project, federal Medicaid expenditures will not be more than federal spending without the waiver.

Currently, there are 29 states and the District of Columbia that have approved Section 1115 waivers with CMS. Those states are: Alabama, Arkansas, Colorado, Delaware, Florida, Hawaii, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming. Additionally, several states have Section 1115 waivers that are pending approval with CMS.

Section 1915(b) Managed Care Waivers

A Section 1915(b) waiver is necessary if a state would like to enter into managed care contracts because of the transfer of risk from the state to a MCO. Under the 1915(b) waiver, states have the following four options:

- 1915(b)(1): implement a managed care delivery system that restricts the types of providers people can use to get Medicaid benefits;
- 1915(b)(2): allow a county or local government to act as a choice counselor or enrollment broker in order to help people pick a manage care plan;
- 1915(b)(3): use the savings the state realizes from a managed care delivery system to provide additional services; and
- 1915(b)(4): restrict the number or type of providers who can provide specific Medicaid services (such as disease management or transportation).

Thus, the 1915(b) waivers allows the state to provide Medicaid services through managed care delivery systems, effectively limiting the consumer's choice of providers. The following states and the District of Columbia currently have Section 1915(b) waivers approved by CMS: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

Section 1915(c) Home and Community Based Services Waivers

The Medicaid Home and Community Based Services (HCBS) waiver program is authorized under Section 1915(c) of the Social Security Act. Through the HCBS waiver, states can assist Medicaid beneficiaries by providing a wide range of services that permit individuals to live in their homes or communities and avoid institutionalization. Programs can provide a combination of standard medical services and non-medical services. Standard medical services include, but are not limited to: case management, home health aide, personal care, adult day health services, and respite care. States can propose other services that may assist in diverting or transitioning individuals from institutional settings to their homes or communities.

Currently, 47 states and the District of Columbia have 1915(c) waivers approved with CMS. The only states that currently do not have an approved

1915(c) waiver with CMS are Arizona, Rhode Island, and Vermont.

Medicaid Waivers in Kansas

Current Medicaid Waivers

KanCare allows the state to provide all HCBS through managed care. Currently, Kansas operates seven separate 1915(c) waivers alongside a 1115 waiver. The seven 1915(c) waivers are: Autism, Frail Elderly (FE), Intellectual and Developmental Disabilities (I/DD), Physical Disabilities (PD), Serious Emotional Disturbance (SED), Technology Assisted (TA), and Traumatic Brain Injury (TBI). Specific information for each of the seven 1915(c) waivers follows.

Autism

The Autism Waiver provides services to children from the time of diagnosis of Autism Spectrum Disorder (ASD), Asperger's Syndrome, or Pervasive Developmental Disorder–Not Otherwise Specified (PDD-NOS) until the child's sixth birthday. Autism services are limited to three years; however, an additional year may be submitted for approval. To qualify for an additional year of service, the child must meet eligibility based on the Level of Care assessment at the annual review on the third year of services and data collected by the Autism Specialist must document continued improvement.

To apply for the waiver, a parent or guardian must complete an application. The application contains two sections. Section 1 requests basic information about the child and the child's family. Section 2 requires the parent or guardian to indicate the screening tool used in the child's diagnosis. This section also requires documentation of Autism Spectrum diagnosis or a signature of a licensed medical doctor or psychologist. The completed application can be submitted one of three ways: faxed, hand delivered to a local KDADS office, or mailed.

In addition to submitting a completed application, the child must be financially eligible to participate in the waiver. Only the child's personal income and resources are considered; the parents' income and resources are not considered for this waiver. Additionally, any personal income of the child over $727 per month must be contributed toward the cost of care.

If a child meets the criteria for the waiver, the child will receive a letter from the Autism Program Manager informing him or her of placement on the Proposed Recipient List and of the numerical position on the list. When a position becomes available, the Program Manager contacts the family and offers them the potential position. There were 241 proposed recipients on the Proposed Recipient List as of August 31, 2015.

Once a child is referred by the Program Manager for assessment, the Functional Eligibility Specialist has five working days to schedule a home visit and complete a functional eligibility assessment to determine if the child meets the established criteria. If the child meets the criteria, the Functional Eligibility Specialist assists the family in completing a Medicaid application and referring them to an Autism Specialist. The Autism Specialist then has five working days to contact the family and begin the development of the Individualized Behavioral Plan or Plan of Care.

The waiver allows individuals to receive early intensive intervention treatment and allows primary caregivers to receive needed support through respite services. Services and supports provided under this waiver include intensive individual supports, respite care, consultative clinical and therapeutic services, family adjustment counseling, interpersonal communication therapy, and parent support and training (peer-to-peer). As of September 16, 2015, there were 61 individuals eligible to receive services under this waiver.

Frail Elderly

The Home and Community Based Services Frail Elderly (HCBS/FE) Waiver provides home and community-based services to Kansas seniors as an alternative to nursing facility care. The waiver serves those individuals 65 and older who choose HCBS and are functionally eligible for nursing

facility care. The individual's personal income and resources are considered when determining eligibility for the waiver. Income over $727 per month must be contributed toward the cost of care.

An individual is required to reach out to the local Aging and Disability Resource Center (ADRC) if interested in the HCBS/FE waiver. The ADRC can conduct the functional assessment needed to determine eligibility for the program, as well as provide community and state options for services. If the individual selects HCBS/FE services, the ADRC will send notification to the Department for Children and Families (DCF) to process a Medicaid application. During the Medicaid application process, the individual selects the Managed Care Organization (MCO) of his or her choice or a MCO is assigned if the individual does not select a particular MCO. The MCO will then assign a Care Coordinator to the consumer. The Care Coordinator meets with the consumer and develops the Plan of Care to establish the number of hours for services required to meet the individual's needs. The Care Coordinator can assist with locating providers in the individual's area if assistance is needed.

Services and supports included under the HCBS/FE Waiver are: adult day care, assistive technology, attendant care, comprehensive support, financial management, medication reminder, nursing evaluation visit, oral health, personal emergency response, sleep cycle support, and wellness monitoring. As of September 16, 2015, there were 5,068 individuals eligible to receive services without the Money Follows the Person (MFP) program, and 53 individuals eligible under the MFP program. The MFP program is a federal demonstration grant given to help individuals currently living in institution settings to choose to transition into community-based services. Individuals must qualify for Medicaid and also qualify for either the HCBS/FE, HCBS/PD, HCBS/I/DD, or TBI waivers to participate in the program.

Intellectual and Developmental Disability

The Home and Community Based Services Intellectual and Development Disability (HCBS I/DD) Waiver provides services to individuals 5 years of age and older with intellectual disabilities and developmental disabilities. To qualify for this waiver, the individual must meet the definition of intellectual disability, have a developmental disability, or be eligible for care in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID). Only the individual's personal income and resources are considered. For individuals under the age of 18, parents' income and resources are not counted. However, personal income over $727 per month must be contributed to the cost of care.

The point of entry into the HCBS I/DD Waiver is an individual's local Community Developmental Disability Organization (CDDO). The CDDO will help determine the individual's eligibility and will work with the person and his or her family to access services. As of September 16, 2015, there were 3,332 individuals on the HCBS I/DD waiting list.

Services and supports under the HCBS I/DD Waiver can include day support, overnight respite care, personal assistant, residual supports, supported employment, assistive services, medical alert, sleep cycle support, specialized medical care, and supportive home care. As of September 16, 2015, there were 8,753 individuals eligible to receive services without the MFP program, and 33 individuals eligible under the MFP program.

Physically Disabled

The Home and Community Based Services Physically Disabled (HCBS/PD) Waiver provides services to individuals who are at least 16 years of age, and no older than 65 years. The individual must be determined disabled by the Social Security Administration, needs assistance to perform normal rhythm of the day, and meet the Medicaid nursing facility threshold. To qualify for this waiver, only the individual's personal income and resources will be considered. If the individual is under age 18, the parents' income and resources will not be considered. However, personal income over $727 per month must be contributed toward the cost of care.

The point of entry for the HCBS/PD Waiver is an individual's local ADRC. As of September 16,

2015, there were 1,769 individuals on the HCBS/PD waiting list. The following services and supports can be provided under the HCBS/PD Waiver as long as those services are approved by the MCO: personal services, assistive services, sleep cycle support, and Personal Emergency Response Systems (PERS) and installation. As of September 16, 2015, there were 5,480 individuals eligible to receive services without the MFP program, and 160 individuals eligible under the MFP program.

Serious Emotional Disturbance

This Serious Emotional Disturbance (SED) Waiver provides services to individuals ages 4-21 who are experiencing a serious emotional disturbance. The State of Kansas no longer accepts children and youth into its state mental health hospital. If a family should choose an inpatient psychiatric facility rather than HCBS, the state will enter into a contract with an out-of-state provider to provide services for that child or youth. The waiver provides for the traditional Medicaid financial criteria to be waived and for children to be assessed for Medicaid financial eligibility based solely on the child's income and resources and not that of the household.

The Community Mental Health Center (CMHC) serves as the functional assessor for the SED Waiver. Services and supports under this waiver include attendant care, independent living and skills building, short-term respite care, parent support and training, professional resource family care and wraparound facilitation. As of September 16, 2015, there were 2,934 individuals eligible to receive services under this waiver.

Technology Assisted

The Technology Assisted (TA) Waiver provides services for children under the age of 21 who are chronically ill or medically fragile and dependent on intensive technology. The individual is determined TA program eligible if he or she is 0-21 years of age, meets the definition of medical fragility, requires the use of primary medical technology on a daily basis (*i.e.* a ventilator, Trach, G-tube feeding), and meets the medical and nursing acuity threshold for the specified age group. Only the individual's personal income and resources are considered. The parents' personal income and resources are not counted for eligibility purposes but are counted for the purpose of determining a family participation fee.

Private agencies serve as the point of entry to the TA Waiver. Services and supports under this waiver can include financial management services, health maintenance monitoring, intermittent intensive medical care service, specialized medical care, long-term community care attendant, medical respite care, and home modification services. As of September 16, 2015, there were 446 individuals eligible to receive services under this waiver.

Traumatic Brain Injury

The Traumatic Brain Injury (TBI) Waiver provides services to individuals ages 16-65 who have sustained a traumatic non-degenerative brain injury resulting in residual deficits and disabilities. The TBI Waiver is not considered a long-term care program and is designed to be a rehabilitative program. The brain injury must be traumatically-acquired, *i.e.* caused by an external physical force. The common injuries resulting in trauma to the brain include, but are not limited to: falls, which involve a forceful blow to the head, not generally consistent with concussion or minor injury; motor vehicle accidents with resulting head trauma; struck by or against, including collision with a moving or stationary object; and assaults involving repeated blows to the brain.

Thus, in order to qualify for the waiver, the individual must have a traumatic brain injury, be 16 to 65 of age, meet the criteria for TBI rehabilitation hospital placement (which is determined by the screening), and meet the financial guidelines to qualify for Medicaid. Only the individual's personal income and resources are considered for eligibility. For individuals under the age of 18, parents' income and resources are not counted toward eligibility. Personal income over $727 must be contributed toward the cost of care.

The individual's local ADRC is the point of entry to the TBI program. Services and supports

under this waiver may include personal services, assistive services, rehabilitation, home delivered meals, medication reminder, and transitional living skills. As of September 16, 2015, there were 504 individuals eligible to receive services without the MFP program, and 11 individuals eligible under the MFP program.

Current Proposal — Waiver Integration

The State of Kansas is seeking to fully integrate the seven 1915(c) waivers into the 1115 waiver. Entrance to HCBS will remain the same, but services will fall into two broader categories: Children's Services and Adults' Services. The new integrated waiver would be called KanCare CommunityCare and, if approved by CMS, would begin on January 1, 2017.

KDHE and KDADS officials indicate state waiver integration is intended to create parity for the populations served through HCBS and offer a broader array of services to individuals participating in the KanCare program. The core features of waiver integration include: eligibility requirements and processes will remain the same, children will continue to be entitled to all medically necessary services identified through Early Periodic Screening Diagnosis and Treatment (EPSDT), all members will continue to be entitled to medically necessary state plan services that are part of KanCare, and services will be authorized through personalized plans of care.

For more information, please contact:

Whitney Howard, Research Analyst
Whitney.Howard@klrd.ks.gov

Amy Deckard, Assistant Director for Information Management
Amy.Deckard@klrd.ks.gov

Iraida Orr, Principal Research Analyst
Iraida.Orr@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Natalie Teemer-Washington
Research Analyst
785-296-3181
Natalie.Teemer-Washington@klrd.ks.gov

Judiciary

M-1 Civil Asset Forfeiture

Civil asset forfeiture is the process through which a law enforcement agency may seize and take ownership of property used in the commission of a crime. This article provides an overview of the civil forfeiture laws in Kansas.

Overview of Kansas Civil Forfeiture Laws

Property and Conduct Subject to Civil Forfeiture

KSA Chapter 60 Article 41 covers asset seizure and forfeiture. Under KSA 2015 Supp. 60-4104, certain conduct can lead to civil asset forfeiture even without prosecution or conviction. This conduct includes, but is not limited to, theft, prostitution, human trafficking, and forgery. Under KSA 2015 Supp. 60-4105, every kind of property used during conduct giving rise to forfeiture, or obtained as a result of conduct giving rise to forfeiture, is subject to forfeiture.

There are certain exceptions under KSA 60-4106. For example, under KSA 60-4106(a)(1), real property or interests in real property cannot be seized unless the conduct leading to forfeiture is a felony. Under KSA 60-4106(a)(3), property is not subject to forfeiture if the owner received the property before or during the conduct giving rise to forfeiture and did not know about the conduct or made reasonable efforts to prevent the conduct.

Kansas Forfeiture Procedure

In Kansas, law enforcement officers may seize property with a warrant issued by the court, without a warrant if they have probable cause to believe the property is subject to forfeiture under the statutes, or constructively, with notice (KSA 2015 Supp. 60-4107). Under KSA 2015 Supp. 60-4107(d), the seizing agency must make reasonable efforts within 30 days to give notice of the seizure to the owner, interest holder, or person who had possession of the property.

Typically, the county or district attorney, the Attorney General, or an attorney approved by one of the two, will represent the law enforcement agency in a forfeiture action. KSA 2015 Supp. 60-4107(g)-(i) provides a procedure the law enforcement agency must follow to secure representation in such a proceeding.

Under KSA 2015 Supp. 60-4109(a), a civil forfeiture proceeding commences when the attorney representing the law enforcement agency (the plaintiff's attorney) files a notice of pending forfeiture or a judicial forfeiture action. If the plaintiff's attorney does not initiate the forfeiture proceeding or the law enforcement agency does not pursue the forfeiture proceeding within 90 days against the property seized, and the property's owner or interest holder (the claimant) files a timely claim, the court must release the property to the owner (on the owner's request) pending further proceedings (KSA 2015 Supp. 60-4109(a)(1)). Under KSA 2015 Supp.60-4109(a)(1), the seized property cannot stay in the owner's possession more than 90 days without a court-authorized extension. Under KSA 2015 Supp. 60-4109(a)(2), if the owner files a petition for exemption to forfeiture under KSA 60-4110, the plaintiff's attorney can delay filing the judicial forfeiture proceeding for up to 180 days. To delay filing, the plaintiff's attorney must provide notice of exemption to any interest holders who filed petitions to have their interests exempt from forfeiture within 60 days after the effective date of the notice of pending forfeiture.

The plaintiff's attorney also is allowed, under KSA 2015 Supp. 60-4109(b), to file a lien on the forfeited property to cover necessary court costs, and the lien will constitute notice to any person claiming an interest in the property as along as it contains certain information.

Burden of Proof and Court Findings

Under KSA 2015 Supp. 60-4113(g), in a civil forfeiture proceeding, the plaintiff's attorney has the initial burden of proof and must prove, by a preponderance of the evidence, the property is subject to civil forfeiture. Then the burden of proof shifts to the claimant (the property owner or interest holder) to prove, by a preponderance of the evidence, the claimant's property interest is not subject to forfeiture. If the court finds the property is not subject to forfeiture, the property must be returned to the claimant. If the court finds the property is subject to forfeiture, the property is forfeited to the law enforcement agency that seized the property. (See 2015 Supp. KSA 60-4113(h)) However, under KSA 60-4106(c), the court must restrict the scope of the forfeiture to ensure that it is proportionate with the conduct that gave rise to the seizure.

Use of Forfeited Property

When property is forfeited, the law enforcement agency can keep the property, transfer it to any government agency, destroy it, or use it for training purposes (KSA 2015 Supp. 60-4117(a)(1) and (a)(2)). The law enforcement agency may also sell the property. KSA 2015 Supp.60-4117(a)(3)(A) requires property, other than real property, to be sold at public sale to the highest bidder. Real property may be sold at a public sale or through a real estate company (KSA 2015 Supp. 60-4117(a)(3)(B)).

Under KSA 2015 Supp. 60-4117(c)-(d), after the proceeds have been used to satisfy certain security interests or liens, expenses of the proceedings, reasonable attorney fees, and repayment of certain law enforcement funds, the remaining proceeds will go to the law enforcement agency's state forfeiture fund if the law enforcement agency is a state agency.

Recent Kansas Legislation

Kansas has enacted little legislation concerning civil forfeiture in the past few years. In 2014, Kansas enacted legislation concerning civil forfeiture as it pertains to certain firearms (2014 HB 2578). That bill added language to KSA 2013 Supp. 22-2512 as to how seized firearms could be disposed of and specifications for notifying the owner of a seized weapon how to retrieve it if the weapon can be returned. In 2013, the legislature enacted HB 2081, which added certain offenses to the conduct giving rise to civil forfeiture (indecent solicitation of a child, aggravated indecent solicitation of a child, and sexual exploitation of a child). It also added electronic devices to the list of items that could be seized.

For more information, please contact:

Natalie Teemer-Washington, Research Analyst
Natalie.Teemer-Washington@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.go

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Robert Gallimore
Principal Research Analyst
785-296-3181
Robert.Gallimore@klrd.ks.gov

Judiciary

M-2 Death Penalty in Kansas

Background

On June 29, 1972, the U.S. Supreme Court, in *Furman v. Georgia*, 408 U.S. 238 (1972), held the imposition and execution of the death penalty, or capital punishment, in the cases before the court constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. Justice Potter Stewart remarked that the death penalty was "cruel and unusual in the same way that being struck by lightning is cruel and unusual." That case nullified all capital sentences imposed without statutory guidelines.

In the following four years, states enacted new death penalty laws aimed at overcoming the court's *de facto* moratorium on the death penalty. Several statutes mandated bifurcated trials, with separate guilt and sentencing phases, and imposed standards to guide the discretion of juries and judges in imposing capital sentences. In *Gregg v. Georgia*, 428 U.S. 153 (1976), the Court upheld the capital sentencing schemes of Georgia, Florida, and Texas. The Court found these states' capital sentencing schemes provided objective criteria to direct and limit the sentencing authority's discretion, provided mandatory appellate review of all death sentences, and allowed the judge or jury to take into account the character and record of an individual defendant.

The death penalty was reenacted in Kansas, effective on July 1, 1994. Governor Joan Finney allowed the bill to become law without her signature.

The Kansas Supreme Court, in *State v. Marsh*, 278 Kan. 520, 534–535, 102 P. 3d 445, 458 (2004), held that the Kansas death penalty statute was facially unconstitutional. The court concluded the statute's weighing equation violated the Eighth and Fourteenth Amendments to the *U.S. Constitution* because, "[i]n the event of equipoise, *i.e.*, the jury's determination that the balance of any aggravating circumstances and any mitigating circumstances weighed equal, the death penalty would be required." *Id.*, at 534, 102 P. 3d, at 457. The U.S. Supreme Court reversed the Kansas Supreme Court's judgment and held the Kansas capital sentencing statute is constitutional. In June 2006, the Court found that the Kansas death penalty statute satisfies the constitutional mandates of *Furman* and its progeny because it "rationally narrows the class of death-eligible defendants and permits a jury to consider any mitigating evidence relevant to its sentencing determination. It does

not interfere, in a constitutionally significant way, with a jury's ability to give independent weight to evidence offered in mitigation."

Kansas Capital Murder Crime

In Kansas, the capital murder crimes for which the death penalty may be invoked include the following:

- Intentional and premeditated killing of any person in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with the intent to hold the person for ransom;
- Intentional and premeditated killing of any person under a contract or agreement to kill that person or being a party to the contract killing;
- Intentional and premeditated killing of any person by an inmate or prisoner confined to a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;
- Intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, the crime of rape, criminal sodomy, or aggravated criminal sodomy, or any attempt thereof;
- Intentional and premeditated killing of a law enforcement officer;
- Intentional and premeditated killing of more than one person as a part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct; or
- Intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with the intent that the child commit or submit to a sex offense.

According to Kansas law, upon conviction of a defendant of capital murder, there will be a separate proceeding to determine whether the defendant shall be sentenced to death. This proceeding will be conducted before the trial jury as soon as practicable. If the jury finds beyond a reasonable doubt that one or more aggravating circumstances exist and that such aggravating circumstances are not outweighed by any mitigating circumstances which are found to exist, then by unanimous vote the defendant will be sentenced to death. The Kansas Supreme Court will automatically review the conviction and sentence of a defendant sentenced to death.

If mitigating circumstances outweigh the aggravating circumstances, a defendant convicted of capital murder will not be given a death sentence but will be sentenced to life without the possibility of parole. A defendant sentenced to life without the possibility of parole is not eligible for parole, probation, assignment to a community correctional services program, conditional release, post-release supervision, or suspension, modification, or reduction of sentence.

Costs

Costs in Kansas death penalty cases have been examined in a 2003 Performance Audit by the Legislative Division of Post Audit and in 2004 and 2014 reports by the Kansas Judicial Council Death Penalty Advisory Committee. Each of these studies indicates costs for death penalty cases tend to be higher than non-death penalty cases at the trial and appellate stages. For instance, the 2014 Judicial Council report indicated that Kansas Board of Indigents' Defense Services costs in death penalty trial cases filed between 2004 and 2011 averaged $395,762 per case, as compared to $98,963 per trial case where the death penalty could have been sought but was not. More detail regarding the costs in death penalty cases may be found in the 2003 Performance Audit report and in the 2004 and 2014 Judicial Council reports, which are available on the Post Audit and Judicial Council websites, respectively.

The Board of Indigents' Defense Services has three units that participate in the defense of capital

cases. The approved budget for these units in FY 2016 is $1,334,752. Actual expenditures for the unit in FY 2015 were $1,523,538. The agency estimates FY 2016 expenditures of $1,575,105 for capital defenses.

Death Penalty and Intellectual Disability

At the national level, the U.S. Supreme Court in *Atkins v. Virginia,* 536 U.S. 304 (2002), stated that capital punishment of those with "mental retardation" is cruel and unusual punishment under the Eighth Amendment to the *U.S. Constitution.* Various states subsequently attempted to draft legislation that would comply with the *Atkins* decision. In the *Atkins* decision, there is no definition of "mentally retarded," but the Court referred to a national consensus regarding mental retardation.

In 2012, the Legislature passed Sub. for SB 397, which replaced statutory references to "mental retardation" and similar terms with "intellectual disability" and directed state agencies to update their terminology accordingly. Thus, the concept of "mental retardation" as addressed by the U.S. Supreme Court in *Atkins* will be discussed here as "intellectual disability."

Kansas law defines "intellectual disability" in the death penalty context to mean a person having significantly subaverage general intellectual functioning to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law. See KSA 21-6622(h).

Under Kansas law, counsel for a defendant convicted of capital murder, or the warden or sheriff having custody of the defendant, may request the court to determine if the defendant has an intellectual disability. The court shall then conduct proceedings to determine if the defendant has an intellectual disability. If the court determines the defendant has an intellectual disability, no sentence of death, life without the possibility of parole, or mandatory term of imprisonment shall be imposed. See KSA 21-6622.

Death Penalty and Minors

In *Roper v. Simmons*, 543 U.S. 551 (2005), the U.S. Supreme Court invalidated the death penalty for all juvenile offenders. The majority opinion pointed to teenagers' lack of maturity and responsibility, greater vulnerability to negative influences, and incomplete character development, concluding that juvenile offenders assume diminished culpability for their crimes.

KSA 21-6618 mandates that, if a defendant in a capital murder case was less than 18 years of age at the time of the commission of the crime, the court shall sentence the defendant as otherwise provided by law, and no sentence of death shall be imposed. Thus, the death penalty or capital punishment cannot be imposed on a minor in Kansas.

Method of Carrying Out Death Penalty

The method of carrying out a sentence of death in Kansas must be by intravenous injection of a substance or substances in sufficient quantity to cause death in a swift and humane manner pursuant to KSA 22-4001. No death penalty sentence has been carried out in Kansas since the death penalty was reenacted in 1994.

Inmates in Kansas Under Sentence of Death					
Defendant's Name	**Race**	**Birth**	**Date Capital Penalty Imposed**	**County**	**Case Status**
James Kraig Kahler	White	Jan. 15, 1963	Oct. 11, 2011	Osage	Appeal Pending
Justin Eugene Thurber	White	Mar. 14, 1983	Mar. 20, 2009	Cowley	Appeal Pending
Scott Dever Cheever	White	Aug. 19, 1981	Jan. 23, 2008	Greenwood	See below
Sidney John Gleason	Black	Apr. 22, 1979	Aug. 28, 2006	Barton	See below
Douglas Stephen Belt	White	Nov. 19, 1961	Nov. 17, 2004	Sedgwick	Appeal Pending
John Edward Robinson, Sr.	White	Dec. 27, 1943	Jan. 21, 2003	Johnson	Sentence upheld; See below
Jonathan Daniel Carr	Black	Mar. 30, 1980	Nov. 15, 2002	Sedgwick	See below
Reginald Dexter Carr, Jr.	Black	Nov. 14, 1977	Nov. 15, 2002	Sedgwick	See below
Gary Wayne Kleypas	White	Oct. 8, 1955	Mar. 11, 1998	Crawford	Appeal Pending

On November 17, 2004, the death sentence of Stanley Elms of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to the Hard 40 term, which is life in prison with no possibility of parole for 40 years.

On April 3, 2009, the death sentence of Michael Marsh of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to two life sentences, with parole eligibility after 55 years, but with 85 months to serve for additional convictions if paroled.

On March 24, 2010, the death sentence of Gavin Scott of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to two life sentences.

In 2010, a Shawnee County district judge granted Phillip D. Cheatham, Jr., who was under sentence of death, a new sentencing hearing. In January 2013, before this hearing was held, the Kansas Supreme Court found Cheatham's trial counsel was ineffective, reversed Cheatham's convictions, and remanded the case for a new trial.

In January 2015, Cheatham legally changed his name to King Phillip Amman Reu-El. During jury selection for his retrial in February 2015, Amman Reu-El pleaded no-contest to capital murder and attempted murder charges. At a sentencing hearing in March 2015, the district court denied Amman Reu-El's request to withdraw his pleas and sentenced Amman Reu-El to the Hard 25 term (life in prison with no possibility of parole for 25 years) for the capital counts and 13 years, 9 months for the attempted murder count, to be served consecutively. In May 2015, Amman Reu-El filed an appeal, which is pending as of December 2015. In September 2015, Amman Reu-El filed a pleading in district court claiming he received ineffective assistance of counsel in making his pleas.

In August 2012, the Kansas Supreme Court reversed the capital murder convictions of Scott Dever Cheever and ordered the case remanded for a new trial. Cheever was under sentence of death for the convictions. The State appealed the case to the U.S. Supreme Court, which issued an opinion December 11, 2013, vacating the judgment of the Kansas Supreme Court and remanding the case for further consideration by Kansas courts of possible error under the Fifth Amendment or Kansas evidentiary rules. The Kansas Supreme Court heard further oral argument in September 2014 but has stayed the release of a decision pending the U.S. Supreme Court's review of the *Gleason* and *Carr* cases (see below). As of December 2015, Cheever was being held in special management at Lansing Correctional Facility.

In July 2014, the Kansas Supreme Court vacated death sentences in three cases. The Court vacated Sidney John Gleason's death sentence and remanded for resentencing. In the appeals of Jonathan Daniel Carr and Reginald Dexter Carr, Jr., the Court reversed all but one of each defendant's capital murder convictions, vacated each defendant's death sentence for the remaining capital murder conviction, and remanded to the district court for further proceedings. In October 2014, Kansas Attorney General Derek Schmidt petitioned the U.S. Supreme Court for a writ of *certiorari* in all three cases. However, the U.S. Supreme Court granted Kansas Attorney General Derek Schmidt's petition for writ of *certiorari* in all three cases and heard oral argument in the cases in October 2015. A decision in the cases is pending as of December 2015.

In November 2015, the Kansas Supreme Court upheld a capital murder conviction and death sentence of John Edward Robinson, Sr., for one of the counts of capital murder charged against him. This marked the first death sentence upheld by the Court since the reenactment of the death penalty in Kansas. The Court reversed two other murder convictions as multiplicitous and affirmed remaining convictions. The lone dissent from the Court's decision was by Justice Lee Johnson, who disagreed that the State had properly charged and proven the count of capital murder upheld by the Court. The dissent also stated that the death penalty is both "cruel" and "unusual" and therefore violates § 9 of the *Kansas Constitution Bill of Rights*. As of December 2015, the filing by Robinson of a motion for rehearing and modification of judgment in the case was pending.

As of December 2015, nine inmates under a death penalty sentence are being held in administrative segregation because Kansas does not technically have a death row. Inmates under sentence of death (other than Cheever) are held in administrative segregation at the El Dorado Correctional Facility (EDCF).

State-to-State Comparison

Kansas is one of 31 states that has a death penalty. The two following tables show the states with a death penalty and the 18 states without such penalty.

Jurisdictions with the Death Penalty				
Alabama	Georgia	Missouri	Oregon	Virginia
Arizona	Idaho	Montana	Pennsylvania	Washington
Arkansas	Indiana	Nevada	South Carolina	Wyoming
California	Kansas*	New Hampshire*	South Dakota	Plus U.S. Government
Colorado	Kentucky	North Carolina	Tennessee	U.S. Military*
Delaware	Louisiana	Ohio	Texas	
Florida	Mississippi	Oklahoma	Utah	
*Indicates jurisdiction with no executions since 1976.				

Jurisdictions without the Death Penalty (year abolished in parentheses)		
Alaska (1957)	Massachusetts (1984)	North Dakota (1973)
Connecticut (2012)	Michigan (1846)	Rhode Island (1984)
Hawaii (1948)	Minnesota (1911)	Vermont (1964)
Illinois (2011)	Nebraska[c] (2015)	West Virginia (1965)
Iowa (1965)	New Jersey (2007)	Wisconsin (1853)
Maine (1887)	New Mexico[a] (2009)	District of Columbia (1981)
Maryland[b] (2013)	New York (2007)	
a) In March 2009, New Mexico repealed the death penalty. The repeal was not retroactive, which left two people on the state's death row.		
b) In May 2013, Maryland abolished the death penalty. The repeal was not retroactive, which left five people on the state's death row.		
c) A petition to suspend the 2015 repeal bill has been submitted and is pending verification.		
Source: Death Penalty Information Center		

Recent Developments

In March 2009, the Senate Judiciary Committee held a hearing on SB 208 to repeal the death penalty in Kansas. The bill was amended and passed out of the Committee. The Senate Committee of the Whole re-referred the bill to the Senate Judiciary Committee for study by the Judicial Council during the Interim. The Judicial Council formed the Death Penalty Advisory Committee to study SB 208 and concluded the bill presented a number of technical problems which could not be resolved by amending the bill. Instead, the Committee drafted a new bill which was introduced in the 2010 Session as SB 375. SB 375 was passed, as amended, out of the Senate Committee on Judiciary. However, the bill was killed on final action in the Senate Committee of the Whole.

Bills that would abolish the death penalty were introduced in both chambers in 2011. See 2011 HB 2323 and SB 239. No action was taken on either bill. The 2012 House Committee on Corrections and Juvenile Justice held an "informational" hearing on the death penalty.

In 2013, bills abolishing the death penalty were again introduced in both chambers. See 2013 HB 2397; 2013 SB 126. No action was taken on either bill during the 2013 or 2014 sessions.

Also in 2013, HB 2388 was introduced and heard in the House Committee on Corrections and Juvenile Justice. This bill would have amended KSA 21-6619 to limit Kansas Supreme Court review in death penalty cases to properly preserved and asserted errors and allowing the Court to review unpreserved and unassigned errors only to correct manifest injustice (as defined in the bill). Proponents of the bill indicated it was introduced in response to the Kansas Supreme Court's decision in *State v. Cheever,* 295 Kan. 229 (2012). A motion in the Committee to recommend the bill favorably as amended failed, and no further action was taken on the bill.

The 2013 Legislature passed Senate Sub. for HB 2043, which allows the Attorney General to file notice of intent to seek the death penalty in those cases where the county or district attorney or a court determines a conflict exists.

In 2014, the Senate Judiciary Committee introduced SB 257, which would have amended the procedure for direct appeals in death penalty cases by establishing statutory time limits and appellate brief page limits and limiting the scope of review. The bill also would have imposed additional requirements and limitations on both KSA 60-1507 motions generally as well as KSA 60-1507 motions specifically filed by prisoners under sentence of death. The Senate Judiciary Committee slightly modified the language of SB 257 and recommended a substitute bill for HB 2389 containing this language. Senate Sub. for HB 2389 passed the Senate with these provisions, but they were removed by the conference committee – and the bill was passed without any specific death penalty-related provisions.

For more information, please contact:

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.go

Natalie Teemer-Washington, Research Analyst
Natalie.Teemer-Washington@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Lauren Douglass
Principal Research Analyst
785-296-3181
Lauren.Douglass@klrd.ks.gov

Judiciary

M-3 Judicial Selection

Current Method for Filling Vacancies

Article 3, Section 5 of the *Kansas Constitution* governs selection of Kansas Supreme Court justices. Since its amendment in 1958, Section 5 has specified any vacancy on the Court shall be filled through the Governor's appointment of one of three candidates nominated by the Supreme Court Nominating Commission (the Commission). The nonpartisan Commission has nine members: a chairperson who is an attorney chosen by the members of the Kansas Bar; one attorney member from each congressional district chosen by members of the Kansas Bar who reside in that district; and one non-attorney member from each congressional district appointed by the Governor.

The process for filling vacancies on the Kansas Court of Appeals is governed by statute and was amended by passage of 2013 HB 2019 to allow the Governor, with the consent of the Senate, to appoint a qualified person to fill a vacancy. Under this new procedure, the Governor must make an appointment within 60 days of receiving notice of the vacancy from the Clerk of the Supreme Court. Otherwise, the Chief Justice of the Supreme Court, with the consent of the Senate, will appoint a qualified person for the position. The Senate is required to vote on the appointment within 60 days of being received or, if the Senate is not in session and will not be in session within the 60-day time limit, within 20 days of the next session. If the Senate fails to vote within the time limit, its consent will be deemed given. If the appointee does not receive a majority vote in the Senate, the Governor will appoint another qualified person within 60 days, and the same consent procedure will be followed.

Once appointed, Supreme Court justices and Court of Appeals judges are subject to retention elections following their first full year in office and at the end of each term. Supreme Court justices serve six-year terms, and Court of Appeals judges serve four-year terms.

Recent Legislative Efforts

As the Kansas Court of Appeals is governed by statute, amending the method for filling vacancies on that court requires only a statutory amendment. The method for filling vacancies on the Kansas Supreme Court is governed by the *Kansas Constitution*, however, requiring a constitutional amendment to modify that process. Article 14, Section 1 of the *Kansas Constitution* provides that a concurrent resolution

originating in either house of the Legislature that is approved by two-thirds of all members will be considered by Kansas voters at the next election. If a majority of those voting on the amendment approves the amendment, it becomes a part of the *Kansas Constitution.*

During the 2013 Legislative Session, the Kansas Legislature considered numerous bills and concurrent resolutions related to judicial selection. One of these concurrent resolutions, HCR 5002, which was approved by the House Judiciary Committee, would have submitted a constitutional amendment to the qualified electors of the State to modify the method of selection for justices of the Kansas Supreme Court and add the law governing the Court of Appeals to the *Kansas Constitution*. Specifically, the amendment would have eliminated the Supreme Court Nominating Commission and allowed the Governor to appoint qualified persons to the Supreme Court and Court of Appeals using the procedure adopted for the Court of Appeals in 2013 HB 2019. While the method of appointment would have been modified, both Supreme Court justices and Court of Appeals judges would have continued to be subject to retention elections.

Several more concurrent resolutions concerning the selection of Kansas Supreme Court justices were introduced during the 2015 Legislative Session. HCR 5004 and HCR 5005 were both approved by the House Judiciary Committee. HCR 5004 would provide for election of justices. HCR 5005 is similar to 2013 HCR 5002.

For more information, please contact:

Lauren Douglass, Principal Research Analyst
Lauren.Douglass@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Robert Gallimore
Principal Research Analyst
785-296-3181
Robert.Gallimore@klrd.ks.gov

Judiciary

M-4 Sex Offenders and Sexually Violent Predators

Sex Offender Registration

In recent years, the Kansas Legislature has made significant amendments to the Kansas Offender Registration Act (the Act), KSA 22-4901 to 22-4911 and 22-4913, to comply with the federal Adam Walsh Sex Offender Registration and Notification Act (SORNA). The purpose of the federal law is to protect the public, in particular children, from violent sex offenders by using a more comprehensive, nationalized system for registration of sex offenders. It calls for state conformity to various aspects of sex offender registration, including the information that must be collected, duration of registration requirement for classifications of offenders, verification of registry information, access to and sharing of information, and penalties for failure to register as required. Failure of a jurisdiction to comply would result in a 10 percent reduction in Byrne law enforcement assistance grants. Seventeen states, Kansas included, substantially have implemented SORNA. The other states are Alabama, Colorado, Delaware, Florida, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, and Wyoming.

The Act outlines registration requirements for “offenders,” which is defined to include sex offenders, violent offenders, and drug offenders, in addition to persons required to register in other states or by a Kansas court for a crime that is not otherwise an offense requiring registration. The definitions of sex offenders, violent offenders, and drug offenders are based on the commission and conviction of designated crimes, KSA 22-4902. A first conviction of failure to comply with the provisions of the Act is a severity level 6, person felony; a second conviction is a level 5, person felony; and a third or subsequent conviction is a level 3, person felony. Additionally, failure to comply with the Act for more than 180 consecutive days is considered an aggravated violation – a level 3, person felony, KSA 22-4903.

Several entities collaborate to enforce the provisions of the Act. KSA 22-4904 lists the duties of each entity in its own subsection as follows:

(a) Courts (at the time of conviction or adjudication);

(b) Staff of a correctional facility;

(c) Staff of a treatment facility;

(d) Registering law enforcement agencies;

(e) Kansas Bureau of Investigation (KBI);

(f) Attorney General;

(g) Kansas Department of Education;

(h) Secretary of Health and Environment; and

(i) The clerk of any court of record.

Registration Requirements

KSA 22-4905 describes registration requirements. An offender must register in person with the registering law enforcement agency within three business days of coming into any county or location of jurisdiction in which the offender: resides or intends to reside, maintains employment or intends to maintain employment, or attends school or intends to attend school. Exceptions exist for anyone physically unable to register in person, at the discretion of the registering law enforcement agency. Additionally, sex offenders must report in person four times a year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment, or is attending school. Violent offenders and drug offenders, at the discretion of the registering law enforcement agency, are required to report in person three times each year and by certified letter one time each year. If incapacitated, the registering law enforcement agency may allow violent offenders and drug offenders to report by certified letter four times a year. An offender must register during the month of the offender's birth, and every third, sixth, and ninth month occurring before and after the offender's birthday. With some exceptions, the offender must pay a $20 fee each time.

Recent law (2013 SB 20) amended this section to provide that registration is complete even when the offender does not remit the registration fee, and failure to remit full payment within 15 days of registration is a class A misdemeanor, or, if within 15 days of the most recent registration two or more full payments have not been remitted, a severity level 9, person felony.

Offenders also must register in person within three business days of commencement, change, or termination of residence, employment status, school attendance, or other information required on the registration form, with the registering law enforcement agency where last registered and provide written notice to the KBI. Similarly, an offender must register within three business days of any name change. Finally, the offender must submit to the taking of an updated photograph when registering or to document any changes in identifying characteristics; renew any driver's license or identification card annually; surrender any drivers' licenses or identification cards from other jurisdictions when Kansas is the offender's primary residence (an exception exists for active duty members of the military and their immediate family); and read and sign registration forms indicating whether these requirements have been explained.

Special conditions exist for registration in certain circumstances. If in the custody of a correctional facility, the law requires offenders to register with that facility within three business days of arrival, but does not require them to update their registration until discharged, paroled, furloughed, or released on work or school release from a correctional facility. If receiving inpatient treatment at any treatment facility, the offender must inform the registering law enforcement agency of the offender's presence at the facility and the expected duration of the treatment. If an offender is transient, the law requires the offender to report in person to the registering law enforcement agency of the county or location of jurisdiction within three business days of arrival, and every 30 days thereafter, or more often at the discretion of the registering law enforcement agency. If traveling outside the United States, the offender must report in person to the registering law enforcement agency and the KBI 21 days prior to travel and provide an itinerary including destination, means of transport, and duration of travel. In an emergency, an offender must report within three business days of making arrangements for travel outside of the United States.

Duration of Registration

Pursuant to the Act, offenders are required to register for 15 or 25 years or for life, depending on the offense. Those crimes requiring registration for 15 years are: capital murder; murder in the first degree; murder in the second degree; voluntary

manslaughter; involuntary manslaughter; criminal restraint, when the victim is less than 18; a sexually motivated crime; a person felony where a deadly weapon was used; sexual battery; manufacture or attempted manufacture of a controlled substance; possession of certain drug precursors; when one of the parties is less than 18, adultery, patronizing a prostitute, or lewd and lascivious behavior; attempt, conspiracy, or criminal solicitation of any of these crimes; and convictions of any person required by court order to register for an offense not otherwise required by the Act.

Those crimes requiring registration for 25 years are: criminal sodomy, when one of the parties is less than 18; indecent solicitation of a child; electronic solicitation; aggravated incest; indecent liberties with a child; unlawful sexual relations; sexual exploitation of a child; aggravated sexual battery; promoting prostitution; or any attempt, conspiracy, or criminal solicitation of any of these crimes.

Those crimes requiring registration for life are: second or subsequent convictions of an offense requiring registration; rape; aggravated indecent solicitation of a child; aggravated indecent liberties with a child; criminal sodomy; aggravated criminal sodomy; aggravated human trafficking; sexual exploitation of a child; promoting prostitution; kidnapping; aggravated kidnapping; or any attempt, conspiracy, or criminal solicitation of any of these crimes. Additionally, any person declared a sexually violent predator is required to register for life. Offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is a severity level 1 non-drug felony or an offgrid felony, also must register for life.

For offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is not a severity level 1 non-drug felony or an off-grid felony, a court may:

- Require registration until the offender reaches the age of 18, five years after adjudication or, if confined, five years after release from confinement, whichever occurs later;
- Not require registration if it finds on the record substantial and compelling reasons; or
- Require registration, but with the information not open to the public or posted on the Internet. (The offender would be required to provide a copy of such an order to the registering law enforcement agency at the time of registration, which in turn, would forward the order to the KBI).

An offender required to register pursuant to the Act cannot expunge any conviction or part of the offender's criminal record while the offender is required to register.

Public Access to Offender Registration Information and the Kansas Bureau of Investigation Registered Offender Website

KSA 22-4909 provides that information provided by offenders pursuant to the Act is open to inspection by the public and can be accessed at a registering law enforcement agency, as well as KBI headquarters. Additionally, the KBI maintains a website with this information (http://www.accesskansas.org/kbi/ro.shtml), as do some registering law enforcement agencies. One of the provisions of this statute, added by 2012 HB 2568, prohibits disclosure of the address of any place where the offender is an employee or any other information about where the offender works on a website sponsored or created by a registering law enforcement agency or the KBI. While that information is not available online, it remains publicly available and may be obtained by contacting the appropriate registering law enforcement agency or by signing up for community notification through the KBI website.

Additionally, when a court orders expungement of a conviction or adjudication that requires registration, the offender must continue registering, although the registration is not open to inspection by the public or posted on the Internet. If the offender has an additional conviction or adjudication that requires registration that is not expunged, registration for that conviction or adjudication remains open to the

public and may be posted on the Internet, unless the registration is ordered restricted.

Court Decisions Regarding Offender Registration

In *State v. Myers*, 260 Kan. 669 (1996), the Kansas Supreme Court rejected an *ex post facto* challenge to the registration requirements, holding they did not unconstitutionally increase the punishment for the applicable crimes. However, the *Myers* court did hold that the public disclosure of registrant information would be punitive and an *ex post facto* violation when imposed retroactively.

Recent Kansas appellate court decisions have noted that the *Myers* holding that public disclosure applied retroactively is unconstitutional has been cast into doubt by the U.S. Supreme Court's decision in *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2D 164 (2003). The *Smith* court held that Alaska's offender registration scheme, including public disclosure of registrant information *via* a website, was nonpunitive and its retroactive application not an *ex post facto* violation. See, *e.g.*, *State v. Brown*, No. 107,512, unpublished opinion filed May 24, 2013. A petition for review in *Brown* was filed June 24, 2013, but was placed on hold in January 2014.

Development of Sex Offender Policy

Consistent with Kansas' early compliance with SORNA, the Kansas Legislature has been at the forefront of state and federal efforts to deal with the problem of sex offenders and sex predators. In addition to the SORNA amendments, since 1993 the Kansas Legislature has passed the Kansas Offender Registration Act (the Act); passed the Civil Commitment of Sexually Violent Predators Act; reinstated the death penalty for various acts of intentional and premeditated murder following the rape or sodomy of the victim or following the kidnapping of the victim; made life without parole the sentence for those persons convicted of a capital murder crime who are not given the sentence of death; nearly quadrupled the length of time more serious offenders, including sex offenders, serve in prison; lengthened the statute of limitations for sex crimes; and required DNA testing.

Legislation enacted in 2006 (SB 506) authorized the creation of the Sex Offender Policy Board (SOPB) under the auspices of the Kansas Criminal Justice Coordinating Council (KCJCC). The bill established the SOPB to consult with and advise the KCJCC on issues and policies relating to the treatment, sentencing, rehabilitation, reintegration, and supervision of sex offenders and to report its findings to the KCJCC, Governor, Attorney General, Chief Justice of the Supreme Court, the Chief Clerk of the House of Representatives, and the Secretary of the Senate. The SOPB's first report examined four topics: utilization of electronic monitoring, public notification pertaining to sex offenders, management of juvenile sex offenders, and restrictions on the residence of released sex offenders. The second report addressed the topics of treatment and supervision standards for sexual offenders, suitability of lifetime release supervision, and safety education and prevention strategies for the public.

Sex Offender Residency Restrictions

Legislation enacted in 2006 (SB 506) also prohibited cities and counties from adopting or enforcing any ordinance, resolution, or regulation establishing residential restrictions for offenders required to register under the Act. This provision was scheduled to expire on June 30, 2008. During the 2006 Interim, the Special Committee on Judiciary was charged by the Legislative Coordinating Council with studying actions by other states and local jurisdictions regarding residency and proximity restrictions for sex offenders to discover any serious unintended consequences of such restriction and identifying actions Kansas might take that actually achieve the intended outcome of increasing public safety. The Committee held a joint hearing with the SOPB to take testimony from experts in the field. The Committee recommended the Legislature wait to receive the report from the SOPB on the topic before any legislative action was taken.

On January 8, 2007, the SOPB issued a report on its findings regarding sex offender residency restrictions, with the following conclusions:

- Although residency restrictions appear to have strong public support, the Board

found no evidence to support their efficacy. It is imperative that policy makers enact laws that actually will make the public safe and not laws giving the public a false sense of security;

- It is recommended the Legislature make permanent the moratorium on residency restrictions. However, the moratorium should not be intended to interfere with a locality's ability to regulate through zoning the location of congregate dwellings for offenders such as group homes;
- Residency restrictions should be determined based on individually identified risk factors;
- The most effective alternative for protecting children is a comprehensive education program. It is recommended that the necessary resources be provided to an agency determined appropriate by the Legislature to educate Kansas parents, children, and communities regarding effective ways to prevent and respond to sexual abuse. Such an education program should include all victims and potential victims of child sexual abuse; and
- In order for an effective model policy to be developed, the issue of sex offender residency restrictions should be referred to the Council of State Governments, the National Governors Association, and similar organizations to prevent states and localities from shifting the population and potential problems of managing sex offenders back and forth among states.

During the 2008 Legislative Session, SB 536 was enacted to:

- Eliminate the sunset provision on the prohibition on cities and counties from adopting or enforcing any ordinance, resolution or regulation establishing residential restrictions for offenders;
- Add a provision to exempt any city or county residential licensing or zoning program for correctional placement residences that regulates housing for such offenders from the prohibition from adopting or enforcing offender residency restrictions;
- Add a provision which defines "correctional placement residence" to mean a facility that provides residential services for offenders who reside or have been placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse; and
- Clarify that a correctional placement residence does not include a single or multifamily dwelling or commercial residential building that provides residence to persons other than those placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse.

During the 2010 Interim, the Joint Committee on Corrections and Juvenile Justice Oversight studied the issue of residency restrictions and concluded that sex offender residency restrictions have no demonstrated efficacy as a means of protecting public safety.

Commitment of Sexually Violent Predators in Kansas

In Kansas, a sexually violent predator is a person who has been convicted of or charged with a "sexually violent offense" and who suffers from a mental abnormality or personality disorder, which makes the person likely to engage in repeat acts of sexual violence. Sexually violent predators are distinct from other sex offenders due to a higher risk to re-offend if their mental abnormality or personality disorder is left untreated. Those crimes considered "sexually violent offenses" are: rape, KSA 21-5503; indecent liberties with a child and aggravated indecent liberties, KSA 21-5506; criminal sodomy and aggravated criminal sodomy, KSA 21-5504; indecent solicitation of a child and aggravated indecent solicitation, KSA 21-5508; sexual exploitation of a child, KSA 21-5510; aggravated sexual battery, KSA 21-5505; and aggravated incest, KSA 21-5604. "Mental abnormality" is defined as a congenital or acquired condition affecting the emotional or volitional capacity, which predisposes the person to commit

sexually violent offenses in a degree constituting such person a menace to the health and safety of others. "Likely to engage in repeat acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

Pursuant to the Kansas Sexually Violent Predator Act (KSA 59-29a01 *et seq.*), originally enacted in 1994, a sexually violent predator can be involuntarily committed to the Sexual Predator Treatment Program (SPTP) at Larned State Hospital. Civil commitment is different from a criminal conviction. Instead of having a definitive time frame, civil commitment continues until the offender's mental abnormality or personality disorder has changed to the extent that he or she is safe to be released. Commitment can be accomplished only following a civil trial in which the court or a jury finds that a person is a sexually violent predator. A sexually violent predator would be required to complete the seven phases of the treatment program, which include five inpatient phases at Larned State Hospital and two outpatient phases at Osawatomie State Hospital. There is no time limit for completion of each phase. The offender must meet the predetermined requirements of the phase to progress.

Upon release from the secure facility, a person would then go to a transitional release or conditional release facility. These facilities cannot be located within 2,000 feet of a licensed child care facility, an established place of worship, any residence in which a child under 18 years of age resides, or a school or facility used for extracurricular activities of pupils enrolled in Kindergarten through grade 12. KSA 59-29a11(b). Additionally, no more than 16 sexually violent predators may be placed in any one county on transitional release or conditional release.

The Secretary of the Department for Children and Families is required to issue an annual report to the Governor and Legislature detailing activities regarding transitional and conditional release of sexually violent predators. Such details include their number and location, the number of those who have been returned to treatment at Larned State Hospital and the reasons for the return; and any plans for the development of additional transitional or conditional release facilities.

During the 2015 Session, House Sub. for SB 12 was enacted. This bill created and amended law governing the civil commitment of sexually violent predators and the SPTP. The bill's extensive provisions included the following:

- Named the continuing and new law governing such civil commitment the "Kansas Sexually Violent Predator Act";
- Adjusted the processes for identifying and evaluating persons who may meet the criteria of a sexually violent predator;
- Adjusted the processes for filing the petition alleging a person is a sexually violent predator and conducting the probable cause hearing and trial on such petition;
- Adjusted processes for post-commitment hearings and annual examinations;
- Adjusted standards and processes for transitional release, conditional release, and final discharge;
- Increased the limit on sexually violent predators that may be placed in any one county on transitional or conditional release from 8 to 16;
- Amended the statute setting forth rights and rules of conduct for sexually violent predators;
- Incorporated the Kansas Administrative Procedure Act, Kansas Judicial Review Act, and Office of Administrative Hearings into the procedures for addressing actions taken by the Kansas Department for Aging and Disability Services regarding SPTP residents; and
- Adjusted *habeas corpus* provisions for persons committed under the Act.

For more information, please contact:

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Natalie Teemer-Washington, Research Analyst
Natalie.Teemer-Washington@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Martha Dorsey
Principal Research
Analyst
785-296-3181
Martha.Dorsey@klrd.ks.gov

Local Government

N-1 Boundary Changes—Annexation

Introduction

Basically, there are three ways a municipality can change its boundaries: annexation, consolidation, or detachment. This article will discuss the first of these boundary change methods.

Annexation is defined as "the territorial expansion of a municipal corporation through the addition of new land." Nationally, there are five major methods of annexation: (1) state legislation; (2) municipal ordinance or resolution; (3) petition of the residents or landowners in the area to be annexed; (4) judicial action; and (5) boundary review commissions. Most states no longer use direct legislative action to provide for annexation. Instead, most states allow for annexation by way of general, permissive laws. Many states, including Kansas, provide for multiple methods of annexation. Briffault, Richard and Laurie Reynolds, *State and Local Government Law*, 6 Ed., West Group Publishing, July 2004, p. 180.

Kansas: Current Law

Kansas law allows cities to annex land by several different methods, depending upon the circumstances. Unilateral annexation is permitted in Kansas for annexations that meet certain criteria. Also permitted are consent annexations (given other criteria) and annexations involving the approval of the board of county commissioners.

All unilateral and most consent annexations are addressed in one statute. KSA 12-520 sets out the conditions under which each of these methods may take place.

Unilateral annexation – Pursuant to KSA 12-520(a), a municipality may annex land unilaterally (*i.e.*, without obtaining landowner consent or voter approval) under any of the following circumstances (Note: Statutory references in this article are to the 2015 Supplement.):

- The land is platted and some part of the land adjoins the city. KSA 12-520(a)(1);
- The land lies within or mainly within the city and has a common perimeter with the city boundary of more than 50 percent. KSA 12-520(a)(4);

- Annexing the land will make the city's boundary line more harmonious (limit: 21 acres). KSA 12-520(a)(5);
- The tract is situated so that two-thirds of any boundary line adjoins the city (limit: 21 acres). KSA 12-520(a)(6);
- The land adjoins the city and is owned by or held in trust for the city. KSA 12-520(a)(2); or
- The land adjoins the city and is owned by another government (certain restrictions apply). KSA 12-520(a)(3).

Note: KSA 12-520c allows for annexation, by consent, of land that does not adjoin a city if certain conditions are met. This is discussed later in this article.

A specific process must be followed for unilateral annexations. Public notification, notice to landowners within the area, and hearings are central to this process, but it is the city's governing body that makes the final decision to approve or reject the annexation. KSA 12-520a and 12-520b. Also, three years after annexation, the board of county commissioners is required to review and hold a hearing on the city's timetable for provision of services to the annexed area. If the board finds the city has not provided the planned services, the property may be deannexed within one and one half years of the board's findings. (The time periods were reduced by 2011 SB 150, as noted below.)

Consent Annexation – Cities may annex some properties without a public hearing process if certain other circumstances exist, including landowner consent:

- Adjoining land – A city may annex adjoining land if the landowner files a written petition for or consents to the annexation with the city. KSA 12-520(a)(7); and
- Noncontiguous land – The governing body of any city may, by ordinance, annex land not adjoining the city if all of the following conditions exist. An aggrieved owner or city may appeal to the district court. KSA 12-520c.
  - The land is located in the same county;
  - The owners of the land petition for or consent in writing to the annexation; and
  - The board of county commissioners determines, by a two-thirds vote, the annexation will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within such county.

County Board as City Boundary Setter (KSA 2015 Supp 12-521) – The board of county commissioners may be petitioned to act as boundary setter for:

- Annexations of land not covered in KSA 12-520; or
- Annexations of land covered in KSA 12-520 but for which the city deems it advisable not to annex under the provisions of that statute.

The city's petition requirement is followed by publication, public notice, notice to landowners within the area, and hearing requirements in the statute. The board of county commissioners must approve any such petition by a two-thirds vote of its members. In addition, the statute makes a distinction between bilateral annexations of 40 acres or more and those of less than 40 acres, as follows: (a) It requires any such annexation involving 40 acres or more be put to a vote of the qualified electors, which the bill defines as owners of land in the area proposed to be annexed; and (b) if the area to be annexed is less than 40 acres, it allows the board of county commissioners to render a judgment on the petition unless the board previously had granted three annexations of adjoining tracts within a 60-month period.

Annexation of Certain Lands Is Prohibited – The following annexations are prohibited under KSA 12-520:

- Agricultural lands consisting of 21 acres or more, unless the owner's written consent is received. KSA 12-520(b).
- Improvement districts incorporated under KSA 19-2753 *et seq.* on or before January 1, 1987. KSA 12-520(c).

- Highway rights-of-way, unless the abutting property on one or both sides is annexed. KSA 12-520(e).

Other Kansas statutes forbid certain other annexations as follows:

- No city may annex *via* KSA 12-520 (*i.e.*, unilaterally or by the consent circumstances in that statute) a narrow corridor of land to gain access to noncontiguous tracts of land. The corridor of land must have a tangible value and purpose other than to enhance future annexations. KSA 12-520 (g).
- No city may annex unilaterally territory of improvement districts where the formation process for the district began on or before January 1, 1987. KSA 12-520(c).
- If the annexation is of 40 acres or more and the qualified electors reject the annexation, no city may annex any lands within that area for 4 years. (There are exceptions for government-owned land and for consent annexation.) KSA 12-521(e).
- No city may annex any other incorporated city, in part or in its entirety. KSA 12-524.
- No city may annex any territory of a U.S. military reservation under control of the Department of the Army (applies to annexation proceedings that began after December 31, 1981). KSA 12-529.

Additional Annexation Provisions – See KSA 66-1,176, *et seq.* regarding city annexation and termination of rights to serve customers and retail electric suppliers.

Recent Kansas Legislative History

Annexation has been addressed by the Kansas Legislature. During the 15 years prior to and including the 2015 Legislative Session, at least 50 bills were introduced and debated. Of the 50 bills, 11 passed both legislative chambers. Of those 11, 8 were approved by the Governor, and 3 were vetoed.

The number of bills considered each biennium generally had been increasing, with a significant increase in the 2009-2010 biennium, until 2011-2012 when the number began to decline. The following table shows the number of annexation bills considered in each biennium:

Biennium	Number of Bills
2001-2002	3
2003-2004	5
2005-2006	7
2007-2008	6
2009-2010	15
2011-2012	7
2013-2014	6
2015-2016	1*
Total	**50**
* through 2015	

The bills addressed several different aspects of annexation, both of general (statewide) applicability and of more limited pertinence. Many bills have repeated the proposed provisions, either exactly or in similar fashion. Twenty-one of the bills dealt, at least in part, with unilateral annexation, but the topic has declined in popularity. The following table lists these unilateral annexation-related bills:

Biennium	Bills Containing Unilateral Annexation Provisions
2003-2004	HB 2043, HB 2654
2005-2006	HB 2185, HB 2229, HB 2230, **SB 24 (Approved**), SB 492
2007-2008	**HB 2058 (Approved),** HB 2917, HB 2978
2009-2010	HB 2084, HB 2471, HB 2478, **SB 51 (Vetoed)**, SB 204, **SB 214 (Approved)**, SB 254, SB 561
2011-2012	none
2013-2014	SB 301, HB 2765
2015-2016	**HB 2003 (Approved)** (through 2015)

The following table lists the unilateral annexation-related topics and the bills in which they were proposed:

Unilateral Annexation-Related Topics	Bills
Repeal outright	2005 HB 2185
Eliminate by requiring approval of board of county commissioners (BCC)	2003 HB 2043
Eliminate by requiring voter approval	2004 HB 2654; 2008 HB 2747
Prohibit unilateral unless BCC determines it will not have an adverse effect on county	2008 HB 2978; 2009 SB 118, SB 204, SB 561; 2010 HB 2478
Limit unilateral annexation to cities with 100,000+ population	2006 SB 492
Prohibit annexation of county-owned land unless city receives BCC permission	**2007 HB 2058 (Approved)**
Allow cities within 1/2 mile to challenge another city's unilateral annexation decisions	**2005 HB 24 (Approved)**
Require cities to consider 16 factors when annexing unilaterally	**2005 SB 24 (Approved)**
Require annexation of highway right-of-way under certain circumstances	2013 SB 301
Require land adjoin the city	**2015 HB 2003 (Approved)**

Another, more recent area of focus in legislation was annexation *via* approval by the board of county commissioners (*i.e.*, "county board as city boundary setter" or bilateral annexation). From 2007 through 2015, a total of 17 bills addressed this issue at least in part. The following table lists the topics related to this area and the bills in which they were proposed:

Board of County Commissioner (BCC) Approval	Bills
Require voter approval of any BCC-approved annexation	2009 HB 2029. HB 2031; 2010 HB 2470; 2011 **SB 150 (Approved),** SB 180, HB 2294
Prohibit BCC approval of the annexation of 21+ acres of unplanted agricultural land without landowner's consent	2009 HB 2029, HB 2030, **SB 51 (Vetoed)** (65 acres); 2010 HB 2470; 2011 SB 180, HB 2294
Prohibit annexation of county-owned land unless city receives BCC's permission	**2007 HB 2058 (Approved)**
Prohibit unilateral annexation unless BCC determines it will not have an adverse effect on county	2008 HB 2978; 2009 SB 118, SB 204; 2010 HB 2478, SB 561; 2011 HB 2294; 2012 HB 2478; **2015 HB 2003 (Approved)**
Revise review process of BCC-approved annexations	2014 HB 2733

Among other annexation-related topics, a number had been considered in multiple bills. Following is a brief description of three such topics:

- Revising the time line for service provision related to annexations – From 2004 through 2011, a total of seven bills were introduced and worked that would shorten the time line to determine whether promised services were provided to the annexed area before steps to deannex could begin. Although the specific time reductions were different in the bills, the issue was the same. One bill was introduced in 2004, one in 2008, two in 2009 (one of which, SB 51, passed both legislative chambers but was vetoed), and one in 2010. Finally, 2011 SB 150 was signed by the Governor. That bill, in part, reduced from five years to three years the time that must elapse following annexation (or related litigation) before the board of county commissioners is required to hold a hearing to consider whether the city has provided the services set forth in its annexation plan and timetable. The bill also reduced from two and a half years to one and a half years the time that must elapse following the services hearing (or conclusion of litigation) before a landowner may petition to the board of county commissioners to deannex the land in question;
- Prohibiting "strip" annexation – This topic has appeared in seven bills since 2008 and finally was approved in 2010 SB 214; and
- Expanding the scope of the court review regarding challenged annexations – This topic appeared in four bills and finally was approved in 2005 SB 24.

As mentioned previously, 2011 SB 150 made some significant changes in the annexation laws, particularly relating to bilateral annexation (*i.e.,* "county board as city boundary setter"). The most significant change was to require an election for specific bilateral annexations. The bill also required homestead rights attributable prior to annexation (in unilateral, bilateral, or most consent-annexation circumstances) to continue after annexation until the land is sold after the annexation.

For more information, please contact:

Martha Dorsey, Principal Research Analyst
Martha.Dorsey@klrd.ks.gov

Jill Shelley, Principal Research Analyst
Jill.Shelley@klrd.ks.gov

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Martha Dorsey
Principal Research
Analyst
785-296-3181
Martha.Dorsey@klrd.ks.gov

Local Government

N-2 Home Rule

Introduction

The Kansas Supreme Court reaffirmed in 2004 that cities have broad home rule powers granted directly by the people of the State of Kansas, and the constitutional home rule powers of cities shall be liberally construed to give cities the largest possible measure of self-government. The opinion, *State ex rel. Kline v. Unified Government of Wyandotte County/Kansas City, Kansas,* upheld the ability of cities to authorize by charter ordinance the Sunday sale of alcoholic liquor despite a state law prohibiting such sales. The Court found the state liquor laws were nonuniform in their application to cities and therefore subject to charter ordinance. See also *Farha v. City of Wichita*, a 2007 case affirming the ruling on *Kline*.

This article examines briefly the history of home rule in Kansas, and explains the different variations of Kansas local government home rule.

> Most states confer home rule powers on some or all of their cities and counties. The U.S. Advisory Commission on Intergovernmental Relations in 1993 reported cities in 37 states and counties in 23 states have constitutional home rule powers. Another 11 states provide home rule for cities by statute, and 13 additional states provide statutory home rule for counties. In Kansas, cities' home rule authority is authorized constitutionally, while counties are granted home rule powers by statute.

What Is Home Rule?

> *['Home rule' is] ... limited autonomy or self-government granted by a central or regional government to its dependent political units. It has been a common feature of multinational empires or states – most notably, the ancient Roman Empire and the British Empire – which have afforded measured recognition of local ways and measured grants of self-government provided that the local populations should remain politically loyal to the central government. It has also been a feature of state and municipal government in the United States, where state constitutions since 1875 have frequently been amended or revamped to confer general or specifically enumerated*

self-governing powers on cities and towns, and sometimes counties and townships. (Source: www.britannica.com/EBchecked/topic/270114/home-rule)

The United States' system of governance has many different levels. These levels – federal, state and local – all have a specific role to play in providing public services for the citizenry. At times, these levels of governance can overlap, or create gaps in the provision of services, leaving uncertainty about who has what type of authority.... (Source: "Dillon's Rule or Not?", National Association of Counties, Research Brief, January 2004, Vol. 2, No. 1.)

The question of authority between levels of government has taken different forms historically. In the United States, local governments are considered creatures of the state as well as subdivisions of the state and, as such, are dependent upon the state for their existence, structure, and scope of powers. State legislatures have plenary power over the local units of government they create, limited only by such restrictions they have imposed upon themselves by state law or by provisions of their state constitutions, most notably home rule provisions. The courts in the late 19th century developed a rule of statutory construction to reflect this rule of dependency known as "Dillon's Rule."

Dillon's Rule states that a local government has only those powers granted in express words, those powers necessarily or fairly implied in the statutory grant, and those powers essential to the accomplishment of the declared objects and purposes of the local unit. Any fair, reasonable, or substantial doubt concerning the existence of power is resolved by the courts against the local government. Local governments without home rule powers are limited to those powers specifically granted to them by the Legislature.

While local governments are considered dependent on the state, and therefore not autonomous, the political landscape changed significantly in Kansas beginning in the early 1960s. The following section describes the development of home rule powers for cities, counties, and, to a lesser extent, school districts.

City, County, and School District Home Rule—Brief History of Kansas Home Rule Provisions

A new era in city-state relations was inaugurated on July 1, 1961, the effective date of the City Home Rule Constitutional Amendment approved by voters at the November 1960 general election. Cities now can look directly to Article 12, Section 5 of the *Kansas Constitution* for the source of their powers. Cities are no longer dependent upon specific enabling acts of the Legislature. The Home Rule Amendment has, in effect, stood Dillon's Rule on its head by providing a direct source, from the people, of legislative power for cities.

Home rule for counties was enacted by statute in 1974. The county statutory grant generally is patterned after the city home rule constitutional amendment.

In 2003, schools were granted expanded administrative powers referred to by some as limited home rule powers. This limited grant of additional administrative power to schools occurred as a result of several years of effort to expand the powers of school districts by the Kansas Association of School Boards and other groups.

Constitutional Home Rule Grant for Cities

The key constitutional language contained in Article 12, Section 5, of the *Kansas Constitution,* reflecting the broad scope of the grant of home rule power for Kansas cities is as follows:

- "Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges, and other exactions. . . ."
- "Cities shall exercise such determination by ordinance passed by the governing body with referendum only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments applicable uniformly to all cities... and to enactments

of the legislature prescribing limitations of indebtedness."

- "Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city."
- "Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government."

The Home Rule Amendment applies to all cities regardless of their size. Further, the Home Rule Amendment is self-executing in that there is no requirement that the Legislature enact any law implementing it, nor are cities required to hold an election or adopt a charter, constitution, or some type of ordinance declaring their intent to exercise home rule powers.

Though the Home Rule Amendment grants cities the power to levy taxes, excises, fees, charges, and other exactions, the Legislature may restrict this power by establishing not more than four classes of cities—cities of the first, second, and third class having been defined in law. These classes are not classes for general government purposes. Rather, these are constitutional classes for purposes of imposing revenue limitations or prohibitions.

The only example, to date, where the Legislature has classified cities for the purpose of imposing limits upon or prohibiting taxes has been in the area of local retailers' sales taxes. In fact, 2006 SB 55 addressed this issue by reducing the number of classes of cities to one for the purpose of local retailers' sales taxes.

> The rules are simple—cities can be bound only by state laws uniformly applicable to all cities, regardless of whether the subject matter of the state law is one of statewide or local concern. If there is a nonuniform law that covers a city, the city may pass a charter ordinance and exempt itself from all or part of the state law and provide substitute or additional provisions. If there is no state law on a subject, a city may enact its own local law. Further, if there is a uniform law that does not expressly preempt local supplemental action, cities may enact additional nonconflicting local regulations compatible with the uniform state law.

Statutory Home Rule Grant for Counties

The County Home Rule Act provides that "the board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate …" subject only to the limits, restrictions, and prohibitions listed in the Act (KSA 19-101a). The statutory grant, likewise, contains a statement of legislative intent that the home rule powers granted to counties shall be liberally construed to give counties the largest measure of self-government. (KSA 19-101c).

County home rule is self-executing in the same manner as city home rule. The power is there for all 105 counties to use. No charter or local constitution need be adopted nor any election held to achieve the power, except in the case of Johnson County, which is covered by a special law authorizing the adoption of a charter by county voters. Voters in Johnson County approved the charter in November 2002.

Counties can be bound by state laws uniformly applicable to all counties. Further, nonuniform laws can be made binding on counties by amending the county home rule statute, which now contains 38 limitations on county home rule. Counties may act under home rule power if there is no state law on the subject. Counties also may supplement uniform

state laws that do not clearly preempt county action by passing non-conflicting local legislation.

Statutory Expansion of School District

KSA 72-8205 was amended in 2003 to expand the powers of school boards as follows:

- The board may transact all school district business and adopt policies the board deems appropriate to perform its constitutional duty to maintain, develop, and operate local public schools.
- The power granted by this subsection shall not be construed to relieve a board from compliance with state law or to relieve any other unit of government of its duties and responsibilities prescribed by law, nor to create any responsibility on the part of a school district to assume the duties or responsibilities are required of another unit of government.
- The board shall exercise the power granted by this subsection by resolution of the board of education.

The expanded administrative powers of school districts have not been reviewed by an appellate court to date.

City and County Home Rule Differences

The major distinction between county home rule and city home rule is the county home rule is granted by statute, whereas the city home rule is granted directly by the people. Because of its constitutional origins, only the voters of Kansas can ultimately repeal city home rule after two-thirds of both houses of the Kansas Legislature have adopted a concurrent resolution calling for amendment or repeal, or a constitutional convention has recommended a change. The Legislature can restrict city home rule powers only by enacting uniform laws that apply in the same way to all cities unless the subject matter is one of the few specific areas listed in the Home Rule Amendment, such as taxing powers and debt limitations. By contrast, the Legislature has a much freer hand to restrict or repeal statutory county home rule. Finally, the other factor distinguishing city and county home rule is the existence of numerous exceptions (34) to county home rule powers found in the statutory home rule grant of power.

"Ordinary" versus "Charter" Ordinances or Resolutions

Ordinary Home Rule Ordinances

City home rule must be exercised by ordinance. The term "ordinary" home rule ordinance was coined after the passage of the Home Rule Amendment, but is not specifically used in the *Kansas Constitution.* The intent of using the term is to distinguish ordinances passed under home rule authority that are not charter ordinances from all other ordinances enacted by cities under specific enabling acts of the Legislature. Similar terminology is used to refer to "ordinary" county home rule resolutions.

There are several instances where cities and counties may use ordinary home rule ordinances or resolutions. The first occurs when a city or county desires to act and there is no state law on the subject sought to be addressed by the local legislation. A second instance allows cities or counties to enact ordinary home rule ordinances or resolutions when there is a uniform state law on the subject, but the law does not explicitly preempt local action. The city or county may supplement the state law as long as there is no conflict between the state law and the local addition or supplement. A third instance involves situations where either uniform or nonuniform enabling or permissive legislation exists, but a city or county chooses not to utilize the available state legislation and instead acts under home rule.

City Charter Ordinances and County Charter Resolutions

A city charter ordinance is an ordinance that exempts a city from the whole or any part of any enactment of the Legislature that is nonuniform in its application to cities and that provides substitute or additional provisions on the same subject. A county charter resolution may be used in essentially the same manner.

Procedures for passage of city charter ordinances require a two-thirds vote of the members of the governing body of the city. Publication of the

charter ordinance is required once each week for two consecutive weeks in the official city newspaper. The charter ordinance is subject to a 10 percent protest petition and election procedures. County charter resolutions must be passed by a unanimous vote in counties where a three-member commission exists, unless the board determines ahead of time to submit the charter resolution to a referendum, in which case a two-thirds vote is required. In counties with a five or seven-member commission, a two-thirds vote is required to pass a charter resolution unless the charter resolution will be submitted to a vote, in which case a majority is required.

County charter resolutions must be published once each week for two consecutive weeks in the official county newspaper and are subject to a 2 percent or 100 electors (whichever is greater) protest petition and election procedure.

Conclusion

Cities and counties in Kansas have broad home rule powers, although the home rule powers of cities are more enduring due to the constitutional basis for these powers. The Kansas appellate courts, for the most part, have construed the home rule powers of both cities and counties in broad fashion, upholding the exercise of the powers. There are, however, some appellate decisions that have negated home rule actions and, in the process, have established restrictive rules of interpretation that cannot be reconciled with other home rule decisions. Whether the court has developed two conflicting lines of rationale for deciding home rule cases has not been resolved. The expanded administrative powers of school districts are referred to as limited home rule powers. The scope of these expanded powers is considerably less comprehensive when compared to the city and county home rule powers.

For more information, please contact:

Martha Dorsey, Principal Research Analyst
Martha.Dorsey@klrd.ks.gov

Reed Holwegner, Principal Research Analyst
Reed.Holwegner@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

O-1
Kansas Public Employees Retirement System Retirement Plans and History

Reed Holwegner
Principal Research Analyst
785-296-3181
Reed.Holwegner@klrd.ks.gov

Retirement

O-1 Kansas Public Employees Retirement System Retirement Plans and History

KPERS Overview—Brief History of State Retirement and Other Employee Benefit Plans

The Kansas Public Employees Retirement System (known generally as KPERS and referenced in this article as the Retirement System) administers three statewide plans. The largest plan, usually referred to as the regular KPERS plan, or simply as KPERS, has within it three tiers that include state, school, and local groups composed of regular state and local public employees; school district, vocational school, and community college employees; Regents' classified employees and certain Regents unclassified staff with pre-1962 service; and state correctional officers. A second plan is known as the Kansas Police and Firemen's (KP&F) Retirement System for certain designated state and local public safety employees. A third plan is known as the Kansas Retirement System for Judges that includes the state judicial system's judges and justices.

All coverage groups are defined benefit, contributory retirement plans and have as members most public employees in Kansas. Tier 1 of the KPERS plan is closed to new membership and Tier 2 closed to most new membership on December 31, 2014, except for certain state correctional personnel who will continue to be eligible for membership as new employees who are hired on and after January 1, 2015. Tier 3 of the KPERS plan became effective for new employees hired after January 1, 2015. The cash balance plan is a defined benefit, contributory plan, according to the Internal Revenue Service (IRS).

The primary purpose of the Retirement System is to accumulate sufficient resources to pay benefits. Retirement and death benefits paid by the Retirement System are considered off-budget expenses. Starting in FY 2000, retirement benefit payments, as proposed by the Governor and approved by the Legislature, were classified as off-budget, non-reportable expenditures. As the retirement benefit payments represent a substantial amount of money distributed annually to retirees and their beneficiaries, the historical growth in payments is tracked for informational purposes. Total benefits paid exceeded $500.0 million for the first time in FY 2000. Today, more than $1.3 billion is paid in annual retirement and death benefits.

The Retirement System also administers several other employee benefit and retirement plans: a public employee death and long-term disability benefits plan; an optional term life insurance plan; a voluntary deferred compensation plan; and a legislative session-only employee's retirement plan. The Legislature has assigned other duties to the agency in managing investments of moneys from three state funds: the Kansas Endowment for Youth Fund, the Senior Services Trust Fund, and the Treasurer's Unclaimed Property Fund.

The Retirement System is governed by a nine-member Board of Trustees. Four members are appointed by the Governor and confirmed by the Senate. One member is appointed by the President of the Senate. One member is appointed by the Speaker of the House. Two members are elected by System members. One member is the State Treasurer. The Board appoints the Executive Director who administers the agency operations for the Board.

The Retirement System manages assets in excess of $16.5 billion. Annually, the Retirement System pays out more in retirement benefits than it collects in employer and employee contributions. The gap between current expenditures and current revenues is made up with funding from investments and earnings. The financial health of the Retirement System may be measured by its funded ratio, or the relationship between the promised benefits and the resources available to pay those promised benefits. In the most recent actuarial valuation on December 31, 2014, the funded ratio for the Retirement System was 62.3 percent, and the unfunded liability was $9.468 billion. This is the amount of financing shortfall when comparing the Retirement System assets with promised retirement benefits.

The 2015 Legislature enacted SB 228 authorizing the issuance of $1.0 billion in taxable bonds. In August 2015, the Kansas Development Finance Authority issued the bonds with an effective interest rate of 4.69 percent. The bonds, with interest paid semi-annually, will mature over the next 30 years, until 2045. The bonds' proceeds become part of the Retirement System's valuation on December 31, 2015, which will be used to determine the participating employer contribution rates for FY 2018. Debt service for the bonds is subject to appropriation and not an obligation of KPERS.

Brief History of KPERS

KPERS was created by the 1961 Legislature, with an effective date of January 1, 1962. Membership in the original KPERS retirement plan (now referred to as KPERS Tier 1) was offered to state and local public employees qualified under the new law and whose participating employers chose to affiliate with KPERS. Another KPERS tier was created in 2007 for state, school, and local public employees becoming members on and after July 1, 2009. KPERS Tier 2 has many characteristics of the original plan, but with certain modifications to ensure that employees and employers will share in the total cost of providing benefits. A third tier was implemented January 1, 2015, for all new employees. The second and third KPERS tiers are described in the last section of this article.

School districts generally were not authorized to affiliate with KPERS until the 1970s, but there were three affiliating in 1963 as the first exceptions to the general rule. Two more school districts affiliated in 1966. Later in 1966, four of the five school districts that had affiliated with KPERS were dissolved by the Legislature effective July 1, 1966. No other school districts became affiliated with KPERS until 1971, when a general law brought the old State School Retirement System (SSRS) and its individual members into KPERS.

The 1970 Legislature authorized affiliation with KPERS on January 1, 1971, for any public school district, area vocational-technical school, community college, and state agency that employed teachers. Other public officials and officers not addressed in the original 1961 legislation had been authorized, beginning in 1963, to participate in KPERS as the result of a series of statutory amendments to KSA 74-4910, *et seq.*, that broadened participation to include groups defined as public rather than governmental exclusively. Amendments to KSA 74-4901 also broadened the definition of which governmental officials and officers were eligible for KPERS membership.

Calculation of Retirement Benefits and Eligibility for KPERS

KPERS Tier 1 and Tier 2 retirement benefits are calculated by a formula based on years of credited service multiplied by a statutory percentage for the type of service credit multiplied by final average salary.

For credited service, two categories were defined in the 1961 KPERS legislation: participating service, which was equal to 1.0 percent of defined salary for each year, and prior service equal to 0.5 percent of defined salary for each year. In 1965, the Legislature raised the prior service multiplier to 0.75 percent. In 1968, the prior service multiplier was raised to 1.0 percent, and the participating service multiplier was increased to 1.25 percent for all years of service.

In 1970, legislation set the participating service for school employees to be the same as other regular KPERS members, which was 1.25 percent at that time. The prior service multiplier for education employees was set at 1.0 percent for years under the SSRS and 0.75 percent for years of school service not credited under the SSRS. In 1982, legislation increased the participating service credit for state, school, and local KPERS members from 1.25 percent to 1.4 percent of final average salary for all participating service credited after July 1, 1982.

In 1993, legislation raised the multiplier to 1.75 percent for all years participating service for members who retired on or after July 1, 1993. Three different qualifications for normal retirement were established: age 65, age 62 with ten years of service; and 85 points (any combination of age plus years of service).

Legislation enacted in 2012, as subsequently clarified during the 2013 Legislative Session, applied a multiplier of 1.85 percent to Tier 2 members retiring under early retirement provisions, as well as to those retiring at the normal retirement dates.

Contribution Rates for KPERS

KPERS Tiers 1, 2, and 3 are participatory plans in which both the employee and employer make contributions. In 1961, employee contributions were statutorily set at 4.0 percent for the first $10,000 of total annual compensation. The $10,000 cap was eliminated by 1967 legislation. Tier 2 employee contribution rates were set at 6.0 percent by statute beginning July 1, 2009. Tier 1 employee contribution rates increased from 4.0 to 5.0 percent in 2014, and to 6.0 percent on January 1, 2015.

In the 1961 legislation, initial employer contributions were set at 4.35 percent (3.75 percent for retirement benefits and 0.6 percent for death and disability benefits) of total compensation of employees for the first year, with future employer contribution rates to be set by the KPERS Board of Trustees, assisted by an actuary and following statutory guidelines.

In 1970, the employer contribution rate for public education employers was set at 5.05 percent from January 1, 1971, to June 30, 1972, with subsequent employer contribution rates to be set by the KPERS Board of Trustees. In 1981, the Legislature reset the 40-year amortization period for KPERS until December 31, 2022, and accelerated a reduction in the employer contribution rates in FY 1982 to 4.3 percent for state and local units of government (KPERS nonschool) and to 3.3 percent for education units of government (KPERS school).

Actuarially recommended employer contribution amounts for the state and school group are determined by assessing the unfunded actuarial liability (UAL) of both groups and combining the separate amounts to determine one.

During the 1980s, the Legislature capped the actuarial contribution rates for employers on numerous occasions in statutory provisions. In 1988, the Legislature established two employer contribution rates, one for the state and schools and one for the local units of government. Previously, the state and local employer rate had been combined as the KPERS nonschool group. The amortization period for the combined state and school group was extended from 15 to 24

years, with employer contribution rates set at 3.1 percent for the state and 2.0 percent for the local employers in FY 1990.

The 1993 legislation introduced the statutory budget caps that would limit the amount of annual increase for employer contributions and provided a 25.0 percent increase in retirement benefits for those who retired on and after July 1, 1993, and an average 15.0 percent increase in retirement benefits for those who retired before July 1, 1993. In order to finance the increased benefits, the Legislature anticipated phasing in higher employer contributions by originally setting a 0.1 percent annual cap on budget increases. The gap between the statutory rates and the actuarial rates that began in the FY 1995 budget year has never been closed.

Legislation in 2015 (SB 228) authorized the issuance of pension obligation bonds. The Legislature reduced the statutory rate for participating employer contributions for FY 2016 and FY 2017 to 10.91 percent and 10.81 percent, respectively. In FY 2018 and subsequent fiscal years, the contribution rate may increase by no more than 1.2 percent above the previous year's contribution rate. According to the most recent actuarial analysis provided to KPERS, with the inclusion of the bond proceeds, the statutory rate is projected to equal the actuarial contribution rate in FY 2019 at 13.55 percent. In calendar year 2027, the funded ratio is estimated to reach 80.0 percent, which is the minimum ratio for which pension plans are considered by retirement experts to be adequately funded. The UAL is estimated to be funded in calendar year 2035.

The failure of KPERS participating employers to contribute at the actuarial rate since 1993 has contributed to the long-term funding problem. Other problems, such as investment losses, also have contributed to the shortfall in funding.

Retirement Benefits and Adjustments

The original 1961 KPERS legislation provided for the nonalienation of benefits. The KPERS Act stated: "No alteration, amendment, or repeal of this act shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal." This provision is found in KSA 74-4923.

The 1961 legislation exempted the KPERS retirement benefits from all state and local taxation. In other words, no taxes shall be assessed, and no retroactive reduction of promised benefits may be enacted. Any change in benefits must be prospective, unless it involves a benefit increase, which may be retroactive in application, as in the case of increasing the multiplier for all years of service credit.

An automatic cost-of-living adjustment (COLA) was not included in the original 1961 legislation. Over the years, the Legislature provided additional *ad hoc* post-retirement benefit adjustments for retirees and their beneficiaries.

KPERS Tier 2 and Tier 3 for Certain New Members

Legislation in 2007 established a Tier 2 for KPERS state, school, and local employees effective July 1, 2009, and made the existing KPERS members a "frozen" group in Tier 1 that no new members could join. The employee contribution rate for the "frozen" KPERS Tier 1 remained 4.0 percent.

The Tier 2 for employees hired on or after July 1, 2009, continued the 1.75 percent multiplier; allowed normal retirement at age 65 with 5 years of service, or at age 60 with at least 30 years of service; provided for early retirement at age 55 with at least ten years of service and an actuarial reduction in benefits; included an automatic, annual 2.0 percent COLA at age 65 and older; and required an employee contribution rate of 6.0 percent.

Legislation in 2012 established a Tier 3 for KPERS state, school, and local employees effective January 1, 2015, and made the existing KPERS members a "frozen" group in Tier 2 that no new members could join, except for certain state correctional personnel. The employee contribution rate for the "frozen" KPERS Tier 2 remained set

at 6.0 percent, but the COLA was eliminated and a new, higher multiplier of 1.85 percent was authorized to be applied retroactively for all years of credited service and for future years of service.

Effective January 1, 2015, the KPERS Tier 3 has the following plan design components:

- Normal retirement age—age 65 and 5 years of service, or age 60 and 30 years of service;
- Minimum interest crediting rate during active years—4.0 percent;
- Discretionary Tier 3 dividends—Modified formula based on KPERS funded ratio for awarding discretionary credits, and capped for early years;
- Employee contribution—6.0 percent;
- Employer service credit—3.0 percent for less than 5 years of service; 4.0 percent for at least 5, but less than 12 years of service; 5.0 percent for at least 12 but less than 24 years of service; and 6.0 percent for 24 or more years of service;
- Vesting—5 years;
- Termination before vesting—interest would be paid for the first 2 years if employee contributions are not withdrawn;
- Termination after vesting—option to leave contributions and draw retirement benefits when eligible, or withdraw employee contributions and interest but forfeit all employer credits and service;
- Death prior to retirement—5-year service requirement and if spouse had been named primary beneficiary, provide retirement benefit for spouse when eligible;
- Tier 3 early retirement—age 55 with 10 years of service;
- Default form of retirement distribution—single life with 10-year certain;
- Annuity conversion factor—2.0 percent less than the actuarial assumed investment rate of return;
- Benefits option—partial lump sum paid in any percentage or dollar amount up to 30.0 percent maximum;
- Post-retirement benefit—COLA may be self-funded for cost-of-living adjustments;
- Electronic and written statements—KPERS Board shall provide information specified. Certain quarterly reporting would be required;
- Powers reserved to adjust plan design—the Legislature may prospectively change interest credits, employer credits, and annuity interest rates. The Board may prospectively change mortality rates;
- Actuarial cost of any legislation—fiscal impact assessment by KPERS actuary required before and after any legislative enactments;
- Divorce after retirement—allow a retirant, if divorced after retirement, and if the retirant had named the retirant's ex-spouse as a joint annuitant, to cancel the joint annuitant's benefit option in accordance with a court order;
- If a member becomes disabled while actively working, such member shall be given participating service credit for the entire period of the member's disability. Such member's account shall be credited with both the employee contribution and the employer credit until the earliest of (i) death; (ii) attainment of normal retirement age; or (iii) the date the member is no longer entitled to receive disability benefits;
- A benefit of $4,000 is payable upon a retired member's death; and
- Employer credits and the guaranteed interest crediting are to be reported quarterly.

The 2012 legislation also further modified the KPERS Tier 1 plan design components and the participating employer funding requirements for contributions. Several other provisions enhanced supplemental funding for KPERS, first, by providing that 80.0 percent from sales of state property would be transferred to the KPERS Trust Fund and, second, by providing for annual transfers of up to 50.0 percent of the balance from the Expanded Lottery Act Revenue Fund to the KPERS Trust Fund after other statutory expenses are met.

The KPERS Tier 1 changes in 2012 included increasing member contributions from 4.0 percent to 5.0 percent on January 1, 2014, and to 6.0 percent on January 1, 2015, with an increase in multiplier to 1.85 percent for future service only, effective January 1, 2014. An alternative election, if approved by the IRS, would have allowed Tier 1 members to elect a reduction in their multiplier to 1.4 percent for future service only and retention of the current 4.0 percent employee contribution rate, effective January 1, 2014. No IRS approval was received in time for an election.

In a private letter ruling dated May 4, 2015, received after the deadline to hold an employee election, the IRS denied members an option to reduce contributions, reasoning to do so would violate the Internal Revenue Code's requirement that a state plan must have a one-time, irrevocable election that must be made no later than when an employee first becomes eligible under the plan. To allow a secondary election would make the plan resemble a cash or deferred arrangement (similar to a 401K) and would risk the plan's tax deferred status under federal tax law.

The 2012 legislation also modified the rate of increase in the annual caps on participating employer contributions. The current 0.6 percent cap would increase to 0.9 percent in FY 2014, 1.0 percent in FY 2015, 1.1 percent in FY 2016, and 1.2 percent in subsequent fiscal years until the UAL of the state and school group reaches an 80.0 percent funded ratio.

Legislation in 2014 modified Tier 3 components. The following Tier 3 provisions were included in that legislation:

- Changed the base year from 2016 to 2015 for initial calculation of interest credits on annuity savings accounts and on retirement annuity accounts;
- Reduced the minimum guaranteed crediting rate from 5.25 percent to 4.0 percent for both types of accounts;
- Revised the formula for determining the additional discretionary interest credits for both types of accounts; and
- Reduced the initial annuity interest rate credit from 6.0 percent at time of retirement to an interest rate equal to 2.0 percent less than the actuarial assumed investment rate of return, as established by the KPERS Board of Trustees upon the member's annuity start date. The current earnings assumption was set at 8.0 percent by the KPERS Board of Trustees in 1987.

For more information, please contact:

Reed Holwegner, Principal Research Analyst
Reed.Holwegner@klrd.ks.gov

Mark Dapp, Fiscal Analyst
Mark.Dapp@klrd.ks.gov

J. G. Scott, Assistant Director for Fiscal Affairs
JG.Scott@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Dylan Dear
Managing Fiscal Analyst
785-296-3181
Dylan.Dear@klrd.ks.gov

State Finance

P-1 District Court Docket Fees

Kansas has had a uniform system of district court docket fees since 1974. The original docket fees were $35 for civil cases and varying amounts for criminal cases, depending upon the nature of the crime. From 1984 to 1995, local law libraries could charge differing library fees that were in addition to statutorily set docket fees, which caused docket fees to be non-uniform.

In 1996, the Legislature enacted legislation that returned docket fees to a uniform level and also added docket fees for filing post-divorce motions for changes in child custody, modifications of child support orders, or changes in visitation. The 2006 Legislature enacted legislation specifying that only the Legislature can establish fees or moneys for court procedures including docket fees, filing fees, or other fees related to access to court procedures.

The 2006 Legislature raised docket fees for four purposes: to provide additional funding for the State General Fund associated with an approved judicial salary increase, to provide an increase in funding for the Kansas Law Enforcement Training Center Fund, to provide funding for the Kansas Judicial Council's judicial performance evaluation process, and for the Child Exchange and Visitation Centers Fund.

The 2009 Legislature raised docket fees to provide funding for the first phase of a statewide non-judicial personnel salary adjustment and raised the docket fee in criminal cases by $1 to fund a $1 increase to the Prosecuting Attorneys' Training Fund.

The 2014 Legislature redirected docket fees from state agencies to the Judicial Branch starting in FY 2014. Starting in FY 2015 docket fees are deposited in three places; the Judicial Council, the Electronic Filing Management Fund, and the Judicial Branch Docket Fee Fund. Through FY 2017 the Electronic Filing Management Fund will receive the first $3.1 million in clerk's fees. From FY 2018 forward, that amount will be reduced to $1.0 million for annual maintenance and upkeep.

The Office of Judicial Administration collected $29.0 million in district court docket fees for the State Treasury in FY 2015.

Fines Penalties and Forfeitures. In FY 2015, the Judicial Branch collected $17.2 million in fines, penalties, and forfeitures. A portion of funds collected, 33.6 percent, is earmarked for assisting victims of crime, alcohol, and drug abuse programs, children's services, and other law

enforcement-related activities. The remainder is transferred to the State General Fund for general operations.

Other Fees. In addition to docket fees, the Judicial Branch also imposes other fees and assessments on individuals who use the judicial system. The Judicial Branch collected $7.6 million in other fees and assessments in FY 2015. These fees support law enforcement related activities within the Kansas Bureau of Investigation, Office of the Attorney General, Board of Indigents' Defense Services, and the Department of Corrections.

The 2009 Legislature authorized the Supreme Court to enact a new surcharge in FY 2009. The surcharge is approved on an annual basis by the Legislature. In FY 2011, the Legislature extended the surcharge through FY 2012 and increased the surcharge by 25.0 percent. The FY 2014 Legislature abolished the Surcharge Fund and directed that all docket fees generated by the Surcharge be deposited in the Docket Fee Fund.

		FY 2015 Actual		FY 2016 Est.	
Name of Fund	**Administering Authority**	**Percent of Fees**	**Revenue to Fund (Est.)**	**Percent of Fees**	**Revenue to Fund (Est.)**
		Docket Fees			
Electronic Filing Management Fund	Chief Justice, Kansas Supreme Court	N/A	$3,100,000	N/A	$3,100,000
Judicial Council Fund	Judicial Council	0.99%	183,149	0.99%	172,161
Judicial Branch Docket Fee Fund	Chief Justice, Kansas Supreme Court	99.01%	25,752,915	99.01%	24,798,332
State General Fund	Kansas State Legislature	0.00%	0	0.00%	0
Docket Fee Total		***100.00%***	***$29,036,064***	***100.00%***	***$28,070,493***
		Fines, Penalties and Forfeitures			
Crime Victim's Compensation Fund	Attorney General	10.94%	$1,876,441	10.94%	$1,876,441
Crime Victim's Assistance Fund	Attorney General	2.24%	384,207	2.24%	384,207
Comm. Alcoholism and Intoxication Programs Fund	Department for Aging and Disability Services	2.75%	471,683	2.75%	471,683
Dept of Corr. Alcohol and Drug Abuse Treatment Fund	Department of Corrections	7.65%	1,312,137	7.65%	1,312,137
Boating Fee Fund	Department of Wildlife, Parks and Tourism	0.16%	27,443	0.16%	27,443
Children's Advocacy Center Fund	Attorney General	1.10%	188,673	1.10%	188,673
EMS Revolving Fund	Emergency Medical Services Board	2.28%	391,068	2.28%	391,068
Trauma Fund	Secretary of Health and Environment	2.28%	391,068	2.28%	391,068
Traffic Records Enhancement Fund	Department of Transportation	2.28%	391,068	2.28%	391,068
Criminal Justice Information Systems Line Fund	Kansas Bureau of Investigations	2.91%	499,126	2.91%	499,126
State General Fund	Kansas State Legislature	66.40%	11,389,003	66.40%	11,389,003
Fines, Penalties and Forfeitures Total		***100.00%***	***$17,152,113***	***100.00%***	***$17,152,113***

Name of Fund	Administering Authority	FY 2015 Actual Percent of Fees	FY 2015 Actual Revenue to Fund (Est.)	FY 2016 Est. Percent of Fees	FY 2016 Est. Revenue to Fund (Est.)
		Other Fees and Assessments			
State General Fund	Various	Fee	188,721	Fee	177,645
Law Enforcement Training Center Fund	Various	Fee	2,175,597	Fee	2,203,159
Marriage License Fees	Various	Fee	1,075,544	Fee	1,065,556
Correctional Supervision Fund	Various	Fee	952,507	Fee	951,463
Drivers License Reinstatement Fees	Various	Fee	879,943	Fee	878,805
KBI-DNA Database Fees	Various	Fee	645,720	Fee	620,001
Community Corrections Supervision Fee Fund	Various	Fee	543,081	Fee	498,561
Indigent Defense Services Application Fee	Various	Fee	474,797	Fee	459,481
Indigent Defense Services Bond Forfeiture Fees	Various	Fee	542,125	Fee	267,572
Other (Law Library, Court Reporter, Interest, etc.)	Various	Fee	117,371	Fee	157,562
Other Fees and Assessments Total			*$7,595,406*		*$7,279,805*
Grand Total of all Fees, Fines, Penalties and Forfeitures Assessed			**$53,783,583**		**$52,502,411**

For more information, please contact:

Dylan Dear, Managing Fiscal Analyst
Dylan.Dear@klrd.ks.gov

J.G. Scott, Assistant Director for Fiscal Affairs
JG.Scott@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

State Finance

P-2 Kansas Laws to Eliminate Deficit Spending

Various laws or statutory sections are designed to provide certain safeguards with respect to state budgeting and managing of expenditures, and to prevent deficit financing. These laws and statutes are summarized below.

Constitutional Provisions

Sometimes certain provisions of the *Kansas Constitution* are cited with regard to financial limitations. For instance, Section 24 of Article 2 says that "No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law." Section 4 of Article 11 states "The Legislature shall provide, at each regular session, for raising sufficient revenue to defray the current expenses of the state for two years."

Sections 6 and 7 of Article 11 relate to incurring public debt for the purpose of defraying extraordinary expenses and making public improvements. Such debt shall not, in the aggregate, exceed $1 million without voter approval of a law passed by the Legislature. The Kansas Supreme Court, in several cases over the years, has said these sections apply only to debts payable from the levy of general property taxes and thus do not prohibit issuance of revenue bonds to be amortized from non-property tax sources.

Unencumbered Balance Required

KSA 75-3730, enacted in 1953, states that all commitments and claims shall be preaudited by the Division of Accounts and Reports as provided in KSA 75-3731. "No payment shall be made and no obligation shall be incurred against any fund, allotment, or appropriation, except liabilities representing the expenses of the legislature, unless the Director of Accounts and Reports shall first certify that his or her records disclose there is a sufficient unencumbered balance available in such fund, allotment, or appropriation to meet the same."

State General Fund Ending Balance Law

Part of 1990 HB 2867 (then KSA 75-6704) provided that the Governor and Legislature must target year-end State General Fund balances expressed as a percentage of fiscal year expenditures and demand transfers, as follows: at least 5 percent for FY 1992, 6 percent for FY

J.G. Scott
Assistant Director for Fiscal Affairs
785-296-3181
JG.Scott@klrd.ks.gov

1993, 7 percent for FY 1994, and 7.5 percent for FY 1995 and thereafter (now KSA 75-6702). Beginning in the 1992 Legislative Session, an "Omnibus Reconciliation Spending Limit Bill" is to be relied upon to reconcile total State General Fund expenditures and demand transfers to the applicable ending balance target. The law does not require any future action by the Governor or Legislature if the target is missed when actual data on receipts, expenditures, and the year-end balance become known.

Allotment System

The allotment system statutes (KSA 75-3722 through 3725) were enacted in 1953 as part of the law which created the Department of Administration. In response to a request from Governor Carlin, the Attorney General issued an opinion (No. 82-160) on July 26, 1982, which sets forth some of the things that can and cannot be done under the allotment system statutes. Some of the key points in that opinion are:

- With certain exceptions, noted below, the Governor (through the Secretary of Administration and Director of the Budget) has broad discretion in the application of allotments in order to avoid a situation where expenditures in a fiscal year would exceed the resources of the State General Fund or a special revenue fund. Allotments need not be applied equally or on a *pro rata* basis to all appropriations from, for example, the State General Fund. Thus, the Governor may pick and choose "as long as such discretion is not abused."
- Demand transfers from the State General Fund to another fund are not subject to the allotment system because technically, appropriations are made from the other fund and not the State General Fund. Such transfers include those to the Local *Ad Valorem* Tax Reduction Fund, County and City Revenue Sharing Fund, City-County Highway Fund, State Highway Fund, State Water Plan Fund, and School District Capital Improvements Fund.
- The allotment system cannot be used in any fiscal year for the purpose of increasing the year-ending balance of a fund nor for controlling cash shortages that might occur at any time within a fiscal year. Thus, if a "deficit" were to be projected at the end of the fiscal year, the allotment system could be used to restore the State General Fund balance to zero.

The Legislature and the Courts and their officers and employees are exempt from the allotment system under KSA 75-3722.

The $100 Million Balance Provision

Part of 1990 HB 2867 (KSA 75-6704) authorizes the Governor to issue an executive order or orders, with approval of the State Finance Council, to reduce State General Fund expenditures and demand transfers if the estimated year-end balance in the State General Fund is less than $100 million. The Director of the Budget must continuously monitor receipts and expenditures and certify to the Governor the amount of reduction in expenditures and demand transfers that would be required to keep the year-end balance from falling below $100 million. Debt service costs, the State General Fund contribution to school employees retirement (KPERS-School), and the demand transfer to the School District Capital Improvements Fund created in 1992 are not subject to reduction.

If the Governor decides to make reductions, they must be on a percentage basis applied equally to all items of appropriations and demand transfers, *i.e.*, across-the-board with no exceptions other than the three mentioned above. In contrast to the allotment system law, all demand transfers but one are subject to reduction.

In August 1991 (FY 1992), the Governor issued an executive directive, with the approval of the State Finance Council, to reduce State General Fund expenditures (except debt service and the KPERS-School employer contributions) by 1 percent. At the time of the State Finance Council action, the projected State General Fund ending balance was projected at approximately $76 million.

Certificates of Indebtedness

KSA 75-3725a, first enacted in 1970, authorizes the State Finance Council to order the Pooled Money Investment Board (PMIB) to issue a certificate of indebtedness when the estimated resources of the State General Fund will be sufficient to meet in full the authorized expenditures and obligations of the State General Fund for an entire fiscal year, but insufficient to meet such expenditures and obligations fully as they become due during certain months of a fiscal year. The certificate must be redeemed from the State General Fund no later than June 30 of the same fiscal year in which it was issued. If necessary, more than one certificate may be issued in a fiscal year. No interest is charged to the State General Fund. However, to whatever extent the amount of a certificate results in greater spending from the State General Fund than would occur if expenditures had to be delayed, there may be some reductions in interest earnings that otherwise would accrue to the State General Fund.

To cover cash flow issues, the State Finance Council authorized issuance of certificates of indebtedness, as follows:

- $65 million in December FY 1983;
- $30 million in October FY 1984;
- $75 million in April FY 1986;
- $75 million in July FY 1987;
- $140 million in December FY 1987 (replaced the July certificate);
- $75 million in November FY 1992;
- $150 million in January FY 2000;
- $150 million in January FY 2001;
- $150 million in September FY 2002;
- $200 million in December FY 2002;
- $450 million in July FY 2003;
- $450 million in July FY 2004;
- $450 million in July FY 2005;
- $450 million in July FY 2006 ;
- $200 million in December FY 2007;
- $350 million in December FY 2008;
- $300 million in June FY 2009;
- $250 million in December FY 2009;
- $225 million in February FY 2009;
- $700 million in July FY 2010;
- $700 million in July FY 2011;
- $600 million in July FY 2012;
- $400 million in July FY 2013;
- $300 million in July FY 2014;
- $675 million in July FY 2015; and
- $840 million in July FY 2016.

The amount of a certificate is not “borrowed” from any particular fund or group of funds. Rather, it is simply a paper transaction by which the State General Fund is temporarily credited with the amount of the certificate and state moneys available for investment and managed by the PMIB. The PMIB is responsible under the state moneys for investing available moneys of all agencies and funds, as well as for maintaining an operating account to pay daily bills of the state. Kansas Public Employee Retirement System invested money is not part of “state moneys available for investment” nor is certain money required to be separately invested by the PMIB under statutes other than the state moneys law.

Certificates of indebtedness could be used if allotments were imposed or if expenditures were reduced under the $100 million balance provision, or if neither such action was taken.

For more information, please contact:

J.G. Scott, Assistant Director for Fiscal Affairs
JG.Scott@klrd.ks.gov

Dylan Dear, Managing Fiscal Analyst
Dylan.Dear@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

J.G. Scott
Assistant Director for Fiscal Affairs
785-296-3181
JG.Scott@klrd.ks.gov

State Finance

P-3 Local Demand Transfers

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

Distinction between Demand Transfers and Revenue Transfers

- **Demand transfers** are expenditures specified by statute rather than appropriation acts. An important characteristic of a demand transfer is that the amount of the transfer in any given fiscal year is based on a formula or authorization in substantive law. The actual appropriation of the funds traditionally was made through that statutory authority, rather than through an appropriation. In recent years, however, adjustments to the statutory amounts of the demand transfers have been included in appropriation bills. State General Fund demand transfers are considered to be State General Fund expenditures.
- A State General Fund **revenue transfer** is specified in an appropriation bill and involves transferring money from the State General Fund to a special revenue fund. Any subsequent expenditure of the funds is considered an expenditure from the special revenue fund.

Five statutory demand transfers flow to local units of government:

- Two of the local transfers are funded from sales tax revenues: the Local *Ad Valorem* Tax Reduction Fund (LAVTRF) and the County and City Revenue Sharing Fund (CCRSF). Both are to be distributed to local governments for property tax relief. The LAVTRF should receive 3.6 percent of sales and use tax receipts, and the CCRSF should receive 2.8 percent. While the

percentages are established in statute, in recent years, the transfers often have been capped at some level less than the full statutory amount or not funded at all;

- The other local transfer based on a specific revenue source is the Special City-County Highway Fund (SCCHF), which was established in 1979 to prevent the deterioration of city streets and county roads. Each year this fund is to receive an amount equal to the state property tax levied on motor carriers;
- The fourth transfer to local units of government is not based on a specific tax resource. The School District Capital Improvements Fund (SDCIF) is used to support school construction projects. By statute, the State Board of Education is to certify school districts' entitlements determined under statutory provisions and funding is then transferred from the State General Fund to the SDCIF; and
- The fifth transfer to local units of government is the School District Capital Outlay Fund (SDCOF). The 2005 Legislature created the capital outlay state aid program as part of its response to the Kansas Supreme Court's opinion in school finance litigation. The program is designed to provide state equalization aid to school districts for capital outlay mill levies up to eight mills.

Treatment of Demand Transfers as Revenue Transfers. In recent years, the local demand transfers, with the exception of the SDCOF, have been changed to revenue transfers. By converting demand transfers to revenue transfers, these funds cease to be State General Fund expenditures and are no longer subject to the ending balance law. The LAVTRF, CCRSF, and SCCHF were last treated as demand transfers in FY 2001, and the SDCIF transfer was changed to a revenue transfer in FY 2003.

Recent Funding for the Local Demand/Revenue Transfers. The SDCIF was the only local State General Fund transfer recommended for FY 2016.

- Full-year funding (at a level below the statutory amount) was last recommended for the LAVTRF and the CCRSF in FY 2002;
- In FY 2003, as part of approved State General Fund allotments, the second half of the scheduled transfers to the LAVTRF, CCRSF, and SCCHF were suspended, and no transfers have been made since FY 2004;
- Because of balances in the SCCHF, local governments received the full amounts of the SCCHF transfer in both FY 2003 and FY 2004, although only one of two scheduled transfers was made in FY 2003 and no State General Fund transfer was made in FY 2004. The FY 2005, FY 2006, FY 2007, and FY 2009; and
- The transfers to the SCCHF were approved at the FY 2003 pre-allotment amount. The FY 2009 transfer was approved at $6.7 million. No funding has been approved since FY 2009; and
- The transfer to the SDCOF was made in FY 2015, but is scheduled to be consolidated in the School Block Grant in FY 2016.

The following table reflects actual and approved local demand or revenue transfers (in thousands of dollars) for FY 2012-FY 2015:

Demand/Revenue Transfers from State General Fund for Local Units of Government FY 2014 - FY 2017 (Dollars in Millions)

	Actual 2014	Actual 2015	Approved Amount FY 2016	Approved Amount FY 2017	Change from FY 2016 $	Change from FY 2016 %
School District Capital Improvements Fund	$ 129.7	$ 145.0	$ 155.0	$ 162.5	$ 7.5	4.8%
School District Capital Outlay Fund	-	28.9	-	-	-	-
Local *Ad Valorem* Tax Reduction Fund	-	-	-	-	-	-
County and City Revenue Sharing Fund	-	-	-	-	-	-
City-County Highway Fund	-	-	-	-	-	-
TOTAL	**$ 129.7**	**$ 173.9**	**$ 155.0**	**$ 162.5**	**$ 7.5**	**4.8%**

Other Demand Transfers. In addition to the local demand/revenue transfers, three other transfers do not flow to local units of government.

One transfer provides matching funds for capital improvement projects at the **Kansas State Fair**. The amounts to be transferred are intended to match amounts transferred by the State Fair to its Capital Improvements Fund, up to $300,000. *A transfer of $100,000 was approved for FY 2016*.

Another provides for a statutory $6.0 million transfer from the **State General Fund** to the State Water Plan Fund. *No transfer was approved for FY 2016*.

The third provides for a transfer to the **Regents' Faculty of Distinction Fund**. This provides for a transfer to supplement endowed professorships at eligible educational institutions. *A transfer of $13,224 was authorized for FY 2016*.

For more information, please contact:

J.G. Scott, Assistant Director for Fiscal Affairs
JG.Scott@klrd.ks.gov

Dylan Dear, Managing Fiscal Analyst
Dylan.Dear@klrd.ks.gov

Bobbi Mariani, Managing Fiscal Analyst
Bobbi.Mariani@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Jennifer Ouellette
Fiscal Analyst
785-296-3181
Jennifer.Ouellette@klrd.ks.gov

State Government

Q-1 Indigents' Defense Services

The *U.S. Constitution* grants certain rights and protections to criminal defendants, including the right to be represented by an attorney. This right has been interpreted by the U.S. Supreme Court 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 also is responsible for paying the other costs associated with criminal defense, such as expert witness and transcription fees.

Finally, Legal Services for Prisoners, Inc., a non-profit corporation, is statutorily authorized to submit its annual operating budget to BIDS. Legal Services for Prisoners provides legal assistance to indigent inmates in Kansas correctional institutions.

Public Defender Offices

BIDS operates nine trial-level public defender offices throughout the state:

- 3rd Judicial District Public Defender (Topeka);
- Junction City Public Defender;
- Sedgwick County Regional Public Defender;
- Reno County Regional Public Defender;
- Salina Public Defender;
- 10th Judicial District Public Defender (Olathe);
- Western Kansas Regional Public Defender (Garden City)*;
- Southeast Kansas Public Defender (Chanute); and
- Southeast Kansas Public Defender Satellite Office (Independence).

*The Western Regional Public Defender Office closed a satellite branch in Liberal on September 1, 2009 after determining it was no longer cost-effective. Most of that caseload is now handled by contract attorneys.

BIDS also operates the following offices in Topeka:

- Appellate Defender;
- Death Penalty Defense Unit;
- Capital Appeals;
- Capital Appeals and Conflicts;
- Northeast Kansas Conflict Office; and
- State Habeas Office.

Finally, BIDS operates two other special offices outside of Topeka:

- Wichita Conflicts Office; and
- Death Penalty Defense Unit – Sedgwick County Satellite Office.

BIDS' officials report it monitors cost per case for each of its offices quarterly to determine the most cost-effective system to deliver constitutionally-required defense services and makes changes as needed to maintain its cost-effectiveness.

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.

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.

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 was "exceptional" and required 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 $80 per hour rate as an alternative cost savings strategy. BIDS conducted public hearings in 11 counties where it was determined that 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 and $69 per hour were implemented. BIDS has determined these rates are more cost-effective than opening additional public defender offices.

The 2006 Legislature had approved an increase in compensation rates from $50 to $80 per hour for assigned counsel beginning in FY 2007. This rate had previously been raised from $30 to $50 by the 1988 Legislature in response to a Kansas Supreme Court ruling.

Prior to FY 2006, BIDS paid assigned counsel expenditures from the operating expenditures account in its State General Fund appropriation. All professional services were treated as assigned counsel costs, including attorney fees, transcription fees, and expert witness fees. The FY 2006 budget added a separate line item for these other expenditures to more accurately account for assigned counsel costs.

Other Costs Affecting the Agency

Expert Witness and Transcription Fees

BIDS is required to pay the fees for expert witnesses and transcription. Most experts utilized by the agency have agreements to work at a reduced rate. However, the agency reported these costs have risen steadily since FY 2008 due to higher transcription costs mandated by the Kansas Supreme Court, new legal requirements for expert testimony, and an increasing appellate caseload.

Death Penalty Cases

Kansas reinstated the death penalty in 1994, following the end of a national moratorium imposed by the U.S. Supreme Court. More information about the death penalty in Kansas is available in the M-2 Death Penalty in Kansas article of this briefing book.

The Death Penalty Defense Unit was established to handle the defense of cases in which the death penalty could be sought. As with all cases handled by public defenders, though, conflicts of interest and other circumstances raise the possibility that outside counsel will have to be contracted to represent defendants.

Capital cases are more costly than other matters handled by BIDS. Not only do these cases take more time for trial, but also they require defense counsel to be qualified to handle the complexities and special rules of death penalty litigation. A report issued by the Judicial Council in 2004 found: "The capital case requires more lawyers (on both prosecution and defense sides), more experts on both sides, more pre-trial motions, longer jury selection time, and a longer trial." Kansas Judicial Council Death Penalty Advisory Committee, p. 17, January 29, 2004.

The Legislative Division of Post Audit (LPA) issued a Performance Audit in December 2003, "Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections." This report noted several findings and recommendations related to the cost of death penalty cases in Kansas:

- BIDS usually bore the cost of defending capital murder cases;
- Contracted attorneys for such cases were paid $100 per hour, with no fee cap; and
- It recommended BIDS ensure it had qualified attorneys in its Death Penalty Defense Unit and consider establishing a conflicts office (which it later did).

A follow-up study, also conducted by the Kansas Judicial Council Death Penalty Advisory Committee, was released on February 13, 2014 and updated cost data reported in LPA's 2003 report. The Advisory Committee found BIDS spent an average of $395,762 on capital cases that went to trial and where prosecutors sought the death penalty, compared to an average of $98,963 on other death penalty eligible cases that went to trial without the prosecutor seeking the death penalty. Kansas Judicial Council Death Penalty Advisory Committee, p. 7, February 13, 2014.

Other Offices Operated by the Agency

Appellate Defender Office

The Appellate Defender Office is located in Topeka and provides representation to indigent felony defendants with cases on appeal.

Northeast Kansas Conflict Office

The Northeast Kansas Conflict Office was established to deal with a large number of conflict cases in Shawnee County. The office also handles off-grid homicide cases in Lyon County. This office is budgeted with the 3rd District Public Defender Office and also is located in Topeka.

Sedgwick County Conflict Office

This office was established to defend conflict cases that cannot be handled by the Sedgwick County Public Defender Office.

Death Penalty Defense Unit

The Death Penalty Defense Unit was established after the reinstatement of the death penalty. BIDS determined it was more cost-effective to establish an office with attorneys specially qualified to handle defense in capital cases rather than relying on contract or assigned counsel.

Capital Appeals and Conflicts Office

The primary function of this office is to handle representation throughout the long and complex appellate process that follows the imposition of a death sentence. The office also handles some cases from the Appellate Defenders Office as time allows.

Capital Appeals Office

This office was established in 2003 to handle additional capital appeals. Specifically, the office was created to handle the appeals of Reginald and Jonathan Carr, who were both convicted of murder in Sedgwick County and sentenced to death. Due to conflict of interest rules, the existing Capital Appeals and Conflicts Office could only represent one of the two men. The establishment of the Capital Appeals Office resolved that conflict and doubled BIDS' capacity for handling death penalty appeals.

State Habeas Office

This office was established in FY 2015 to handle death penalty defense after a death sentence is upheld by the Kansas Supreme Court and petition for *certiorari* has been unsuccessful for the defense.

Legal Services for Prisoners

Legal Services for Prisoners, Inc. provides legal services to inmates in Kansas correctional facilities. The goal of the program is to ensure that prisoners' right to access the courts and pursue non-frivolous claims is met. Legal Services for Prisoners submits its annual budget to BIDS. Although Legal Services for Prisoners is not a state agency, its funding is administered through BIDS.

For more information, please contact:

Jennifer Ouellette, Fiscal Analyst
Jennifer.Ouellette@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Martha Dorsey
Principal Research Analyst
785-296-3181
Martha.Dorsey@klrd.ks.gov

State Government

Q-2 Kansas Open Meetings Act

Purpose

The Kansas Open Meetings Act (KOMA), KSA 75-4317 *et seq*., is one of two main laws that guarantee the business of government is conducted in the "sunshine." The second "sunshine" act is the Kansas Open Records Act (KORA), which is discussed in a separate briefing paper.

The open meetings law recognizes "that a representative government is dependent upon an informed electorate" and declares that the policy of the State of Kansas is one where "meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public" (KSA 75-4317).

The Kansas Supreme Court has recognized that the law is to be "interpreted liberally and exceptions narrowly construed" to carry out the purpose of the law. See *Memorial Hospital Association v. Knutson,* 239 Kan. 663, 669 (1986).

State and Local Public Bodies Covered by KOMA

The Kansas Open Meetings Act applies to the following:

- State agencies;
- Political and taxing subdivisions of the state;
- Legislative bodies of the state or its subdivisions;
- Administrative bodies of the state or its subdivisions;
- Boards, commissions, authorities, councils, committees, and subcommittees of the state or its subdivisions, or of legislative or administrative bodies thereof; and
- Other subordinate groups of any of the above entities that receive or expend and are supported in whole or in part by public funds (KSA 75-4318).

State Bodies Covered by KOMA

- The State Legislature, its legislative committees, and subcommittees unless rules provide otherwise;
- State administrative bodies, boards, and commissions;
- State Board of Regents;
- State Board of Education;
- Kansas Turnpike Authority; and
- Other State bodies.

Local Governments Covered by KOMA

- Cities;
- Drainage districts;
- Counties;
- Conservation districts;
- School districts;
- Irrigation districts;
- Townships;
- Groundwater management districts;
- Water districts;
- Watershed districts;
- Fire districts;
- Municipal energy agencies;
- Sewer districts; and
- Other special district governments.

One of the most difficult problems of interpretation of the open meetings law is to determine which subordinate groups of public entities are covered and which are excluded.

Representative Subordinate Groups	
Covered	**Not Covered**
Nonprofit Mental Health Services Providers	Nonprofit entity operating county hospital
Area Agencies on Aging	Kansas Venture Capital, Inc.
Economic Opportunity Foundation	Prairie Village Economic Development Commission
Three Rivers, Inc.	Hesston Area Service Center

Public Bodies Excluded From KOMA

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

- The Judicial Branch; and
- State or local bodies when exercising quasi-judicial powers (examples include teacher due process hearings, civil service board hearings for a specific employee, or zoning amendment hearings for a specific property).

Meetings: What Are They?

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

- Occurs in person or through the use of a telephone or any other medium for "interactive" communication (See also "Serial Meetings," below);
- Involves a majority of the membership of an agency or body (Prior to a change in 2009, a meeting was defined as involving the majority of a quorum of a body.); and
- Is for the purpose of discussing the business or affairs of the body.

A Kansas appellate court has held that informal discussions before, after, or during recesses of a public meeting are subject to the requirements of the open meetings law. *See Coggins v. Public Employee Relations Board*, 2 Kan. App.2d 416 (1978). Calling a gathering a "work session" does not exempt the event from the law if the three requirements of a meeting are met.

Serial Meetings. The Attorney General has said that serial communications among a majority of a quorum of a public body constitute a meeting, if the purpose is to discuss a common topic of business or affairs of that body by the members. (Note: The opinions were issued prior to the change in requirements from "majority of a quorum" to "majority.") Such a meeting may occur through calling trees, e-mail, or the use of an agent (staff member) of the body. [See Atty. Gen. Op. 98-26 and 98-49.] The use of instant messaging also would qualify as a meeting. In 2009, the law was changed to address such communication that some have called "serial meetings," or communications held in a series when, taken together, involve a majority of members. Pursuant to this change, KSA 75-4318(f) now deems interactive communications in a series to be open if the communications:

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

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

Is Binding Action the Trigger? In regard to discussing "the business or affairs of the body," binding action or voting is not necessary. It is the discussion itself that triggers the requirements of the open meetings law (KSA 75-4317a).

What About Social Gatherings? Social gatherings are not subject to KOMA as long as there is no discussion of the business of the public body.

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

Notice Required Only When Requested. Contrary to popular belief, KOMA does not require notice of meetings to be published in a newspaper or otherwise widely distributed. According to KSA 75-4318(b), notice must be given to any person or organization requesting it. Notice requests may expire at the end of a fiscal year, but the public body has a duty to notify the person of the pending expiration before terminating notice. The presiding officer has the duty to provide notice, but that duty may be delegated. No time limit is imposed for receipt of notice prior to the meeting.

Notice may be given in writing or orally, but it must be made individually to the person requesting it. Posting or publication in a newspaper is insufficient. A single notice can suffice for regularly scheduled meetings. There also is a duty to notify of any special meetings. No fee for notice may be charged.

Petitions for notice may be submitted by groups of people, but notice need be provided only to one person on the list, that person being designated as required by law. All members of an employee organization or trade association are deemed to have received a notice if one is furnished to the executive officer of the organization.

Agenda Not Required. KSA 75-4318(d) states: "Prior to any meeting …, any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting the agenda." In *Stevens v. City of Hutchinson,* 11 Kan. App. 2d 290 (1986), the court concluded that while the law does not require an agenda be created, if a body chooses to create an agenda, the agenda should include topics planned for discussion.

Minimal Requirements for Minutes. The only KOMA requirement regarding minutes exists in regard to closed or executive sessions. KSA 75-4319(a) requires that any motion to recess for a closed or executive meeting be recorded in the meeting minutes. (See "Executive Sessions: Procedure and Subjects Allowed" for additional information on executive sessions.)

Conduct of Meetings. Any person may attend open meetings, but the law does not require that the public be allowed to speak or have an item placed on the agenda. KOMA does not dictate the location of a meeting, the size of the room used (or even that a room must be used), or other accommodation-type considerations. The court has determined the key to determining whether a meeting is "open" is whether it is accessible to the public. See *Stevens v. City of Hutchinson,* 11 Kan. App. 2d 292 (1986).

KSA 75-4318(a) prohibits the use of secret ballots for any binding action. The public must be able to ascertain how each member voted.

Use of Cameras. Subject to reasonable rules, cameras and recording devices must be allowed at open meetings (KSA 75-4318(e)).

Subject Matter Justifying Executive Session

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

- Personnel matters of nonelected personnel. The purpose of this exception is to protect the privacy interests of individuals. Discussions of consolidation of departments or overall salary structure are not proper topics for executive session. This personnel exemption applies only to employees of the public agency. The personnel exemption does not apply to appointments to boards or committees, nor does it apply to independent contractors.
- Consultation with an attorney for the body or agency that would be deemed privileged in the attorney-client relationship. All elements of privilege must be present:
  - The body's attorney must be present;
  - The communication must be privileged; and
  - No other third parties may be present.
- Employer-employee negotiations to discuss conduct or status of negotiations, with or without the authorized representative who actually is doing the bargaining.
- Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships.
- Matters affecting an individual student, patient, or resident of a public institution.
- Preliminary discussions relating to acquisition (not sale) of real property.
- Security of a public body or agency, public building or facility, or the information system of a public body or agency, if open discussion would jeopardize security.

Executive Sessions: Procedure and Subjects Allowed

Requirements and restrictions on closed or executive sessions are contained in KSA 75-4319. Executive sessions are permitted only for the purposes specified. First, however, the public body must convene an open meeting and then recess into an executive session. Binding action may not be taken in executive session. Reaching a consensus in executive session is not in itself a violation of the KOMA. *O'Hair v. USD No. 300,* 15 Kan. App. 2d 52 (1991). A "consensus," however, may constitute binding action and violate the law if a body fails to follow up with a formal open vote on a decision that normally would require a vote. The law does not require an executive session; the decision to hold an executive session is discretionary.

Only the members of a public body have the right to attend an executive session. Mere observers may not attend. Inclusion of general observers means the meeting should be open to all members of the public. Persons who aid the body in its discussions may be admitted discretionarily.

Procedures for going into executive session include the following:

- Formal motion, seconded, and carried;
- Motion must contain a statement providing:
  - Justification for closure;
  - Subject(s) to be discussed; and
  - Time and place open meeting will resume.
- Executive session motions must be recorded in minutes. The law does not require other information to be recorded. Other minutes for open or executive sessions are discretionary, unless some other law requires them.

Enforcement of the KOMA

The 2015 Legislative Session resulted in significant changes to enforcement of both KOMA and the Kansas Open Records Act (KORA) *via* HB 2256. The bill requires the Attorney General to provide and coordinate KORA and KOMA training throughout the state, including through coordination with appropriate organizations. Further, the bill gives the Attorney General or county or district attorney various subpoena and examination powers in KORA and KOMA investigations.

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

Comparison with Other States' Laws

Recently, concern has arisen over several aspects of Kansas' open meetings law, and how they compare with those of other states. Among the concerns expressed were:

- What actually constitutes a meeting? For example, are social gatherings considered meetings? If so, in what instances? How many members must be present in order for a gathering to constitute a meeting?
- What kind of notice has to be given? Does this apply to all meetings or just specific types?

The following information was derived either from a 2002 states survey by the National Conference of State Legislatures (NCSL) or from direct research of a limited number of states' statutes. States included in the statute comparison were Alabama, Alaska, Arizona, Arkansas, Colorado, Idaho, Illinois, Indiana, Iowa, Mississippi, Missouri, Nebraska, Oklahoma, and Texas.

Inclusion of Legislatures in Open Meetings Laws. In the limited comparison of other states' statutes, the first item noted was that several states' legislative bodies are exempt from their open meetings laws. Of those compared, the states of Alaska, Arkansas, and Oklahoma exempted their legislatures, either specifically or by omission, from the open meetings laws. The statutes of one other state, Nebraska, were ambiguous as to whether its legislature is included. Indiana's Legislature was deemed not subject in *State ex rel. Masariu v. Marion Superior Court,* in which the court held that any judicial involvement in legislative open meetings and records matters constituted a violation of the separation of powers clause of the *Indiana Constitution*. By comparison, KOMA specifically includes the Legislature (KSA 75-4318).

What Constitutes a Meeting. Based on the limited comparison of other states' statutes, most states that included their legislatures defined a meeting as the gathering of a majority of the body's members. Only one of the states examined, Illinois, defined it as a "majority of a quorum." As mentioned previously, Kansas changed its law in 2009 from a majority of a quorum to a majority of the body's members.

The meeting definitions among the states examined varied as to whether social gatherings were specifically addressed. When specifically addressed, the mention was in the format of what a meeting does not include. Alabama's law states that a meeting does not include occasions when a quorum attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers, so long as the governing body does not deliberate specific matters expected to come before the governing body at a later date. Similarly, Missouri's law excludes an informal gathering of members of a body for ministerial or social purposes when there is no intent to avoid the purposes of the open meetings law.

Notice Details. In its 2002 report, NCSL indicated: "Most legislatures post meeting notices in the capitol or legislative building. Due to increased computer use, legislative assemblies now commonly enter notices into their computer systems and post

meeting listings on their Internet or Intranet sites. Only 13 chambers reported that they advertise committee meetings in newspapers, and six use radio or television announcements...."

The NCSL survey also indicated "[t]he items to be discussed usually must be included in the meeting notice as well.... [H]owever, committees often have the ability to take up issues not listed.

For more information, please contact:

Martha Dorsey, Principal Research Analyst
Martha.Dorsey@klrd.ks.gov

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Martha Dorsey
Principal Research Analyst
785-296-3181
Martha.Dorsey@klrd.ks.gov

State Government

Q-3 Kansas Open Records Act

Purpose

The Kansas Open Records Act (KORA)—KSA 45-215 *et seq.*—is one of two main laws that guarantee the business of government be conducted in the "sunshine." The other "sunshine" law is the Kansas Open Meetings Act, which is the subject of a separate briefing paper.

The open records law declares it is the public policy of Kansas that "public records shall be open for inspection by any person unless otherwise provided" (KSA 45-216). The burden of proving an exemption from disclosure is on the agency not disclosing the information (*SRS v. Public Employee Relations Board*, 249 Kan. 163 (1991)).

Who Is Covered by the Act?

Coverage under KORA is keyed to the definition of "public agency." Included in this definition are:

- The state;
- Any political or taxing subdivision of the state or any office, officer, agency, or instrumentality thereof; and
- Any other entity receiving or expending and supported in whole or in part by public funds that are appropriated by the state or its political and taxing subdivisions.

The definition covers all state agencies, cities, counties, townships, school districts, and other special district governments as well as any agencies or instrumentalities of these entities and any officers of the above public entities.

In addition, although not included in the KORA itself, KSA 45-240 requires non-profit entities, except health care providers, that receive public funds of at least $350 per year to adhere to certain open records requirements. The 2005 Legislature added this provision to require such non-profit entities to document the receipt and expenditure of public funds and make this information available to the public. Non-profit entities may charge a reasonable fee to provide this information.

Exclusions from Open Records Requirement

Certain entities and individuals that are excluded from the definition of "public agency" include:

- Any entity solely by reason of payment from public funds for property, goods, or services of the entity. This exemption is designed to exempt vendors who merely sell goods or services to the government, but the records of the public agencies making the purchases must be open to the public. (*See Frederickson*, 33 Kan. L. Rev. 216-7);
- Any municipal or state judge; and
- Any officer or employee of the state or local political or taxing subdivision, if the office they are provided is not open to the public at least 35 hours a week.

Further, judges of the district court are excluded from the definition of public agency, and judges' telephone records do not become public records merely because the telephone system is maintained by a county (Op. Atty Gen. 77 (1996)).

What Is a Public Record?

"Public record" is defined under KORA to mean "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency . . . " (KSA 45-217(g)(1)).

Excluded from the definition of public record are:

- Records owned by a private person or entity that are not related to functions, activities, programs, or operations funded by public funds;
- Records kept by individual legislators or members of governing bodies of political and taxing subdivisions; or
- Employers' records related to certain individually identifiable employee records. (KSA 45-217(g)(2) and (3)).

The above definition is quite broad. The comment has been made that the Act is meant to encompass "all recorded information—be it recorded on paper, video film, audiotape, photographs, mylar overlays for projectors, slides, computer disks or tape, or etched upon stone tablets."

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

Members of the public have the right to inspect public records during regular office hours and any established additional hours. If the agency does not have regular office hours, it must establish reasonable hours when persons may inspect records. An agency without regular office hours may require a 24-hour notice of desire to inspect. Notice may be required to be in writing. All records are open for inspection unless closed pursuant to specific legal authority (KSA 45-218 (a) and (b)).

Any person may make abstracts or obtain copies of a public record. If copies cannot be made in the place where the records are kept, the records custodian must allow the use of other copying facilities (KSA 45-219(b)). Members of the public cannot remove a record without written permission of the custodian (KSA 45-218(a)).

Computerized information can meet the definition of a public record and must be provided in the form requested if the public agency has the capability of producing it in that form. The agency is not required to acquire or design a special program to produce information in a desired form, but it has discretion to allow an individual who requests such information to design or provide a computer program to obtain the information in the desired form. (Op. Atty Gen. 152 (1988) [voter registration lists]; Op. Atty Gen. 106 (1989); and Op. Atty Gen. 137 (1987).)

However, KORA explicitly states a public agency is not required to electronically make copies of public records by allowing a person to obtain the copies by attaching a personal device to the agency's computer equipment (KSA 45-219 (g)).

A public agency is not required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, or illustrations unless the items were shown or played at a public meeting. Regardless, the agency is not required to

provide items copyrighted by someone other than the public agency (KSA 45-219(a)).

Duties of Public Agencies

Public agencies are required to:

- Appoint a freedom of information officer to assist the public with open records requests and disputes. That officer is to provide information on the open records law, including a brochure stating the public's basic rights under the law (KSA 45-226 and KSA 45-227);
- Adopt procedures to be followed (KSA 45-220(a)); and
- Provide, upon request, office hours, name of custodian of record, fees, and procedures for obtaining records (KSA 45-220(f)).

Rights of Public Agencies

The public agency may:

- Require the request to be written, but not on a specific form (KSA 45-220(b));
- Require written certification that the requestor will not use names and addresses obtained from the records from solicit sales to those persons whose names are contained in the list (KSA 45-220(c));
- Deny access if the request places an unreasonable burden in producing the record or is intended to disrupt the agency (KSA 45-218(e)); and
- Require payment of allowed fees in advance. Fees may include costs of any computer services and staff time (KSA 45-218(f) and KSA 45-219(c)).

Prohibited Uses of Lists of Names and Addresses

A list of names and addresses shall not be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed (KSA 45-220(c)(2) and KSA 45-230). This provision does not prohibit commercial use generally; it just applies to use of the names to sell or offer to sell property or a service. This provision does not prohibit the use of lists of names obtained from public records to solicit the purchase of property from the persons listed (water meters; promissory note underlying contract for deed).

Any person, including the records custodian, who violates this provision of the law and gives or receives records for this purpose can be penalized with a civil fine not to exceed $500 in an action brought by the Attorney General or a county or district attorney (KSA 45-230).

Records That Must Be Closed

Some public records are closed mandatorily by federal law, state statute, or Supreme Court rule. These types of public records must be closed and generally are referenced in KSA 45-221(a)(1). Approximately 260 different statutes require closure of certain public records. A few examples include:

- Child in need of care records and reports, including certain juvenile intake and assessment reports (KSA 38-2209);
- Unexecuted search or arrest warrants (KSA 21-5906);
- Grand jury proceedings records (KSA 22-3012); and
- Peer review records (KSA 65-4915(b)).

Records That May Be Closed

KSA 45-221(a)(1) to (55) lists other types of public records that are not required to be disclosed. The public agency has discretion and may decide whether to make these types of records available. However, the burden of showing that a record fits within an exception rests with the party intending to prevent disclosure. Some of the different types of records that may be closed discretionarily include:

- Records of a public agency with legislative powers, when the records pertain to proposed legislation or amendments. This exemption does not apply when such records are:

  - Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
  - Distributed to a majority of a quorum of any body with the authority to take action or make recommendations to the public agency with regard to the matters to which these records pertain (KSA 45-221(a)(21)).
- Records of a public legislative agency, when the records pertain to research prepared for one or more members of the agency. Again, this exemption does not apply (*i.e.*, the records would be open) when such records are:
  - Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
  - Distributed to a majority of a quorum of any body that has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain (KSA 45-221(a)(22));
- Records that are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure (KSA 45-221(a)(2));
- Medical, psychiatric, psychological, and alcohol or drug treatment records that pertain to identifiable individuals (KSA 45-221(a)(3));
- Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment in public agencies (KSA 45-221(a)(4));
- Letters of reference or recommendation pertaining to the character or qualification of an identifiable individual (KSA 45-221(a)(6));
- Information that would reveal the identity of any undercover agent or any informant reporting a specific violation of law (KSA 45-221(a)(5));
- Criminal investigation records (KSA 45-221(a)(10));
- Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications, or related information for any building or facility used for purposes requiring security measures in or around the building or facility, or for the generation or transmission of power, water, fuels, or communications, if disclosure would jeopardize security of the public agency, building, or facility (KSA 45-221(a)(12));
- Attorney work product (KSA 45-221(a)(25)); and
- Public records containing information of a personal nature when public disclosure would constitute a clearly unwarranted invasion of personal privacy (KSA 45-221(a)(30)).

Sunset of Exemptions

A sunset provision for all exemptions was added in 2000. The provision required a review of exemptions within five years, or they would expire. It also required any exemptions continued after legislative review to be reviewed again five years later (KSA 45-229). The Legislature began its review during the 2003 Interim and continued during the 2004 Session and the 2004 Interim. The review was completed during the 2005 Session and extended the life of more than 240 exemptions, which had been scheduled to expire on July 1, 2005. The extension, based on the legislation that resulted from this review, would have expired on July 1, 2011. The exceptions again were reviewed during the 2009 Interim. Recommendations from that review resulted in the extension of approximately the same number of exceptions by the 2010 Legislature. Twenty-eight exceptions were reviewed during the 2010 Interim and subsequently were approved in the 2011 Session. During the 2012 Session, exceptions reviewed and extended involved six subject areas and eight statutes (2012 HB 2569).

In 2013, the Legislature reviewed and extended exemptions in 15 statutes. Additionally, the Legislature modified the review requirement so that exceptions will no longer be subject to review and expiration if the Legislature has twice reviewed and continued the exception or reviews and continues the exception during the 2013 Session or thereafter (2013 HB 2012). In

2014, the Legislature conducted a final review of 36 exemptions. Two were stricken because the statutes creating those exemptions were repealed. Twelve were reviewed and continued in 2015 HB 2023. In 2015 HB 2256, exceptions were added for records of a public agency on a public website that are searchable by a keyword search and identify the home address or home ownership of a municipal judge, city attorney, assistant city attorney, special assistant county attorney, or special assistant district attorney.

Enforcement of the Open Records Law

The 2015 Session resulted in significant changes to enforcement of both KORA and the Kansas Open Meetings Act (KOMA) *via* HB 2256. The bill requires the Attorney General to provide and coordinate KORA and KOMA training throughout the state, including through coordination with appropriate organizations. Further, the bill gives the Attorney General or a county or district attorney various subpoena and examination powers in KORA and KOMA investigations.

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

Criminal Penalty for Altering Public Record

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

For more information, please contact:

Martha Dorsey, Principal Research Analyst
Martha.Dorsey@klrd.ks.gov

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Robert Gallimore, Principal Research Analyst
Robert.Gallimore@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Erica Haas
Principal Research Analyst
785-296-3181
Erica.Haas@klrd.ks.gov

State Government

Q-4 Legalization of Medical and Recreational Marijuana

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

Medical Use of Marijuana

History of Legislation in Kansas

In the last 11 years, 9 bills were introduced in the Kansas Legislature addressing the topic of medical marijuana. None of the bills were recommended for passage; however, during the 2015 Legislative Session, HB 2282 advanced out of its original committee and its contents passed the House Committee of the Whole as an amendment to HB 2049. HB 2282, as amended, would allow use of medical hemp preparations to treat or alleviate a patient's condition causing seizures, including those characteristic of epilepsy. The bill was withdrawn from General Orders in the House of Representatives and referred to the House Committee on Appropriations, where it remains. HB 2049 would amend the penalties for possession of marijuana so that a first offense would be a class B nonperson misdemeanor, a second offense would be a class A nonperson misdemeanor, and a third or subsequent offense would be a drug severity level 5 felony. Under current law, a first offense is a class A nonperson misdemeanor and any subsequent offense is a drug severity level 5 felony. The bill was referred to the Senate Committee on Corrections and Juvenile Justice at the end of the 2015 Legislative Session.

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

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

In 2008, SB 556 would have authorized physicians to issue written certifications to patients to allow for the use of marijuana or tetrahydrocannabinol (THC) for certain debilitating medical conditions. The bill would have provided doctors with immunity from criminal and civil liability for issuing certificates and would have created a defense to patients for possession of marijuana, THC, or drug paraphernalia to aid in the use of such substances.

Other States

The District of Columbia and 23 states have laws legalizing medical marijuana and cannabis programs. The laws in these states meet the following criteria: protection from criminal penalties for using marijuana for a medical purpose; access to marijuana through home cultivation, dispensaries, or some other system that is likely to be implemented; allowance for a variety of strains; and allowance of either smoking or vaporization of marijuana products, plant material, or extract.

Another 11 states allow use of low THC, high cannabidiol products for specific medical conditions or as a legal defense. Both Missouri and Iowa enacted laws in 2014 to allow cannabidiol oil to be prescribed to individuals who suffer from intractable epilepsy, a seizure disorder in which a patient's seizures fail to come under control with treatment.

Recreational Use of Marijuana

Other States

The District of Columbia and four states (Alaska, Colorado, Oregon, and Washington) have legalized the recreational use of marijuana as of October 2015. Twenty-one states introduced legislation in 2015 to advance or allow the use of recreational marijuana for adults.

The District of Columbia and 20 states have decriminalized the use of small amounts of marijuana. Additional decriminalization efforts were introduced in 17 states in 2015.

In addition to legalization and decriminalization, efforts to reform sentencing laws related to marijuana were introduced in 21 states in 2015. Utah, Wyoming, North Dakota, Louisiana, and Texas passed sentencing reforms in 2015. Most of these reforms have resulted in graduated penalties based on the amount of marijuana possessed and the number of convictions.

Wichita City Ordinance

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

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

The Kansas Supreme Court heard oral arguments on September 17, 2015. As of October 2015, the Court has not issued a ruling on the case.

For more information, please contact:

Erica Haas, Principal Research Analyst
Erica.Haas@klrd.ks.gov

Natalie Nelson, Research Analyst
Natalie.Nelson@klrd.ks.gov

Iraida Orr, Principal Research Analyst
Iraida.Orr@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Dylan Dear
Managing Fiscal Analyst
785-296-3181
Dylan.Dear@klrd.ks.gov

State Government

Q-5 State Employee Issues

This report discusses a variety of issues regarding state employees, including an explanation of classified and unclassified employees, benefits provided to state employees, recent salary and wage adjustments authorized by the Legislature, general information on the number of state employees, and the characteristics of the classified workforce.

Classified and Unclassified Employees. The state workforce is composed of classified and unclassified employees. Classified employees comprise nearly two-thirds of the state workforce, while unclassified employees comprise the remaining one-third. Classified employees are selected through a competitive process, while unclassified positions can be filled through direct appointment, with or without competition. While unclassified employees are essentially "at will" employees who serve at the discretion of their appointing authority, classified employees are covered by the "merit" or "civil service" system, which provides additional employment safeguards.

- All actions including recruitment, hiring, classification, compensation, training, retention, promotion, discipline, and dismissal of state employees shall be:
  - Based on merit principles and equal opportunity; and
  - Made without regard to race, national origin or ancestry, religion, political affiliation, or other non-merit factors and shall not be based on sex, age, or disability except where those factors constitute a bona fide occupational qualification or where a disability prevents an individual from performing the essential functions of a position.
- Employees are to be retained based on their ability to manage the duties of their position.

State Employee Benefits. Among the benefits available to most state employees are medical, dental, and vision plans; long-term disability insurance; deferred compensation; and a cafeteria benefits plan, which allows employees to pay dependent care expenses and non-reimbursable health care expenses with pre-tax dollars. In addition, state employees accrue vacation and sick leave. The vacation leave accrual rate increases after 5, 10, and 15 years. In general, the state also provides nine to ten days of holiday leave for state employees.

Retirement Plans. Most state employees participate in the Kansas Public Employees Retirement System (KPERS). Employees contribute 6.0 percent bi-weekly based on salary. The state contribution is set by law each year. In addition to the regular KPERS program, there are plans

for certain law enforcement groups, correctional officers, judges and justices, and certain Regents unclassified employees. Contributions from both the employee and the state differ from plan to plan.

Characteristics of State Employees. In FY 2014, a profile of classified state employees reflected the "average" classified employee is 46 years of age; has 13 years of state service; and earns an average annual salary of $37,720.

Compensation of State Employees. Kansas statutes direct the Director of Personnel Services, after consultation with the Director of the Budget and the Secretary of Administration, to prepare a pay plan for classified employees, which "shall contain a schedule of salary and wage ranges and steps." The statutes also provide, however, that this pay plan can be modified by provisions in an appropriation bill or other act. When the Governor recommends step movement on the classified pay plan, a general salary increase, or both, funding equivalent to the percentage increase for classified employees generally is included in agency budgets to be distributed to unclassified employees on a merit basis.

The previous Kansas Civil Service Basic Pay Plan consisted of 34 pay grades, each with 13 steps. The difference between each step was approximately 2.5 percent, and the difference between each salary grade was approximately 5.0 percent. Employees typically are hired into a job at the minimum of the salary grade. Until recently, assuming satisfactory work performance, the classified employees would receive an annual 2.5 percent step increase, along with any other general adjustment in salary approved by the Legislature. No classified step movement was recommended or approved from FY 2001 to FY 2006. In FY 2007, the Legislature approved a 2.5 percent step movement, effective September 10, 2006. There has been no further step movement since FY 2009.

New Classified Employee Pay Plans. The 2008 Legislature established five new pay plans for Executive Branch classified state employees and authorized multi-year salary increases for classified employees, beginning in FY 2009, who are identified in positions that are below market in salary.

The legislation enacted the recommendations of the State Employee Oversight Commission's five basic pay plans for classified employees. The exact provisions of the five pay plans are not specified by the legislation, but there is a reference to the pay plans as recommended by the State Employee Oversight Commission. The five pay plans, as recommended by the State Employee Oversight Commission, include:

- Basic Vocational Pay Plan (3,844 employees in 57 classifications), which is a step plan, but with more narrow pay grades than previously existed;
- Classified Pay Plan (11,917 employees in 282 classifications), which is a hybrid model with movement based on steps up to market and an open range, regulated through the use of zones, beyond market, and would include such classes as Human Service Specialists and Mental Health Developmental Disability Technicians;
- Management Pay Plan (256 employees in 20 classifications), which has open pay grades with pay movement based on position-in-range and performance and would include such classes as public service executives and corrections managers;
- Professional Individual Contributor Pay Plan (2,751 employees in 130 classifications), which is an open range model with market anchors and would include such classes as nurses and scientists; and
- Protective Services Pay Plan (3,215 employees in 42 classifications), which is a step model and would include such classes as uniformed officers of the Department of Corrections and the Kansas Highway Patrol.

The legislation authorized a four-year appropriation totaling $68.0 million from all funds, including $34.0 million from the State General Fund (SGF), for below- market pay adjustments (excluding the FY 2009 appropriation of $16.0 million). Due to budgetary considerations, the appropriation

for FY 2012 was eliminated, bringing the total appropriation to $58.7 million. The State Finance Council approved an appropriation of $11.4 million, including $8.1 million from the SGF for FY 2013.

The legislation also created the State Employee Pay Plan Oversight Committee. The Oversight Committee included seven voting members and two non-voting *ex officio* members:

- One member appointed by the President of the Senate;
- Two members appointed by the Speaker of the House;
- One member appointed by the Minority Leader of the Senate;
- One member appointed by the Minority Leader of the House;
- Two members appointed by the Governor, with at least one being a representative of a state employee labor union; and
- Two non-voting *ex officio* members: the Secretary of Administration or the Secretary's designee, and the Secretary of Labor or the Secretary's designee.

At least one member of the Oversight Committee was required to be a member of the Senate, and one member was required to be from the House of Representatives. The Oversight Committee was required to annually report to the Legislature at the beginning of each legislative session on the progress made in the development, implementation, and administration of the new pay plans and the associated performance management process. The Oversight Committee sunset on July 1, 2014.

Finally, the legislation codified a compensation philosophy for state employees. The philosophy was crafted by the State Employee Pay Philosophy Task Force and endorsed by the State Employee Compensation Oversight Commission during the 2007 Interim. The pay philosophy includes:

- The goal of attracting and retaining quality employees with competitive compensation based on relevant labor markets;
- A base of principles of fairness and equity to be administered with sound fiscal discipline; and
- An understanding that longevity bonus payments shall not be considered as part of the base pay for classified employees.

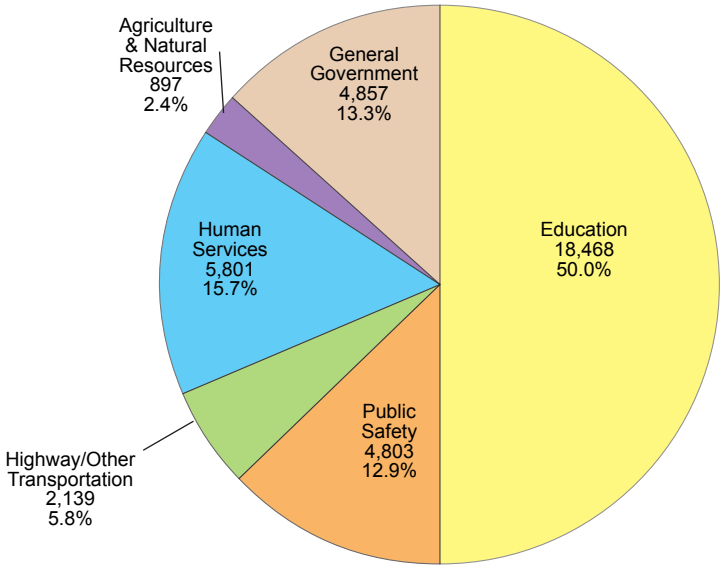
The following table reflects classified step movement and base salary increases since FY 1997:

Fiscal Year	Salary Adjustment
1997	Step Movement: 2.5 percent Base Adjustment: None
1998	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
1999	Step Movement: 2.5 percent Base Adjustment: 1.5 percent
2000	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
2001	Step Movement: 2.5 percent Base Adjustment: None
2002	Step Movement: None Base Adjustment: 3.0 percent, with 1.5 percent effective for full year, and 1.5 percent effective for half a year
2003	Step Movement: None Base Adjustment: None
2004	Step Movement: None Base Adjustment: 1.5 percent effective for last 23 pay periods
2005	Step Movement: None Base Adjustment: 3.0 percent
2006	Step Movement: None Base Adjustment: 2.5 percent, with 1.25 percent effective for full year, and 1.25 percent effective for half a year
2007	Step Movement: 2.5 percent, effective September 10, 2006 Base Adjustment: 1.5 percent
2008	Step Movement: None Base Adjustment: 2.0 percent
2009	Step Movement: None Base Adjustment: 2.5 percent Below Market Salary Adjustments
2010	Step Movement: None Base Adjustment: None Below Market Salary Adjustments
2011	Step Movement: None Base Adjustment: None Below Market Salary Adjustments
2012	Step Movement: None Base Adjustment: None
2013	Step Movement: None Base Adjustment: None
2014	Step Movement: None Base Adjustment: None Employee Bonus: $250 Bonus
2015	Step Movement: None Base Adjustment: None Employee Bonus: None

FY 2015. The 2015 Legislature approved a total of 36,965.6 full-time equivalent (FTE) positions, a net reduction of 842 positions below the 2014 actual number. Major adjustments include a reduction of 395.8 FTE positions in the Department for Children and Families and 112.0 positions for the closure of Rainbow Mental Health Facility, offset partially by an increase in the Commission of Veterans Affairs of 69.2 FTE positions.

- Full-time equivalent (FTE) positions are permanent positions, either full-time or part-time, but mathematically equated to full-time. For example, two half-time positions equal one full-time position.
- Non-FTE unclassified permanent positions are essentially unclassified temporary positions that are considered "permanent" because they are authorized to participate in the state retirement system.

The following chart reflects approved FY 2015 FTE positions by function of government:



Largest Employers. The following table lists the ten largest state employers and their numbers of FTE positions:

Agency	FTE Positions
University of Kansas	5,342.0
Kansas State University	3,861.7
University of Kansas Medical Center	2,632.4
Children and Families, Department for	2,251.5
Transportation, Department of	2,139.5
Wichita State University	2,017.1
Judicial Branch	1,862.3
KSU-ESARP	958.5
Pittsburg State University	944.0
Revenue, Department of	1,125.1
* Source: 2015 IBARS Approved	

For more information, please contact:

Dylan Dear, Managing Fiscal Analyst
Dylan.Dear@klrd.ks.gov

Bobbi Mariani, Managing Fiscal Analyst
Bobbi.Mariani@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Natalie Teemer-Washington
Research Analyst
785-296-3181
Natalie.Teemer-Washington@klrd.ks.gov

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State Government

Q-6 Veterans and Military Personnel Benefits

Most benefits for military personnel and veterans are offered by the federal government. However, through legislation, states offer additional benefits and resources to veterans and military families. Kansas has established agencies to assist veterans and military family members in filing claims for federal benefits and offers other benefits for veterans and their families who reside in the state. This article summarizes recent Kansas legislation enacted to support veterans and military families, the state agency established to help veterans and military families access their benefits, and some of the benefits available to veterans and military families in Kansas along with resources for more detailed information.

2015 Legislation

Kansas regularly passes legislation to address veterans' needs. Legislation passed in 2015 established additional benefits for veterans and military families and reorganized statutes to ensure continued access to benefits. 2015 HB 2154 established a permissive veterans' preference in private employment; established employment reinstatement protections for certain servicemembers; changed the residency requirement for in-state tuition for veterans and military family members using federal benefits to pay tuition; modified the statute relating to professional credentialing for military servicemembers and military spouses; and amended statutes related to diversions, court-ordered treatment, and sentencing with regard to military servicemembers and veterans. These changes along with information about other benefits for Kansas veterans, servicemembers, and military families are summarized under the various headings below.

Benefits Assistance

Kansas Commission on Veterans' Affairs Office (KCVAO). The KCVAO provides Kansas veterans and their families with information and assistance by coordinating programs and services to help them improve their quality of life. The KCVAO's available services range from helping veterans file claims for medical, educational, or other benefits to helping veterans obtain earned medals and military awards. KCVAO Veterans' Services Representatives are available, free of charge, to assist veterans and family members.

Veterans Claims Assistance Program (VCAP). The purpose of the VCAP is to improve the coordination of veterans' benefits counseling

in Kansas and to ensure taxpayer dollars are used efficiently and effectively and every veteran is served and receives necessary counseling and assistance. The VCAP, through its new advisory board, also advises the Director of the KCVAO on all veterans' services, including the VCAP. The VCAP Advisory Board also makes recommendations to the Director of the KCVAO regarding match funding levels for veterans' service organizations.

State of Kansas Veterans' Benefits

Education

Residency. Veterans, their spouses, and their children are considered residents by community colleges and Board of Regents institutions. When such a person is using federal educational benefits to attend college in Kansas and is living in Kansas, the person will be charged in-state tuition and fees regardless of length of residency.

Scholarships. Kansas offers scholarships to veterans, active duty military personnel, and Kansas National Guard members. In some cases, spouses and dependents of veterans also are eligible for scholarship consideration.

The Kansas Military Service Scholarship covers tuition and fees for active duty servicemembers and honorably discharged (or generally discharged under honorable conditions), veterans who deployed or received hostile fire pay for at least 90 days after September 11, 2001. The 90-day requirement may be waived if the service member was injured during such military service.

Kansas National Guard Educational Assistance provides a percentage of tuition and fees for enlisted personnel in the Kansas Air/Army National Guard who have a high school diploma or GED, have less than 20 years of service, and have not already obtained a bachelor's degree.

Kansas also offers free tuition and fees to dependents and unmarried widows and widowers of servicemembers killed in action while serving on or after September 11, 2001; dependents of those who are prisoners of war or missing in action; and dependents of those who died as a result of service-connected disabilities suffered during the Vietnam conflict.

Obligations to the State for taking certain types of state scholarships can be postponed for military service.

Kansas also offers ROTC scholarships at Board of Regents institutions, Washburn University, and community colleges for students interested in becoming commissioned officers in the armed forces.

More information about educational resources available to veterans and military families can be found at:

- http://myarmybenefits.us.army.mil/Home/Benefit_Library/State__Territory_Benefits/Kansas.html; and
- http://www.kansasregents.org/students/military

Military Interstate Children's Compact Commission. Kansas has been a member of the Military Interstate Children's Compact Commission since 2008. The Compact addresses educational transition issues military families face when relocating to new duty stations. The compact assists military families with enrollment, placement, attendance, eligibility, and graduation. Active duty servicemembers' children, National Guard and Reserve servicemembers on active duty orders, and servicemembers or veterans who are medically discharged or retired for one year are eligible for assistance under the Compact.

More information and points of contact are available at: http://mic3.net/pages/contact/Map/kansas.aspx.

Emergency Financial Assistance

The Adjutant General may enter into grants and interest-free loans with Kansas National Guard servicemembers, members of the reserve forces, and their families to assist with financial emergencies. Individuals may contribute to the Military Emergency Relief Fund by checking the designated block on their individual income tax return forms.

Employment

Veterans' Preference. The veterans' preference applies to initial employment and first promotion with state government and with counties and cities in "civil service" positions. Veterans are to be preferred if "competent," which is defined to mean "likely to successfully meet the performance standards of the position based on what a reasonable person knowledgeable in the operation of the position would conclude from all information available at the time the decision is made."

Veterans' preference applies to veterans who have been honorably discharged from the armed forces. The veterans' preference will also extend to spouses of veterans who have 100 percent service-connected disability, surviving spouses (who have not remarried) of veterans killed in action or died as result of injuries while serving, or the spouses of prisoners of war. Veterans' preference does not apply to certain types of jobs such as elected positions, city or county at-will positions, positions that require licensure as a physician, and positions that require the employee to be admitted to practice law in Kansas.

The hiring authority is required to take certain actions, including noting in job notices that the hiring authority is subject to veterans' preference, explaining how the preference works, and explaining how veterans may take advantage of the preference.

For more information regarding veterans' preference, visit: http://da.ks.gov/ps/aaa/recruitment/veterans/vetemployinfo.htm.

Private Veterans Preference. Private employers may establish a veterans hiring preference in Kansas. The veterans preference must be in writing and must be applied consistently. Veterans are required to provide the employer with proof of military service and discharge under honorable conditions.

Pensions and Life Insurance. State pension participants away from state jobs for military service may be granted up to five years of state service credit for their military service. An employee may buy up to six years of service credit that is not granted, and purchased service need not be preceded or followed by state employment.

Additionally, an absence for extended military service is not considered termination of employment unless the member withdraws accumulated contributions.

Basic life insurance, worth 150 percent of annual salary, continues while the employee is on active duty. An employee may continue to have optional life insurance by paying the premiums for 16 months; after that, the policy may be converted to an individual policy.

Position Reinstatement. An officer or employee of the State or any political subdivision does not forfeit that position when entering military service; instead, the job has a "temporary vacancy," and the original jobholder is to be reinstated upon return. Anyone called or ordered to active duty by this state, or any other states' reserve compartment and who gives notice to his or her public or private employer and reports back to that employer within 72 hours of discharge is to be reinstated to the former position (unless it was a temporary position). A state employee who returns to classified service within 90 days after an honorable discharge is to be returned to the same job or another job comparable in status and pay in the same geographic location. A state employee's appointing authority may grant one or more pay step increases upon return.

Professional Licenses–Credit for Military Education and Training. Statutes direct state agencies issuing professional licenses to accept from an applicant for license the education, training, or service completed in the military. The education, training, or service must be equal to the existing educational requirements established by the agency. The license may be granted even if the service member was discharged under less than honorable conditions.

While this rule generally does not apply to the Board of Nursing, the Board of Emergency Medical Services, or the practice of law, there are special provisions for nurses and emergency medical technicians. Statutes authorize the Board of Nursing to waive the requirement that an applicant

graduate from an approved school of practical or professional nursing if the applicant passed the National Council Licensure Examination for Practical Nurses, has evidence of practical nursing experience within the U.S. Military, and was separated from service with an honorable discharge or under honorable conditions.

Statute also mandates the granting of an Attendant's Certificate to an applicant who holds a current and active certification with the National Registry of Emergency Medical Technicians and who completed emergency medical technician training as a member of the U.S. Military. For these provisions to apply, the applicant must have received an honorable discharge or have been separated under honorable conditions.

Professional Licenses–Maintaining License While Serving. A license issued by the State to engage in or practice an occupation or profession is valid while the licensee is in military service and for up to six months following release, without the licensee paying a renewal fee, submitting a renewal application, or meeting continuing education or other license conditions. (This provision does not apply to licensees who engage in the licensed activity outside of the line of duty while in military service.) No such license may be revoked, suspended, or canceled for failure to maintain professional liability insurance or failure to pay the surcharge to the Health Care Stabilization Fund.

Professional Licenses–Military Servicemembers' Non-resident Military Spouses. Kansas professional licensing bodies are required to grant professional licenses to nonresident military spouses and servicemembers who hold professional licenses in other states, if the licensees meet certain requirements. These licenses must be issued within 60 days after a complete application is submitted.

Probationary Licenses–Servicemembers and Military Spouses. A service member or military spouse may have a license on a probationary basis for up to six months when the licensing body does not have licensure, registration, or certification by endorsement, reinstatement, or reciprocity and the service member or military spouse meets certain criteria.

State Employee Direct Payment Benefits. Benefits-eligible employees in the State's executive branch who are on military leave as activated reserve component uniformed military personnel may be eligible for one-time activation payments of $1,500. Additionally, benefits-eligible State employees who are called to full-time military duty and are mobilized and deployed may receive the difference between their military pay, plus most allowances, and their regular State of Kansas wages, up to $1,000 per pay period.

Highways and Bridges

The State of Kansas honors veterans by designating portions of highways in their name. The Department of Transportation provides a Memorial Highways and Bridges Map: http://www.ksdot.org/Assets/wwwksdotorg/bureaus/burTransPlan/maps/SpecialInterestStateMaps/Memorial.pdf.

Housing and Care

Certain veterans, primarily those with disabilities, are eligible for housing and care at the Kansas Soldiers' Home, near Fort Dodge, and the Kansas Veterans Home, in Winfield. The KCVAO states priority for admission of veterans will be given on the basis of severity of medical care required. For more information see:

- https://kcva.ks.gov/veteran-homes/winfield-home; and
- https://kcva.ks.gov/veteran-homes/fort-dodge-home.

Insurance

Personal Insurance. No personal insurance shall be subject to cancellation, non-renewal, premium increase, or adverse tier placement for the term of a deployment, based solely on that deployment.

Private Health Insurance. A Kansas resident with individual health coverage, who is activated for military service and therefore becomes eligible for government-sponsored health insurance, cannot be denied reinstatement to the same individual coverage following honorable discharge.

Judicial Benefits

Diversion Considerations

A prosecutor may consider more combat service-related injuries when considering whether to enter into a diversion agreement with a defendant. The injuries considered now include major depressive disorder, polytrauma, post-traumatic stress disorder, and traumatic brain injury.

Sentencing Considerations

Sentencing judges may consider more combat service-related injuries (including major depressive disorder, polytrauma, post-traumatic stress disorder, and traumatic brain injury) as mitigating factors when sentencing a defendant.

Court Ordered Treatment Considerations

A judge may consider more combat service-connected injuries, including major depressive disorder, polytrauma, post-traumatic stress disorder, and traumatic brain injury, when ordering a defendant to treatment. There is no requirement that a defendant have a discharge under honorable conditions to qualify for court-ordered treatment. Treatment in the 2003 SB 123 program is an alternative for a defendant who meets the criteria for court-ordered treatment and the 2003 SB 123 program, but cannot receive treatment through a military treatment facility or veterans' treatment facility.

Taxes

Income Tax–Check-off Provisions. Taxpayers may voluntarily contribute to the Kansas Hometown Heroes Fund by checking a block on the individual income tax form. All moneys deposited in the Fund must be used solely for the veterans' services program of the KCVAO.

Property Tax–Deferral. An active duty service member who has orders to deploy, or is currently deployed, outside of the United States for at least six months, may defer payment of taxes on real property for up to two years. A claim for the deferral must be filed with the county clerk.

Property Tax–Homestead. Certain disabled veterans and surviving spouses who do not remarry are eligible for the Homestead Property Tax Refund Program. Disabled veterans are those Kansas residents who have been honorably discharged from active duty in the armed forces or Kansas National Guard and who have been certified to have a 50 percent or more permanent service-connected disability.

Vehicle Taxes. Active duty servicemembers who are Kansas residents will not be required to pay vehicle taxes if they maintain vehicles outside of the state and are absent from the state on military orders on the date that the registration payment is due.

Vehicle-Related Benefits

Driver's License Requirements–Waiver. The Director of Vehicles and Kansas Department of Revenue may waive the skills test for an applicant for a commercial driver's license, if that applicant provides evidence of certain military commercial vehicle driving experience. The applicant's military driving experience must meet the requirements of 49 CFR 383.77. The applicant must have military experience operating a vehicle similar to the commercial motor vehicle the applicant expects to operate. The applicant must not have been convicted of any offense (such as driving under the influence of alcohol or a controlled substance) that would disqualify a civilian commercial driver. An applicant still will be required to pass the Kansas knowledge test for driving a commercial motor vehicle.

Also, some state requirements for written and driving testing may be waived for an applicant for a Class M (motorcycle) driver's license who has completed motorcycle safety training in accordance with Department of Defense requirements.

"Veteran" Designation on Driver's Licenses and Identification Cards. A veteran may have "VETERAN" printed on the front of a state-issued driver's license or a non-driver identification card

by showing proof of military service in the form of a DD214 or equivalent form. The veteran must have received an honorable discharge or general discharge under honorable conditions. The Secretary of Revenue may provide names and addresses from motor vehicle records to the KCVAO for the purpose of assisting the KCVAO in notifying veterans of the facilities, benefits, and services available to veterans in the State of Kansas.

License Plates. Kansas has several distinctive license plates available for veterans and family members. In some cases, those license plates may be provided at no cost. More information on the available license plates is available at: http://www.ksrevenue.org/dmv-plates.html.

Vietnam War Era Medallion Program

The Vietnam War Era Medallion Program provides eligible veterans with a medallion, a medal, and a certificate of appreciation. The Medallion Program is open to veterans who served within the United States or in a foreign country, regardless of whether the veteran was under 18 years of age at the time of enlistment. Eligible veterans are those that served on active duty in the U.S. military service between February 28, 1961, and May 7, 1975; are legal residents of Kansas or were legal residents at the time they entered military service, the time they were discharged from military service, or at the time of their death; and were honorably discharged, are still on active duty in an honorable status, or were on active duty at the time of their death.

Voting Opportunities

Overseas military personnel and their family members may vote a full ballot for all elections. The ballots will be mailed 45 days before an election. The military service member or family member may submit a ballot to the county election office before polls close by mail, e-mail, or fax. For more information see: http://www.voteks.org/when-you-vote/how-will-i-vote.html.

Parking Privileges for Disabled Veterans

Veterans with disabled veterans license plates may exercise free parking privileges in spaces reserved for disabled persons in public parking facilities and parking lots that employ parking attendants.

Other Benefits

Anti-Discrimination Towards Military Personnel. Kansas law prohibits discrimination on the basis of military status. Alleged violations are a civil matter.

Permits and Licensing. Several types of hunting and fishing permit and licensing benefits are available to military personnel and veterans. More information about these benefits is available at: http://kdwpt.state.ks.us/Hunting/Applications-and-Fees.

Concealed Carry Licenses. Active duty military personnel and their dependents residing in Kansas may apply for a concealed carry handgun license without a Kansas driver's license or a Kansas non-driver's license identification card. Upon presenting proof of active duty status and completing other requirements for a concealed carry permit, the service member or dependent would be granted a license under the Personal and Family Protection Act and issued a unique license number.

Military Burials. Certain veterans and their eligible dependents may be buried in state veterans' cemeteries. Cemeteries are located in Fort Dodge, Fort Riley, WaKeeney, and Winfield. The final disposition of a military decedent's remains would supersede existing statutory listing of priorities for such remains. The provision applies to all active duty military personnel and gives priority to the federal Department of Defense Form 93 in controlling the disposition of the decedent's remains for periods when members of the U.S. armed forces, reserve forces, or National Guard are on active duty. A certified copy of an original discharge or other official record of military service may be filed with the Adjutant General, who will provide copies free of charge if they are needed to apply for U.S. Department of Veterans Affairs benefits.

Alternate Death Gratuity. Effective January 1, 2015, if federal funding is not available during a federal government shutdown, the Adjutant General will pay a death gratuity of $100,000 for any eligible Kansas military service member. The Adjutant General will secure federal reimbursements after the government reopens.

Additional Benefits Information

The U.S. Army's official benefits website provides a general overview of military and veterans' benefits in Kansas along with contact information for some state agencies: http://myarmybenefits.us.army.mil/Home/Benefit_Library/State__Territory_Benefits/Kansas.html.

The Kansas Board of Regents' website lists scholarships available for military personnel, veterans, and spouses along with the requirements for each scholarship: http://www.kansasregents.org/students/military.

The KCVAO's website includes several resources for veterans and military personnel. The following links cover federal and state benefits, employment resources, and educational resources:

- http://www.kcva.org;
- http://kcva.ks.gov/veteran-services/federal-benefits;
- http://kcva.ks.gov/veteran-services/state-benefits;
- http://kcva.ks.gov/kanvet;
- http://kcva.ks.gov/kanvet/employment-resources; and
- http://kcva.ks.gov/kanvet/education-resources.

The U.S. Department of Veterans Affairs' Kansas website includes links for veterans health administration offices, veterans benefits administrations offices, and national cemetery administration offices: http://www.va.gov/directory/guide/state.asp?State=KS&dnum=ALL

The Kansas Department of Revenue's website includes information on military license plates offered in Kansas. The complete list of license plates can be found at: http://www.ksrevenue.org/dmv-plates.html.

The Retirement Living Information Center's website lists the sales tax, personal income tax, property taxes, and inheritance and estate taxes for Kansas. It also lists the types of military and veterans income that are exempt from Kansas income tax and federal income tax: http://www.retirementliving.com/taxes-kansas-new-mexico#KANSAS.

The Kansas State Employment Center's website includes certain information solely dedicated to veterans' employment. There is an overview of veterans' preference, veterans training opportunities, and job application and interview assistance: http://da.ks.gov/ps/aaa/recruitment/veterans/vetemployinfo.htm.

The United States Department of Labor's website lists the contact information for the Kansas Director of Veterans' Employment and Training as well as Kansas employment resources for veterans and federal resources for veterans: http://www.webapps.dol.gov/elaws/vets/realifelines/stateinfo.htm?state=KS.

The Kansas Adjutant General's Office's Kansas Military Bill of Rights website lists benefits and services that Kansas provides to veterans and military personnel: http://kansastag.gov/NGUARD.asp?PageID=346.

For more information, please contact:

Natalie Teemer-Washington, Research Analyst
Natalie.Teemer-Washington@klrd.ks.gov

David Fye, Principal Fiscal Analyst
David.Fye@klrd.ks.gov

Jill Shelley, Principal Research Analyst
Jill.Shelley@klrd.ks.gov

Cindy Lash, Principal Research Analyst
Cindy.Lash@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Chris Courtwright
Principal Economist
785-296-3181
Chris.Courtwright@klrd.ks.gov

Taxation

R-1 Homestead Program

When Kansas enacted the Homestead Property Tax Refund Act in 1970, it became the sixth state to enact a "circuit-breaker" style of property tax relief.

A "circuit-breaker" is a form of property tax relief in which the benefit is dependent on income or other criteria and the amount of property taxes paid. The moniker developed as an analogy to the device that breaks an electrical circuit during an overload, just as the property tax relief benefit begins to accrue once a person's property taxes have become overloaded relative to his or her income.

Including Kansas:

- 34 states currently have some form of circuit-breaker program.
- 27 states allow renters to participate in the programs.

Eligibility Requirements:

- Household income of $33,400 or less; and
- Someone in the household is:
  - Age 55 or above;
  - A dependent under age 18;
  - Blind; or
  - Otherwise disabled.
- Renters were eligible (15 percent of rent is equivalent to property tax paid) until tax year 2013.

Program Structure

The current Kansas Homestead Refund Program is an entitlement for eligible taxpayers based upon their household income and their property tax liability. The maximum available refund is $700 and the minimum refund is $30.

Recent Legislative History

A 2006 change to the Homestead Refund Program expanded it by approximately $4.5 million. The 2007 Legislature enacted an even

more significant expansion of the program, which increased the size of the program by an additional $9.9 million.

	Eligible Claims Filed	Amount	Average Refund
FY 2009	102,586	$32.819 million	$320
FY 2010	132,136	$42.872 million	$324
FY 2011	120,029	$42.860 million	$357
FY 2012	126,762	$43.049 million	$340
FY 2013	115,719	$37.586 million	$325
FY 2014	86,082	$29.415 million	$342
FY 2015	70,343	$23,032 million	$327

Among the key features of the 2007 expansion law:

- The maximum refund available under the program was increased from $600 to $700;
- 50 percent of Social Security benefits were excluded from the definition of income for purposes of qualifying for the program; and
- A residential valuation ceiling prohibits any homeowner with a residence valued at $350,000 or more from participating in the program.

Hypothetical Taxpayers

The impact of the 2006 and 2007 program expansion legislation is demonstrated on the following hypothetical taxpayers:

Homestead Refund			
	Pre-2006 Law	2006 Law	2007 Law
Elderly couple with $1,000 in property tax liability and $23,000 in household income, $11,000 of which comes from Social Security benefits.	$72	$150	$385
Single mother with two young children, $750 in property tax liability and $16,000 in household income.	$240	$360	$420
Disabled renter paying $450 per month in rent,with $9,000 of household income from sources other than disability income.	$480	$528	$616

For more information, please contact:

Chris Courtwright. Principal Economist
Chris.Courtwright@klrd.ks.gov

Edward Penner, Research Analyst
Edward.Penner@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Kansas Legislative Research Department

Chris Courtwright
Principal Economist
785-296-3181
Chris.Courtwright@klrd.ks.gov

Taxation

R-2 Kansas Retail Sales Tax Exemptions

The Kansas Retail Sales Tax is levied statewide at the rate of 6.5 percent on retail sales of tangible personal property and certain services, absent specific exemption. Specific exemptions may be found in KSA 79-3603 and KSA 79-3606. Additionally, certain services are not subject to the retail sales tax.

Statutory Exemptions

As of July 1, 2015, the statutes included 104 specific exemptions. These exemptions include conceptual exemptions, based on the definition of retail sales; legal exemptions, based on federal requirements; and public policy exemptions.

For FY 2015, the Kansas Department of Revenue (KDOR) estimates that conceptual exemptions resulted in a reduction of revenue in the amount of $4.208 billion. Of that amount, $3.199 billion results from KSA 79-3606(m), which exempts from taxation property that becomes an ingredient or component part of property or services produced or manufactured for ultimate sale at retail.

Legal exemptions resulted in reduction of revenue in the amount of $22.50 million in FY 2015, according to estimates by KDOR. This amount was primarily made up of $10.38 million lost to the sale, repair, or modification of aircraft sold for interstate commerce and $10.79 million lost to property purchased with food stamps issued by the U.S. Department of Agriculture.

Public policy exemptions accounted for $1.704 billion in lost revenue according to KDOR's FY 2015 estimates. Of this amount, $3.55 million was due to exemptions for charitable organizations named in statutes, and an additional $32.61 million was due to broadly applicable charitable, religious, or benevolent exemptions.

Services Not Subject to Retail Sales Tax

Certain services do not fall under the statutory definitions of what is required to be taxed under the retail sales tax. KDOR estimates those services not being taxed resulted in a reduction in revenue in the amount of $619.4 million in FY 2015. Using North American Industry Classification System (NAICS) definitions, that reduction in revenue came from the following categories:

Category	FY 2015 Reduction in Revenue
Professional, Scientific & Technical	$ 282.9 million
Administrative & Support	102.3 million
Health Care	215.0 million
Personal Care	17.9 million
Other	1.4 million
Total	$ 619.4 million

*Total may not equal the sum due to rounding.

For more information, please contact:

Chris Courtwright. Principal Economist
Chris.Courtwright@klrd.ks.gov

Edward Penner, Research Analyst
Edward.Penner@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Chris Courtwright
Principal Economist
785-296-3181
Chris.Courtwright@klrd.ks.gov

Taxation

R-3 Liquor Taxes

Kansas has three levels of liquor taxation, each of which imposes different rates and provides for a different disposition of revenue.

Liquor Gallonage Tax. The first level of taxation is the gallonage tax, which is imposed upon the person who first manufactures, sells, purchases, or receives the liquor or cereal malt beverage (CMB).

Liquor Enforcement or Sales Tax. The second level of taxation is the enforcement or sales tax, which is imposed on the gross receipts from the sale of liquor or CMB to consumers by retail liquor dealers and grocery and convenience stores; and to clubs, drinking establishments, and caterers by distributors.

Liquor Drink Tax. The third level of taxation is levied on the gross receipts from the sale of liquor by clubs, caterers, and drinking establishments.

Gallonage

Since the gallonage tax is imposed upon the person who first manufactures, uses, sells, stores, purchases, or receives the alcoholic liquor or CMB, the tax has already been paid by the time the product has reached the retail liquor store – or in the case of CMB, grocery or convenience store.

When the liquor store owner purchases a case of light wine from a distributor, the 30 cents per gallon tax has already been built in as part of that store owner's acquisition cost.

Rates	
	Per Gallon
Beer and CMB	$0.18
Light Wine	$0.30
Fortified Wine	$0.75
Alcohol and Spirits	$2.50

Gallonage tax receipts in FY 2015 were approximately $21.9 million. Of this amount, nearly $9.7 million was attributed to the beer and CMB tax.

Gallonage Tax – Disposition of Revenue		
	State General Fund	**Community Alcoholism and Intoxication Programs Fund (CAIPF)**
Alcohol and Spirits	90%	10%
All Other Gallonage Taxes	100%	--

Liquor gallonage tax rates have not been increased since 1977.

Enforcement and Sales

Enforcement. Enforcement tax is an in-lieu-of sales tax imposed at the rate of 8 percent on the gross receipts of the sale of liquor to consumers and on the gross receipts from the sale of liquor and CMB to clubs, drinking establishments, and caterers by distributors.

- A consumer purchasing a $10 bottle of wine at a liquor store is going to pay 80 cents in enforcement tax.

The club owner buying the case of light wine (who already had paid the 30 cents per gallon gallonage tax as part of his acquisition cost) also would now pay the 8 percent enforcement tax.

Sales. CMB purchases in grocery or convenience stores are not subject to the enforcement tax, but rather are subject to state and local sales taxes. The state sales tax rate is 6.5 percent, and combined local sales tax rates range as high as 5 percent.

CMB sales, therefore, are taxed at rates ranging from 6.5 to 11.5 percent.

Besides the rate differential between sales of strong beer (and other alcohol) by liquor stores and CMB by grocery and convenience stores, there is a major difference in the disposition of revenue.

Enforcement and Sales Tax Disposition of Revenue			
	SGF	**State Highway Fund**	**Local Units**
Enforcement (8 percent)	100.00%	---	---
State Sales (6.5 percent)	83.846%	16.154%	---
Local Sales (up to 5 percent)	---	---	100.00%

Enforcement tax receipts in FY 2015 were approximately $68.5 million. Grocery and convenience store sales tax collections from CMB are unknown.

The liquor enforcement tax rate has not been increased since 1983.

Drink

The liquor drink tax is imposed at the rate of 10 percent on the gross receipts from the sale of alcoholic liquor by clubs, caterers, and drinking establishments.

The club owner (who had previously paid the gallonage tax and then the enforcement tax when acquiring the case of light wine) next is required to charge the drink tax on sales to its customers. Assuming the club charged $4.00 for a glass of light wine, the drink tax on such a transaction would be 40 cents.

Drink Tax – Disposition of Revenue			
	SGF	CAIPF	Local Alcoholic Liquor Fund
Drink Tax (10 percent)	25%	5%	70%

Liquor drink tax revenues in FY 2015 were about $41.8 million, of which $10.5 million were deposited in the SGF.

The liquor drink tax rate has remained unchanged since imposition in 1979.

For more information, please contact:

Chris Courtwright. Principal Economist
Chris.Courtwright@klrd.ks.gov

Reed Holwegner, Principal Research Analyst
Reed.Holwegner@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Edward Penner
Research Analyst
785-296-3181
Edward.Penner@klrd.ks.gov

Taxation

R-4 Mortgage Registration Tax and Statutory Fees for Recording Documents with County Registers of Deeds

The tax charged to register a mortgage by county registers of deeds is scheduled to be phased out beginning with calendar year 2015 through calendar year 2019. Statutory fees charged for documents filed with county registers of deeds are increased from calendar year 2015 through calendar year 2018.

Mortgage Registration Tax Phase-Out

The mortgage registration tax, which has been levied at the rate of 0.26 percent of the principal debt or obligation secured by mortgages, is reduced to 0.2 percent for all mortgages received and filed for record during calendar year 2015; 0.15 percent during calendar year 2016; 0.1 percent during calendar year 2017; and 0.05 percent during calendar year 2018. The tax is repealed altogether beginning in calendar year 2019. Of the revenue generated by the mortgage registration tax, 25/26ths had been retained by the counties.

Fee Increase Phase-In

Statutory recording fees are scheduled to be increased as follows:

	Prior Law	CY 2015	CY 2016	CY 2017	CY 2018 $ thereafter
First page of deeds, mortgages, other instruments	$6.00	$8.00	$11.00	$14.00	$17.00
Each additional page of such documents	2.00	4.00	7.00	10.00	13.00
Recording town plats per page	20.00	22.00	25.00	28.00	31.00
Release/assignment of mortgages	5.00	7.00	10.00	13.00	16.00
Certifying instruments on record	1.00	3.00	6.00	9.00	12.00
Signature acknowledgment	0.50	2.50	5.50	8.50	11.50
IRS tax lien filing notices	5.00	7.00	10.00	13.00	16.00
IRS/KDOR lien release notices	5.00	7.00	10.00	13.00	16.00
Liens for materials/ services under KSA 58-201	5.00	7.00	10.00	13.00	16.00

The above fees are capped beginning in calendar year 2015 such that a maximum of $125 may be levied for recording mortgages of $75,000 or less involving single-family principal residences.

Heritage Trust Fund

The Heritage Trust Fund had previously been the recipient of 1/26th of the revenue generated by the mortgage registration tax. The Heritage Trust Fund will receive no revenue from the mortgage registration tax beginning in calendar year 2015. Rather, an additional fee of $1 is levied beginning in calendar year 2015 and credited to the Heritage Trust Fund on the first and all subsequent pages of any deeds, mortgages, and other instruments and on release or assignments of mortgages. An annual statutory cap of $100,000 on Heritage Trust Fund mortgage registration tax distributions from any given county is replaced with a new cap of $30,000 from any county relative to the new $1 fee.

County Clerk and County Treasurer Technology Funds

An existing separate fee of $2 per page is increased to $3 per page beginning in calendar year 2015 and receipts from this additional $1 are to be split into two separate $0.50 portions and deposited in the newly created County Clerk Technology Fund and County Treasurer Technology Fund in each county.

For more information, please contact:

Edward Penner, Research Analyst
Edward.Penner@klrd.ks.gov

Chris Courtwright, Principal Economist
Chris.Courtwright@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Edward Penner
Research Analyst
785-296-3181
Edward.Penner@klrd.ks.gov

Taxation

R-5 Selected Tax Rate Comparisons

The following tables compare selected tax rates and tax bases with those of selected nearby states.

	Individual Income Tax						
	Federal IRC Starting Point	Tax Rate Range (percent)	No. of Brackets	Bracket Range (dollars)	Personal Exemption Single	Personal Exemption Married	Personal Exemption Dependent
Kansas	Adjusted Gross Income	2.7-4.6*	2	15,000	2,250	4,500	2,250
Missouri	Adjusted Gross Income	1.5-6.0	10	1,000-9,001	2,100	4,200	1,200
Nebraska	Adjusted Gross Income	2.46-6.84	4	3,050-39,460	130 (credit)	260 (credit)	130 (credit)
Oklahoma	Adjusted Gross Income	0.5-5.25	7	1,000-8,701	1,000	2,000	1,000
Colorado	Taxable Income	4.63	1	Flat Rate	4,000	8,000	4,000
Iowa	Adjusted Gross Income (as defined in IRC effective 1/1/14)	0.36-8.98	9	1,539-69,255	40 (credit)	40 (credit)	40 (credit)
Arkansas	No Relation to Federal IRC	0.9-6.9	6	4,299-35,100	26 (credit)	26 (credit)	26(credit)
Texas	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Source: Federation of Tax Administrators, as of January 1, 2015.

* 2015 enacted legislation provides for rate reductions to 2.6 and 4.6% in TY 2018 and further reductions on a revenues-based formula beginning in TY 2019.

Corporate Income Tax				
	Tax Rate (percent)	**No. of Brackets**	**Bracket Range (dollars)**	**Apportionment Method**
Kansas	4	1	Flat Rate	Three factor
Missouri	6.25	1	Flat Rate	Three factor
Nebraska	5.58-7.81	2	100,000	Sales
Oklahoma	6	1	Flat Rate	Three factor
Colorado	4.63	1	Flat Rate	Sales
Iowa	6.0-12.0	4	250,000-250,001	Sales
Arkansas	1.0-6.5	6	3,000-100,001	Double Weighted Sales
Texas*	N/A	N/A	N/A	Sales

Source: Federation of Tax Administrators, as of January 1, 2015.

* Texas imposes a franchise tax on entities with more than $1,030,000 total revenues at a rate of 1%, or 0.5% for entities primarily engaged in retail or wholesale trade, on lesser of 70% of total revenues or 100% of gross receipts after deductions for either compensation or cost of goods sold.

Sales Tax			
	Rate (percent)	**Food**	**Non-prescription drugs**
Kansas	6.5		
Missouri	4.225	1.225	
Nebraska	5.5		
Colorado	4.5	Exempt	
Iowa	2.9	Exempt	
Arkansas	6.5	1.5	
Texas	6.25	Exempt	Exempt

Source: Federation of Tax Administrators, as of January 1, 2015

Motor Fuel Tax		
	Gasoline*	**Diesel Fuel***
Kansas	25.03	27.03
Missouri	17.3	17.3
Oklahoma	17	14
Colorado	22	20.5
Iowa	22	23.5
Arkansas	21.8	22.8
Texas	20	20

Source: Federation of Tax Administrators, as of January 1, 2015

* Includes fees, such as environmental and inspection fees.

Cigarette Tax	
	Excise Tax (cents per pack)
Kansas	129
Missouri	17
Nebraska	64
Oklahoma	103
Colorado	84
Iowa	136
Arkansas	115
Texas	141
Source: Federation of Tax Administrators, as of January 1, 2015	

For more information, please contact:

Edward Penner, Research Analyst
Edward.Penner@klrd.ks.gov

Chris Courtwright, Principal Economist
Chris.Courtwright@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Mark Dapp
Fiscal Analyst
785-296-3181
Mark.Dapp@klrd.ks.gov

Taxation

R-6 Tax Amnesty

As part of Senate Sub. for HB 2109, the 2015 Legislature authorized a tax amnesty program, allowing for penalties and interest to be waived if the underlying delinquent tax liabilities are paid in full from September 1, 2015, to October 15, 2015. The tax amnesty covers privilege tax, estate tax, income taxes, withholding and estimated taxes, cigarette and tobacco products taxes, state and local retail sales and compensating use taxes, liquor enforcement taxes, and mineral severance taxes.

The program applies only to penalties and interest on final liabilities, not those matters on appeal, for tax periods ending on or before December 31, 2013. The amnesty would not apply to any matter for which, on or after September 1, 2015, taxpayers have received notices of assessment or for which an audit had previously been initiated. Any fraud or intentional misrepresentation in connection with an amnesty application would void the application and any penalties and interest that otherwise would be waived.

Taxpayers who submit an application for the program can pay their outstanding debts in full with their application or may include at least 10.0 percent of their tax liability amount owed with their application and set up a payment in which they pay the full amount of their approved amnesty amount by October 15, 2015.

Tax Amnesty History in Kansas

The 2010 Legislature enacted a tax amnesty program that closely resembled the 2015 program. The amnesty applied to penalties and interest for unpaid tax liabilities for tax periods ending on or before December 31, 2008. The program was offered on the same types of taxes that are covered by the 2015 program, and the amnesty period ran from September 1, 2010 to October 15, 2010. The program generated approximately $30.0 million in revenue for the State General Fund.

Tax Amnesty Programs in Other States

In 2015, six states, not including Kansas, offered a tax amnesty program that included a majority of the state taxes levied. Each of these respective programs differed in what tax periods were eligible for amnesty and the length of the time the amnesty program was administered, but all of the programs were offered for approximately two months and required taxes to be paid in full by the conclusion of the program.

Tax Amnesty Programs in Other States

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Kansas Department of Revenue
SGF Amnesty Collections
Fiscal Year 2016

Tax Type	SGF
Cigarette and Tobacco	$ -
Consumers Use	85,411
Corporate Income	17,509,861
Fiduciary	1,245
Individual Income	4,241,809
Liquor Enforcement	2,610
Privilege Tax	52,599
Retail Liquor	7,843
Retailer's Use	103,165
Sales Tax	890,768
Withholding	221,160
Total SGF	**$ 23,116,471**

For more information, please contact:

Mark Dapp, Fiscal Analyst
Mark.Dapp@klrd.ks.gov

Chris Courtwright, Principal Economist
Chris.Courtwright@klrd.ks.gov

Edward Penner, Research Analyst
Edward.Penner@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Jill Shelley
Principal Research Analyst
785-296-3181
Jill.Shelley@klrd.ks.gov

Transportation and Motor Vehicles

S-1 Driving Privileges and ID Cards in Other States for Those Who Cannot Prove Lawful Presence

Kansas does not provide driving credentials for those who cannot prove lawful presence in the United States. Other states have authorized such credentials, for reasons including allowing those who cannot prove lawful presence to obtain vehicle insurance.

Kansas Law Requires Citizenship or Lawful Presence for a Driver's License

Kansas law has, since 2000, provided that an applicant for a driver's license or instruction permit must be lawfully present in the United States, with language in KSA 2015 Supp. 8-237 and 8-240. Since 2007, the language in KSA 8-240(b) has read this way:

> (2) The division shall not issue any driver's license or instruction permit to any person who fails to provide proof that the person is lawfully present in the United States. Before issuing a driver's license or instruction permit to a person, the division shall require valid documentary evidence that the applicant: (A) Is a citizen or national of the United States; (B) is an alien lawfully admitted for permanent or temporary residence in the United States; (C) has conditional permanent resident status in the United States; (D) has an approved application for asylum in the United States or has entered into the United States in refugee status; (E) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States; (F) has a pending application for asylum in the United States; (G) has a pending or approved application for temporary protected status in the United States; (H) has approved deferred action status; or (I) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.
>
> (3) If an applicant provides evidence of lawful presence set out in subsections (b)(2)(E) through (2)(I), or is an alien lawfully admitted for temporary residence under subsection (b)(2)(B), the division may only issue a driver's license to the person under the following conditions: (A) A driver's license issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year;

(B) a driver's license issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires; (C) no driver's license issued pursuant to this subparagraph shall be for a longer period of time than the time period permitted by KSA 8-247(a), and amendments thereto; and (D) a driver's license issued pursuant to this subparagraph may be renewed, subject at the time of renewal, to the same requirements and conditions as set out in this subsection (b) for the issuance of the original driver's license.[1]

The Department of Revenue states it began utilizing the U.S. Citizenship and Immigration Service's "Systematic Alien Verification for Entitlement system", in July 2011, to determine the status of temporary residents in the United States when such applicants apply for a Kansas driver's License, instruction permit or non-driver identification card. The applicant also must prove residency in Kansas, as any other applicant.

According to the U.S. Citizenship and Immigration Services, "An individual who has received deferred action is authorized by [the Department of Homeland Security (DHS)] to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect."[2] It defines deferred action as a "discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion."

Various Other States Allow Driving Credentials for Those Who Cannot Prove Lawful Presence

As of mid-October 2015, 14 states, the District of Columbia, and Puerto Rico had enacted law to authorize driver's licenses, ID cards, or both to those who do not provide satisfactory documentary evidence that the applicant has lawful immigration status or a valid Social Security number. Three of those states had authorization in place before 2013.[3]

- In 1999, Washington State amended its driver's license and ID card proof of identity statute (RCW 46.20.035) to specify that only a driver's license or ID card issued to an applicant providing certain types of proof of identity is valid for identification purposes and, if the applicant is unable to prove his or her identity, must be labeled "not valid for identification purposes." Washington regulations list documents that can be used to prove identity, such as a federal or state agency identification card, a U.S. passport, a foreign passport accompanied by U.S. Citizenship and Immigration Services documentation, and a military identification card that contains the signature and a photograph of the applicant. Applicants who wish to provide other types of identification may request Department of Licensing review. A 2011 attempt to amend the law failed because, according to a report for another legislature, "legislators (1) believed that additional verification measures required to end licensing for undocumented immigrants would have cost as much as $1.5 million and (2) were worried about the state's ability to harvest apples if undocumented immigrants could not drive to the orchards."[4]
- The 2003 New Mexico Legislature added this sentence to its main statute regarding applications for driver's licenses (NMSA 66-5-9): "For foreign nationals applying for driver's licenses the secretary shall accept the individual taxpayer

1 Documents approved as proof of residency are listed on the Department of Revenue website http://www.ksrevenue.org/dmvproof.html.

2 http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions, accessed November 2014

3 According to a May 2013 report to Connecticut legislators, California, Hawaii, Maryland, Maine, Michigan, Oregon, and Tennessee are "states that previously permitted undocumented immigrants to drive" but "stopped doing so between 2003 and 2010 for various reasons; these reversals resulted from both legislative and executive actions." Issuance of Driver's Licenses to Undocumented Immigrants, Connecticut General Assembly Office of Legislative Research Report 2013-R-0194, May 29, 2013. California, Maine, Maryland, and Oregon again enacted permissive laws in 2013.

4 *Ibid*

identification number as a substitute for a social security number regardless of immigration status." Earlier legislation had included, "The secretary is authorized to establish by regulation other documents that may be accepted as a substitute for a social security number." Various bills have been introduced to amend these and other provisions.

- In 2005, the Utah Legislature modified its Public Safety Code to prohibit issuing a driver's license to any person who is not a Utah resident and to offer a driving privilege card to those without Social Security numbers (Utah Statutes 53-3-204 *et seq*.). A driving privilege card is to be clearly distinguishable from a driver's license and include a notice to the effect that the card is not valid for identification; government entities may not accept the card as identification. A "driving privilege card" expires each year on the person's birthday. An applicant for a driving privilege card is required to provide fingerprints as well as a photograph; the state's Bureau of Criminal Identification must check the fingerprints against state and regional criminal databases; submit the fingerprints to national criminal records databases, including the Federal Bureau of Investigation's Next Generation Identification system; and notify the federal Immigration and Customs Enforcement Agency if the person has a felony in the person's criminal history record.

Nine states authorized driving privileges for certain undocumented residents in 2013 and two more adopted such measures in 2015:

State	Bill; Session Law	Date Became Law	Implementation Date
California (CA)	AB 60; Ch. 524	Oct. 3, 2013	Jan. 1, 2015
Colorado (CO)	SB 13-251; Ch. 402	June 5, 2013	Aug. 1, 2014
Connecticut (CT)	HB 6495; P.A. 13-89	June 6, 2013	Jan. 1, 2015
Delaware (DE)	SB 59, 80:67	June 30, 2015	Jan. 1, 2016
Hawaii (HI)	HB 1007: Act 172	July 2, 2015	Jan. 1, 2016
Illinois (IL)	SB 957; P.A. 097-1157	Jan. 22, 2013	Nov. 28, 2013
Maine (ME)	H.P. 980; Ch. 163	May 29, 2013	Oct. 9, 2013
Maryland (MD)	SB 715; Ch. 309	May 2, 2013	Jan. 1, 2014
Nevada (NV)	SB 303; Ch. 282	May 31, 2013	Jan 1, 2014
Oregon (OR)	SB 833; Ch. 48	May 1, 2013	~~Jan. 1, 2014~~ *
Vermont (VT)	S. 38; Act 074	June 5, 2013	Jan. 1, 2014

* The implementation date for Oregon's law is stricken because, *via* the referendum process, the law was placed on the general ballot of the November 2014 election, where it was rejected by voters.[5]

5 http://ballotpedia.org/Oregon_Alternative_Driver_Licenses_Referendum,_Measure_88_%282014%29

The District of Columbia authorized a limited purpose driver's license, permit, or ID card early in 2014, with D.C. Law 20-62 (D.C. Code 50-1401.05); those credentials have been available since May 1, 2014.

An amendment to Puerto Rico's Motor Vehicle and Traffic Law (9 LPRA Sec. 5078) approved in June 2013 also allows driver's licenses to certain undocumented residents.

The provisions in the bills authorizing driver's licenses, ID cards, or both for those who cannot prove lawful presence vary in many ways. Maine's new law adds phrases to existing law to exempt an applicant for renewal of a noncommercial driver's license or non-driver ID card from requirements to prove lawful presence only if the applicant has continuously held the driver's license or ID card since December 31, 1989, or was born before December 1, 1964. Several states differentiate between a driver's license, which can be used to prove identity, and the new document, calling it a "driving privilege card," "operator's privilege card," or similar term. (The term "driver's license" is used in this article and is used to refer to all types, including learner permits.) The driver's licenses will include identity features such as full name, birth date, signature, and photo, and all 2013 and 2015 bills except Maine's[6] included these provisions:

- An applicant must provide proof of identity;
- An applicant must provide proof of residency within the state; and
- An applicant for any driver's license must meet all additional requirements for driving, such as passing driving skills tests and maintaining vehicle insurance.

The following tables illustrate ways in which the new laws except Maine's are similar and dissimilar; they greatly simplify the bills' provisions and do not include all requirements. **The tables are based on the bills listed above only and not on the entirety of each state's laws.**

6 South Carolina reportedly has a photo ID requirement but an alternative is offered for people with a "reasonable impediment" to obtaining a photo ID, according to NCSL. South Carolina's law also has been challenged in court.

Comparisons of New Driver's License and ID Laws

Driver's license, ID card, or both authorized in the bills:											
Driver's license authorized; applicant must meet all additional requirements for a driver's license	CA	CO	CT	DE	DC	HI	IL	MD	NV	OR	VT
Not applicable to a commercial driver's license	CA	CO		DE				MD	NV	OR	
ID card authorized	CA	CO			DC			MD			VT
License or ID card must be easily distinguishable	CA	CO	CT	DE		HI		MD	NV	OR	VT
Identity may be proven with these documents listed in the bills:											
Passport	CA	CO	CT	DE		HI			NV	OR	VT
Consular identification document	CA	CO	CT			HI	IL		NV	OR	VT
Birth certificate	CA		CT	DE		HI			NV		VT
Marriage license	CA		CT			HI					VT
Foreign voter registration or voter ID document	CA		CT			HI					
Foreign driver's license	CA		CT			HI					
U.S. application for asylum	CA					HI					
Official school transcript	CA		CT			HI					
Military identification		CO							NV		
Other[a)]	CA		CT	DE	DC					OR	VT

Residency may be proven with these documents listed in the bills:											
Home utility bill	CA		CT						NV		
Lease or rental document	CA		CT						NV	OR	
Deed or title to real property	CA									OR	
Property tax bill or statement	CA		CT								
Income tax return	CA	CO		DE		HI		MD		OR	
Bank or credit card statement			CT						NV		VT
Pay stub			CT			HI			NV		
Insurance document			CT						NV		VT
Medical bill			CT						NV		VT
Other[b)]	CA	CO	CT		DC		IL		NV	OR	VT
Additional eligibility provisions in the bills:											
Available to those who can and those who cannot prove lawful presence				DE	DC	HI			NV		VT
Applicant must sign an affidavit stating the applicant is ineligible for a Social Security number	CA							MD		OR	
Applicant must sign an affidavit that the applicant is unable to submit satisfactory proof that the applicant's presence in the U.S. is authorized under federal law	CA		CT								
Criminal history required[c]			CT	DE							
Limitations on uses specified in the bills; the driver's license or ID card may NOT be used for:											
Official federal purposes	CA	CO	CT		DC	HI		MD			VT
Proof of identity				DE			IL				
Evidence of citizenship or immigration status	CA				DC						
Eligibility for public benefits	CA	CO				HI			NV		
Voting[d]		CO	CT			HI					
Eligibility for any license									NV		
Purchasing a firearm								MD			
Enforcement of immigration laws	CA	CO			DC	HI			NV		
Other[e]	CA									OR	
Card must include a statement about its acceptable uses	CA	CO	CT				IL	MD			VT

a) California's, the District of Columbia's, and Illinois' bills state additional acceptable documents for proving identity will be specified in regulations. The District of Columbia's bill states proof of identity will be defined by rule; those rules in general specify the types of documents listed in the table. Connecticut lists a passport, consular identification document, or consular report of birth as primary proof of identity and others, including a baptismal certificate, as secondary. Connecticut requires two forms of primary proof of identity or one form of primary proof and one form of secondary proof. Delaware also lists school identification that includes a photograph and allows other documentation to be evaluated on a case-by-case basis. Hawaii's bill lists documents that may be used to establish identity and residency and it allows the director of transportation to designate other proof of residency. Additional types of acceptable documents listed in Hawaii's law are school or college identification card with full name and photograph, a valid identification card for health benefits or a social services program, a current voter registration card issued by the state, and a Social Security card. Nevada requires an applicant provide two types of proof of identity. It also allows as proof a driver's license issued by another state. Nevada's Department of Motor Vehicles and Vermont's Department of Motor Vehicles Commissioner may define additional types of acceptable documentation; Oregon's Department of Transportation also would have defined acceptable documentation.

b) The District of Columbia's bill states proof of residency will be defined by rule; those rules specify documents such as those listed. California's bill states additional types of acceptable documents will be specified in regulation. Colorado specifies the income tax return must contain a federal taxpayer ID number, and it requires both an affidavit and a tax return. Colorado also specifies residency standards that meet REAL ID Act requirements and that the applicant must affirm the applicant has or will apply for lawful residency status when eligible. Connecticut's list of proof of residency documents also includes a Medicaid or Medicare statement, a Social Security benefits statement, postmarked mail, and an official school record showing enrollment. Illinois' bill states a list of acceptable residency documents is to be established in rules and regulations. Nevada requires an applicant provide two types of proof of residency; its Department of Motor Vehicles may approve additional types of documents. Oregon's Department of Transportation could have and Vermont's Department of Motor Vehicles Commissioner may define additional types of acceptable documentation. Vermont's list of other acceptable documentation includes mail, vehicle title or registration, W-2 or similar tax document, and a document from an educational institution.

c) Connecticut states an applicant may not have been convicted of any felony in the state. Delaware requires the applicant to submit fingerprints and other necessary information for a criminal background check. Utah has a similar requirement; see above.

d) KSA 2015 Supp. 25-2908 (h) includes a driver's license as a form of identification that can be used for voting.

e) California's and Hawaii's bills state the card may not be used as proof of eligibility for employment or voter registration. The bills also make it a violation of law to discriminate against an individual who holds this type of card. Oregon also would have allowed its driver card to identify the person as an anatomical donor, emancipated minor, or veteran; to identify the person for purposes of civil action judgments, liens, and support payments; and to aid a law enforcement agency in identifying a missing person.

Opponents and proponents of the new laws have made various points on their desirability:

Pros	Cons
• Roads would be safer because those driving would have to pass written and driving tests. • Databases containing information about everyone who drives could be important law enforcement tools. • Such documents would allow these drivers to get vehicle insurance. • Such licenses may be made available also to those who do not wish to share the information required to get a license that complies with federal standards.	• Driving is a privilege that should be extended only to those here legally. • Documents from other countries provided for proof of identity are difficult to verify. • Driving privileges may attract illegal immigrants to a state in which such a license is offered. • A distinguishable license for undocumented immigrants may encourage profiling and discrimination.

In findings presented in the bill enacted in 2015, the Hawaii Legislature further states the requirements of the REAL ID Act "unduly burden elderly residents, houseless individuals, undocumented immigrants, lawfully present nonimmigrants, and survivors of gender-based violence. . . . The legislature further finds that the lack of access to driver's licensure as a result of restrictive identification requirements poses a serious threat to public safety. Allowing . . . driver's licenses will improve public safety by ensuring that all drivers are tested for driving skills and able to acquire motor vehicle insurance."

For further information please contact:

Jill Shelley, Principal Research Analyst
Jill.Shelley@klrd.ks.gov

Joanna Dolan, Principal Research Analyst
Joanna.Dolan@klrd.ks.gov

Whitney Howard, Research Analyst
Whitney.Howard@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

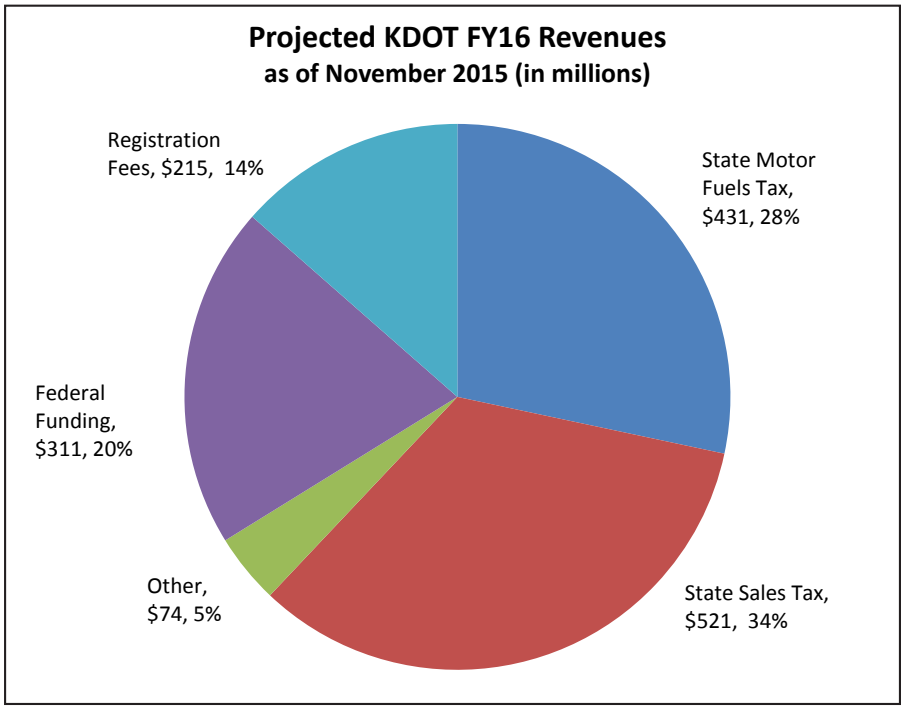
Jill Shelley
Principal Research Analyst
785-296-3181
Jill.Shelley@klrd.ks.gov

Transportation

S-2 State Highway Fund Receipts and Transfers

The *Kansas Constitution's* Article 11, Section 10, says, "The State shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels." Projected revenues to the State Highway Fund (SHF) for use by the Kansas Department of Transportation (KDOT) can be described in five categories: state sales tax, state motor fuels tax, federal funding, vehicle registration fees, and "other." This article discusses the components of those categories and transfers from the SHF.

KDOT estimates—updated through November 2016 (including November consensus estimates)—include these amounts for revenues in fiscal year (FY) 2016 (in millions).



Components of State Highway Fund Revenues

Information below summarizes statutes related to major categories of state funding collected in the SHF.

State motor fuels tax. Kansas imposes a tax of 24¢ a gallon on gasoline and 26¢ a gallon on diesel fuel, unchanged since 2003. A separate article on state motor fuel taxes and fuel use is provided as W-2 State Motor

Fuel Taxes and Fuel Use. KSA 2015 Supp. 79-34,142 directs 66.37 percent of fuels tax revenues to the SHF and 33.63 percent to the Special City and County Highway Fund.

State sales tax. KSA 2015 Supp. 79-3620 directs 16.226 percent of the revenues from the state sales tax to the SHF. The sales tax rate on which this is imposed is 6.5 percent. KSA 2015 Supp. 79-3710 similarly directs 16.226 percent of compensating use tax to the SHF. Those statutes direct 16.154 percent of sales and use taxes to the SHF as of July 1, 2016.

Registration fees. Statutes also direct moneys from vehicle registration and title fees (KSA 2015 Supp. 8-145, and others), fees from permits for oversize or overweight vehicles (KSA 2015 Supp. 8-1911), and other registration-related fees to the SHF. For most vehicles, property taxes paid at registration and retained by the counties are the majority of the total amount paid. Examples are provided in the general memorandum "Taxes and Fees Paid at Vehicle Registration," available through the KLRD website homepage, "Transportation."

Other fees. Driver's license exam and reinstatement fees (KSA 2015 Supp. 8-267 and others) are included in this category, as are smaller items such as junkyard certificate of compliance fees (KSA 68-2205) and sign permit and license fees (KSA 2015 Supp. 68-2236).

Anticipated Revenues the State Highway Fund Has Not Realized

Since 1999, actual State General Fund (SGF) revenues to the SHF have been reduced by approximately $2.9 billion when compared with the amounts anticipated. The following table summarizes the categories of those reductions. A detailed spreadsheet, "State Highway Fund Adjustments," shows year-by-year revenue adjustments, by category. It is available through the KLRD website homepage, "Capitol Issues," "Transportation." This table reflects KDOT's budget estimates through November 2015.

Net Changes to SHF Revenues from SGF, Authorized to Anticipated, 1999-2017 (in millions)

Sales Tax Demand Transfer. Sales taxes were transferred from the SGF to the SHF under highway program bills starting in 1983. The Comprehensive Transportation Program as enacted in 1999 included provisions to transfer certain percentages of sales tax (9.5 percent in 2001 – 14 percent in 2006 and later) from the SGF to the SHF. Appropriations reduced those amounts, and the transfers were removed from the law in 2004.	$(1,456.73)
Sales and Compensating Use Tax. When sales tax transfers were eliminated, the sales tax was increased and the percentage going directly into the SHF was increased. The amount reflects the changes enacted in 2010 Senate Sub. for HB 2360, and as amended by 2013 House Sub. for SB 83 and 2015 House Sub. for SB 270.	420.75
Loans to the SGF. A total of $125.2 million was "borrowed" from the SHF with arrangements to replace that money from FY 2007 through FY 2010. Only the first two payments were made.	(61.79)
Bond Payments. The 2004 Legislature authorized the issuance of $210 million in bonds backed by the SGF. SGF payments were made on those bonds only in 2007 and 2008. (Subsequent payments have been made from the SHF.)	26.58
Transfers from the SHF. Transfers include amounts for the Fair Fares program at the Department of Commerce, Highway Patrol operations, payments on SGF-backed bonds, allotments, and the 2011 direct transfer of $200 million. Note: The amount includes transfers authorized by 2015 Senate Sub. for HB 2135.	(1,924.43)
Total	**$(2,995.63)**

Highway-related transfers to local governments. KSA 2015 Supp. 79-3425i states the Special City and County Highway Fund (SCCHF) will receive certain moneys related to commercial vehicles in addition to moneys from fuels taxes. Transfers to the SCCHF of commercial motor vehicle *ad valorem* taxes and the commercial vehicle fees that have replaced the *ad valorem* taxes as of January 1, 2014, (see KSA 2015 Supp. 8-143m) have been suspended since FY 2010. Appropriations bills, most recently Section 246 of 2015 House Sub. for SB 112, have amended KSA 79-3425i so that no commercial vehicle taxes or fees are transferred from the SGF to the SCCHF. The transfers had been limited to approximately $5.1 million a year beginning in FY 2001.

For further information please contact:

Jill Shelley, Principal Research Analyst
Jill.Shelley@klrd.ks.gov

Chris Courtwright, Principal Economist
Chris.Courtwright@klrd.ks.gov

Aaron Klaassen, Principal Fiscal Analyst
Aaron.Klaassen@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824

Jill Shelley
Principal Research Analyst
785-296-3181
Jill.Shelley@klrd.ks.gov

Transportation

S-3 State Motor Fuels Taxes and Fuel Use

For many years, the state sources that provide the most funding for transportation programs have been motor fuels taxes, sales tax, and registration fees.

This article provides information regarding Kansas motor fuels taxes and fuels use.

Per gallon amounts of motor fuels taxes. Kansas' motor fuels taxes are 24¢ a gallon on gasoline and 26¢ a gallon on diesel fuel, unchanged since 2003. The table below lists the effective dates of tax increases for motor fuels. The increases in 1989 through 1992 were part of the Comprehensive Highway Plan as it was enacted in 1989, and those in 1999 and 2001 were part of the original ten-year Comprehensive Transportation Program enacted in 1999. No increases in fuels taxes are associated with the Transportation Works for Kansas (T-Works) bill enacted in 2010.

Motor Fuels Tax Rates Changes 1925 - 2015

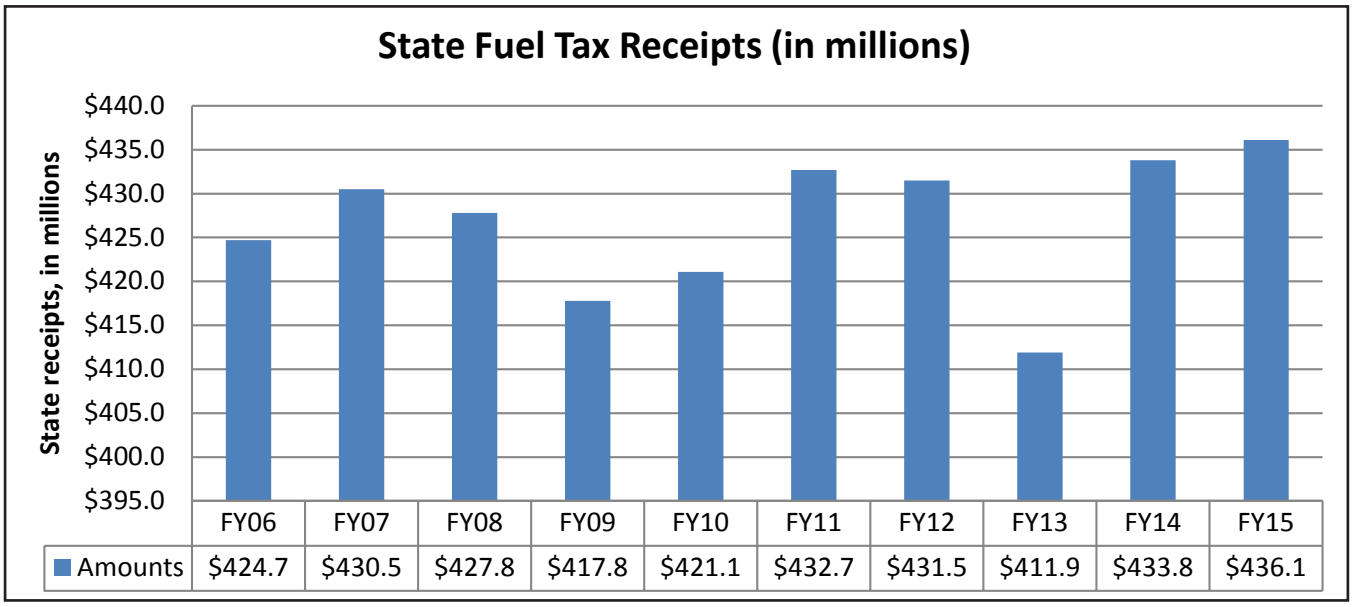
Effective Date	Gasoline	Diesel
1925	2¢	--
1929	3¢	--
1941	--	3¢
1945	4¢	4¢
1949	5¢	5¢
1956	--	7¢
1969	7¢	8¢
1976	8¢	10¢
1983	10¢	12¢
1984	11¢	13¢
1989	15¢	17¢
1990	16¢	18¢
1991	17¢	19¢
1992	18¢	20¢
1999	20¢	22¢
2001	21¢	23¢
2002	23¢	25¢
2003	24¢	26¢

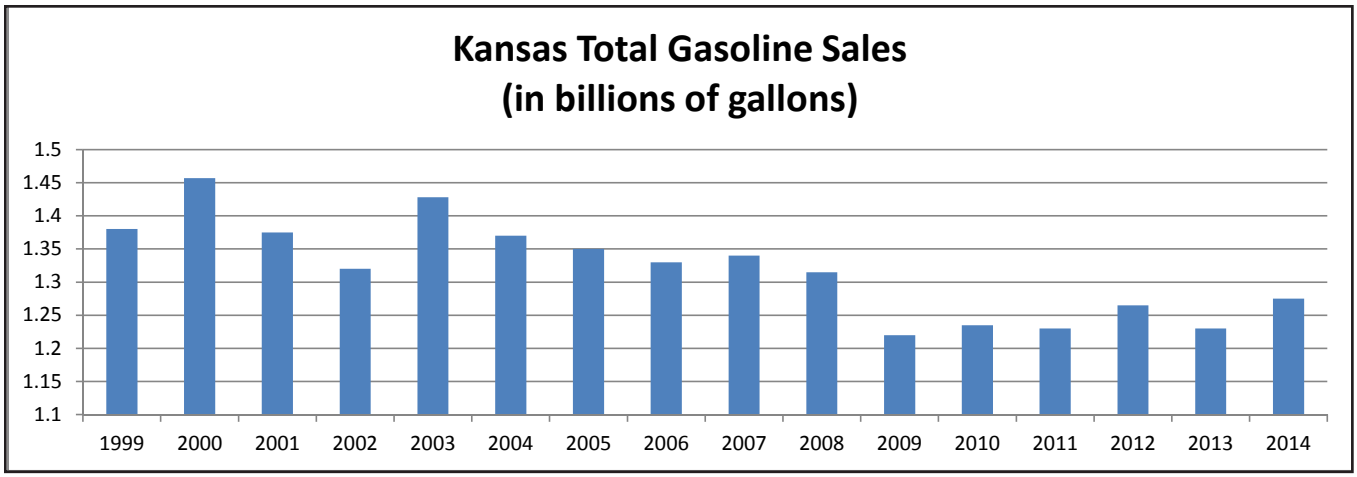
A tax of 17¢ a gallon was imposed on E-85 gasohol beginning in 2006. Certain fuel purchases, including aviation fuel and fuel used for nonhighway purposes, are exempt from taxation.

A federal fuels tax of 18.4¢ a gallon for gasoline, gasohol, and special fuels and 24.4¢ a gallon for diesel fuel also is included in fuel prices. The amount of federal tax per gallon has not increased since 1993, although increases have been proposed in Congress.

Combined state, local, and federal gasoline taxes across the country as of October 1, 2015, averaged 48.7¢ a gallon and ranged from a low of 30.7¢ a gallon in Alaska and 32.9¢ a gallon in New Jersey to 73.7¢ a gallon in Pennsylvania, 62.9¢ a gallon in Washington state, 62.7¢ a gallon in New York, and 61.6¢ a gallon in Hawaii. The equivalent rate for Kansas was 42.4¢ a gallon.

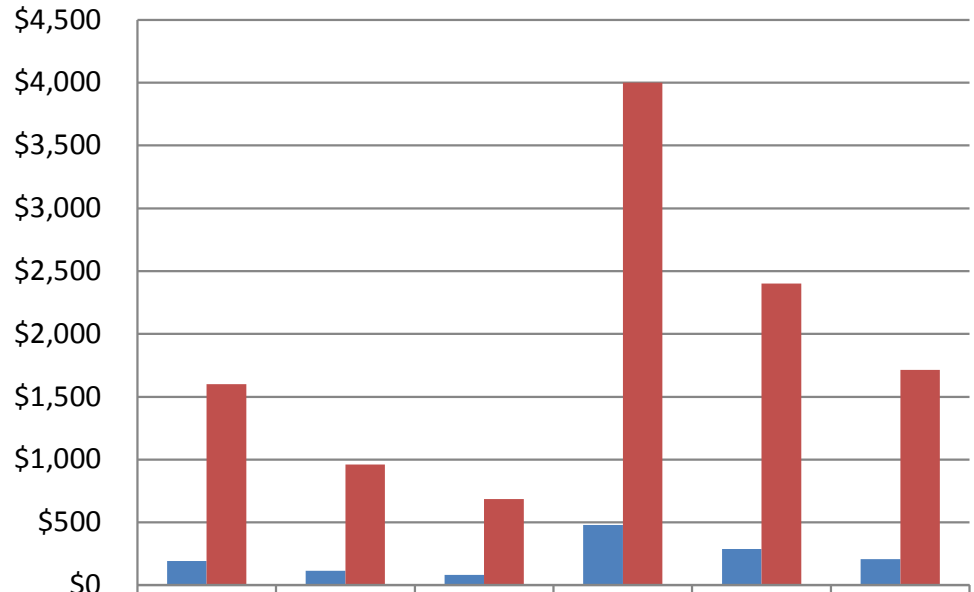
Fuels usage and tax revenues. Kansas fuels tax revenues and gasoline usage fluctuate, as illustrated in the graphics below.





Amounts households spend. According to the Bureau of Labor Statistics in the U.S. Department of Labor, U.S. households spent a median of $9,073 on transportation in 2014, an increase from $8,293 in 2011. In 2014, $2,468 (27 percent) of the transportation total was spent on gasoline. If fuel prices average $2 a gallon, state fuel taxes account for 12 percent of the amount motorists spend on fuel.

State Gasoline Tax Portion of Overall Annual Gasoline Cost, If Price Is $2/gallon



	12,000 miles 15 mpg	12,000 miles 25 mpg	12,000 miles 35 mpg	30,000 miles 15 mpg	30,000 miles 25 mpg	30,000 miles 35 mpg
Paid in Gasoline Tax	$192	$115	$82	$480	$288	$206
Paid for Fuel (including taxes), $2/gallon	$1,600	$960	$686	$4,000	$2,400	$1,714

Sources:

Reports, Monthly Motor Fuel Reported by States, U.S. Department of Transportation, Federal Highway Administration, Office of Highway Policy Information, Motor Fuel and the Highway Trust Fund. http://www.fhwa.dot.gov/policyinformation/motorfuel/may14/index.cfm and reports for previous years, current year information accessed December 11, 2015.

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American Petroleum Institute, Combined local, state, and federal gasoline taxes: http://www.api.org/oil-and-natural-gas-overview/industry-economics/fuel-taxes

For further information please contact:

Jill Shelley, Principal Research Analyst
Jill.Shelley@klrd.ks.gov

Chris Courtwright, Principal Economist
Chris.Courtwright@klrd.ks.gov

Aaron Klaassen, Principal Fiscal Analyst
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