



# Kansas Register

Ron Thornburgh, Secretary of State

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## State of Kansas

## Board of Emergency Medical Services

## Notice of Meeting

The Board of Emergency Medical Services will meet at 9 a.m. Friday, June 7, at the Pozez Education Center, 1500 S.W. 10th Ave., Topeka. Committee meetings will begin at 10 a.m. Thursday, June 6.

Agenda items include updates on the office, committee reports and possible action, 2002 legislative session, Advisory Committee on Trauma, FY 2002/2003 budgets, and Kansas Rural Health Options Project.

All meetings of the board are open to the public. For more information, contact the administrator at 109 S.W. 6th, Topeka, 66603, (785) 296-6237.

David Lake  
Administrator

Doc. No. 027935

## State of Kansas

Department of Agriculture  
Division of Water Resources

## Notice of Prehearing Conference

A prehearing conference will be conducted at 1:30 p.m. Tuesday, June 11, in the Sunflower Conference Room, second floor, Kansas Department of Agriculture, 109 S.W. 9th, Topeka. At the prehearing conference, the chief engineer will set deadlines, outline procedures and consider issues preliminary to a hearing to consider Wheatland Electric's applications for change in the place of use, point of diversion and use made of water in vested right, File No. FI 168; for change in the place of use and point of diversion in vested right, File No. FI 229; and for change in the place of use, point of diversion, and use made of water in water right, File No. 2,342; all in Finney County, Kansas. The Wheatland facility in question is located generally in the Northwest Quarter of Section 13, Township 24, Range 33 West, in Finney County, Kansas. The case will determine certain issues including whether the chief engineer should approve Wheatland's applications for change.

Persons wanting to participate in the proceedings should plan to attend the prehearing conference, by phone or in person, and submit, in writing, their name, address, telephone number, the party they wish to represent and whether they will appear at the conference by phone or in person. The submission also shall include the legal basis for the person's standing in this action or the nature of their interest in these proceedings. This written submission should be sent to the attention of Leslie Garner, Kansas Department of Agriculture, 109 S.W. 9th, Topeka, 66612, to be received not later than June 7.

Jamie Clover Adams  
Secretary of Agriculture

Doc. No. 027951

(Published in the Kansas Register May 23, 2002.)

USDA-Natural Resources  
Conservation Service

## Notice of Kansas Technical Committee Meeting

The Kansas Technical Committee will meet from 9:30 a.m. to 3 p.m. Tuesday, June 11, at the NRCS Conference Center, 747 Duvall, Salina, to discuss the Conservation Provisions of the Farm Security and Rural Investment Act of 2002 as it pertains to Kansas.

For additional information, contact Steve Parkin, USDA-Natural Resources Conservation Service, 760 S. Broadway, Salina, 67401-4642, (785) 823-4568, fax (785) 823-4540.

Mary D. Shaffer  
Public Affairs Specialist

Doc. No. 027948

## State of Kansas

Department of Agriculture  
Division of Water Resources

## Notice of Prehearing Conference

A prehearing conference will be conducted June 11 in the Sunflower Conference Room, second floor, Kansas Department of Agriculture, 109 S.W. 9th, Topeka. The prehearing conference is scheduled to be heard second on the 1:30 p.m. docket and will be taken up by the chief engineer upon conclusion of the Wheatland prehearing conference first scheduled for 1:30 p.m. At the prehearing conference, the chief engineer will set deadlines, outline procedures and consider issues preliminary to a hearing to consider Sunflower Electric's applications for permits to appropriate water for beneficial use. The place of use identified in the applications is proposed to be the Southwest Quarter of Section 29, the Southeast Quarter of Section 30, the Northeast Quarter of Section 31, and the Northwest Quarter of Section 32, all in Township 24 South, Range 33 West, in Finney County, Kansas. The case will determine certain issues including whether the chief engineer should approve Sunflower's applications.

Persons wanting to participate in the proceedings should plan to attend the prehearing conference, by phone or in person, and submit, in writing, their name, address, telephone number, the party they wish to represent and whether they will appear at the conference by phone or in person. The submission also shall include the legal basis for the person's standing in this action or the nature of their interest in these proceedings. This written submission should be sent to the attention of Leslie Garner, Kansas Department of Agriculture, 109 S.W. 9th, Topeka, 66612, to be received not later than June 7.

Jamie Clover Adams  
Secretary of Agriculture

Doc. No. 027952

## State of Kansas

## Department of Agriculture

Request for Comments on Proposed  
Special Local Need Registration

Notice is hereby given that BASF Corporation has requested a Special Local Need (SLN) registration, Section 24(c) FIFRA, to allow aerial application of Distinct® Herbicide (EPA Registration Number 7969-150) to field corn in counties west and inclusive of Highway 81. Distinct® is currently registered for statewide postemergence applications in field corn, but only by ground application equipment. This product is labeled for use in corn up to 20 inches tall and thereby provides the grower with greater flexibility and more opportunity to remove especially problematic weeds such as ALS-resistant kochia and Palmer amaranth. Distinct® contains the two active ingredients diflufenzopyr and dicamba, and is used primarily to control annual broadleaf weeds and some perennial weeds. The combination of the two active ingredients allows weed control at later stages of growth than what is possible with dicamba alone.

A letter supporting the request has been received from Kansas State University weed scientists Dr. Phillip Stahlman and Dr. Randall Currie. They cite the fact that the

limited window of time available for application of herbicides makes it difficult to treat large areas, especially when conditions are wet and not suitable for ground application. The risk of drift or volatilization of Distinct® is considered comparable to alternative products that are currently labeled for aerial application in corn.

BASF Corporation has completed its residue and efficacy testing for this proposed use and is submitting a request for amendment of the existing federal registration. Efficacy and residue data summaries have been provided to the Kansas Department of Agriculture in support of the proposed SLN registration. These data appear to support the federal label preharvest interval of 32 days for corn forage and 72 days for corn grain or stover when Distinct® is applied at the maximum allowed rate of 10 oz/A (6 oz/A per application).

Interested persons may submit written comments, data or other evidence in support of or in opposition to the proposed SLN registration before June 6. Prepared documents or data should be addressed to Gary Boutz, Pesticide and Fertilizer Program, 109 S.W. 9th, 3rd Floor, Topeka, 66612-1281.

Jamie Clover Adams  
Secretary of Agriculture

Doc. No. 027944

## State of Kansas

## Legislature

## Interim Committee Schedule

The following committee meetings have been scheduled during the period of May 27-June 9. Requests for accommodation to participate in committee meetings should be made at least two working days in advance of the meeting by contacting Legislative Administrative Services at (785) 296-2391 or TTY (785) 296-8430. When available, agendas can be found at <http://skyways.lib.ks.us/ksleg/KLRD/klrd.html>.

Date	Room	Time	Committee	Agenda
May 30	519-S	1:00 p.m.	Legislative Educational Planning Committee	Final report from Augenblick & Myers on school finance "suitability" study.
May 31			<b>Sine Die</b>	
May 31	123-S	Upon adjournment of both houses	Joint Committee on State Building Construction	Agenda not available.
May 31	514-S	9:00 a.m.	Joint Committee on Administrative Rules and Regulations	Review rules and regulations proposed by the Dept. of Corrections; Dept. of Revenue; KCC; Chief Engineer—Division of Water Resources; Behavioral Sciences Regulatory Board; and KDHE.
May 31	531-N	Upon adjournment of both houses	Joint Committee on Information Technology	Planning for interim meetings.

Jeff Russell  
Director of Legislative  
Administrative Services

Doc. No. 027957

State of Kansas

State Conservation Commission

Notice of Meeting

The State Conservation Commission will conduct a telephone conference at 8 a.m. Thursday, May 30. Individuals may attend by reporting to the executive director's office in Suite 500, 109 S.W. 9th, Topeka. A copy of the agenda may be obtained by contacting Cathy Greene at the address above, (785) 296-3600. If special accommodations are needed, contact the agency at least three days in advance of the meeting date.

Tracy Streeter  
Executive Director

Doc. No. 026963

State of Kansas

Pooled Money Investment Board

Notice of Investment Rates

The following rates are published in accordance with K.S.A. 75-4210. These rates and their uses are defined in K.S.A. 12-1675(b)(c)(d), 75-4201(l) and 75-4209(a)(1)(B).

Effective 5-20-02 through 5-26-02

Term	Rate
1-89 days	1.73%
3 months	1.70%
6 months	1.90%
1 year	2.41%
18 months	2.95%
2 years	3.35%

Derl S. Treff  
Director of Investments

Doc. No. 027932

State of Kansas

Department of Transportation

Notice to Consulting Engineers

The Kansas Department of Transportation is seeking qualified consulting engineering firms for the project listed below. The firm must be proficient in roundabout design, operation and construction. A response may be submitted by e-mail to Neil@ksdot.org, or seven signed copies of the response can be mailed to Neil Rusch, P.E., Assistant to the Director, Division of Engineering and Design, KDOT, Room 1084-West, Docking State Office Building, 915 S.W. Harrison, Topeka, 66612-1568. Responses shall be limited to four pages. Responses must be received in Room 1084-West by 5 p.m. June 13 for the consulting engineering firm to be considered.

From the firms expressing interest, the Consultant Selection Committee will select a list of the most highly qualified (not less than three, not more than five) and invite them to attend an individual interview conference. At this time, the consulting firms can more thoroughly discuss their experience related to the type of project at hand and will be expected to discuss, in some detail, their approach to this project and the personnel to be assigned

to the project. Firms not selected to be short-listed will be notified by letter.

The Consultant Negotiating Committee, appointed by the Secretary of Transportation, will conduct the discussions with the firms invited to the individual interview conferences. The committee will select the firm to perform the professional services required for completing the advertised project. After the selection of this firm, the remaining firms will be notified by letter of the outcome.

106 K-8685-01, Statewide

The scope of services is to provide, on an as-needed basis, conceptual review, design review, operational analysis, report writing and assistance in the development of a KDOT Roundabout Design Guide.

It is KDOT's policy to use the following criteria as the basis for selection of the consulting engineering firms:

1. Size and professional qualifications;
2. Experience of staff;
3. Location of firm with respect to proposed project;
4. Work load of firm; and
5. Firm's performance record.

E. Dean Carlson  
Secretary of Transportation

Doc. No. 027936

State of Kansas

Legislature

Legislative Bills and Resolutions Introduced

The following numbers and titles of bills and resolutions were introduced May 9-16 by the 2002 Kansas Legislature. Copies of bills and resolutions are available free of charge from the Legislative Document Room, 145-N, State Capitol, 300 S.W. 10th Ave., Topeka, 66612, (785) 296-4096. Full texts of bills, bill tracking and other information may be accessed at [ink.org/public/legislative](http://ink.org/public/legislative).

House Bills

HB 3041, An act creating the Kansas council for interstate adult offender supervision; membership; duties, by Committee on Federal and State Affairs.

HB 3042, An act concerning peer review; reporting of criminal activity; immunity from liability, by Committee on Federal and State Affairs.

Senate Bills

SB 664, An act reconciling amendments to certain statutes; amending K.S.A. 12-189 and K.S.A. 2001 Supp. 65-171d, 72-979, 74-3256, 74-3267a, 74-3298, 74-32,107, 74-32,138 and 74-4921 and repealing the existing sections; also repealing K.S.A. 12-189e and K.S.A. 2001 Supp. 19-2881c, 65-171z, 72-979a, 74-3256a, 74-3267b, 74-3298a, 74-32,107a, 74-32,138a and 74-4921b, by Committee on Ways and Means.

Senate Concurrent Resolutions

SCR 1627, A concurrent resolution relating to the adjournment of the senate and house of representatives for a period during the 2002 regular session of the legislature.

Senate Resolutions

SR 1862, A resolution in memory of Velda Duette.

SR 1863, A resolution congratulating and commending Dr. Jack Chalender.

SR 1864, A resolution congratulating and honoring Leroy C. Tombs, Sr.

SR 1865, A resolution congratulating and commending Kiddie Kollege.

Doc. No. 027933

## State of Kansas

## Department of Transportation

## Notice to Contractors

Sealed proposals for the construction of road and bridge work in the following Kansas counties will be received at the Bureau of Construction and Maintenance, KDOT, Topeka, or at the Capitol Plaza Hotel, Topeka, until 2 p.m. June 19 and then publicly opened:

## District One - Northeast

**District One**—106 K-5925-02 - Various locations in District 1, 301 miles (484.4 kilometers), signing. (State Funds)

**Jackson**—75-43 K-8943-01 - U.S. 75 from the Shawnee-Jackson county line north to the junction of K-16, 17.1 miles (27.6 kilometers), joint repair. (State Funds)

**Leavenworth**—24-52 K-7726-01 - Intersection of U.S. 24/U.S. 40 and K-16 in Tonganoxie, 0.4 mile (0.6 kilometer), intersection improvement. (State Funds)

## District Two - Northcentral

**Chase**—177-9 K-8360-01 - K-177 Fox Creek bridge, bridge overlay. (State Funds)

**Clay**—15-14 K-7717-01 - K-15 from the south city limits of Clay Center north to U.S. 24, 0.9 mile (1.5 kilometers), milling and overlay. (State Funds)

**Cloud**—81-15 K-8415-01 - Intersection of U.S. 81 and College Drive in Concordia, 0.3 mile (0.5 kilometer), intersection improvement. (State Funds)

**Lincoln**—181-53 K-8361-01 - K-181 culvert 534, culvert construction. (State Funds)

**McPherson**—59 C-3537-01 - County road 1 mile (1.6 kilometers) south and 2.5 miles (4 kilometers) east of Inman, 0.2 mile (0.3 kilometer), grading, bridge and surfacing. (Federal Funds)

**Morris**—4-64 K-8354-01 - K-4 culvert 7.1 miles (11.5 kilometers) northeast of the junction of U.S. 77, culvert construction. (State Funds)

**Ottawa**—41-72 K-8358-01 - K-41 culvert east of Delphos approximately 0.9 mile (1.5 kilometers), culvert construction. (State Funds)

**Washington**—101 C-3742-01 - County road 11.0 miles (17.7 kilometers) north and 1.6 miles (2.6 kilometers) west of Washington, 0.2 mile (0.3 kilometer), grading and bridge. (Federal Funds)

## District Three - Northwest

**District Three**—27-106 K-5927-02 - Various locations in District 3, 102.4 miles (164.7 kilometers), signing. (State Funds)

**Osborne**—24-71 K-6372-01 - U.S. 24 from the north junction of U.S. 281 east to the two-lane/four-lane, 6.9 miles (11.1 kilometers), grading, bridge and surfacing. (Federal Funds)

**Trego**—70-98 K-7305-01 - I-70 junction of U.S. 283 east to the Trego-Riley county line, 6.8 miles (27.4 kilometers), surface and bridge. (State Funds)

## District Four - Southeast

**Bourbon**—54-6 K-8362-01 - U.S. 54 Tennyson Creek bridge, bridge repair. (State Funds)

**Cherokee**—11 C-3636-01 - County road 2 miles (3.2 kilometers) west and 1.5 miles (2.4 kilometers) north of Riverton, 0.2 mile (0.4 kilometer), grading and bridge. (Federal Funds)

**Cherokee**—11 C-3637-01 - County road 2 miles (3.2 kilometers) north and 6.5 miles (10.6 kilometers) east of Columbus, 0.2 mile (0.4 kilometer), grading and bridge. (Federal Funds)

**Cherokee**—11 C-3638-01 - County road 1.5 miles (2.4 kilometers) south and 1.1 miles (1.8 kilometers) east of Columbus, 0.2 mile (0.3 kilometer), grading and bridge. (Federal Funds)

**Cherokee**—7-11 K-7718-01 - K-7 and Bethlehem Road intersection in Columbus, 0.2 mile (0.4 kilometer), intersection improvement. (State Funds)

**Crawford**—126-19 K-8828-01 - K-126 from the junction of U.S. 160 north and east to the junction of K-7, 15 miles (24.2 kilometers), seal. (State Funds)

**Franklin**—35-30 K-6355-01 - I-35 from 7.4 miles (12.2 kilometers) northeast of K-68 northeast to the Franklin-Miami county line, 4.1 miles (6.6 kilometers), pavement reconstruction. (Federal Funds)

**Miami**—69-61 K-5747 - U.S. 69, 4.7 miles (7.6 kilometers) north of the Linn-Miami county line, north to the two-lane/four-lane divided highway, 10.9 miles (17.5 kilometers), grading, bridge and surfacing. (Federal Funds)

**Miami**—35-61 K-6356-01 - I-35 from the Franklin-Miami county line northeast to the Miami-Johnson county line, 2.8 miles (4.5 kilometers), pavement reconstruction. (Federal Funds)

**Montgomery**—63 C-3605-01 - County road 1.3 miles (2.1 kilometers) south and 0.3 mile (0.5 kilometer) west of Elk City, 0.2 mile (0.3 kilometer), grading, bridge and surfacing. (Federal Funds)

**Montgomery**—63 C-3799-01 - County road 1.3 miles (2.1 kilometers) west of Cherryvale, 0.2 mile (0.3 kilometer), grading, bridge and surfacing. (Federal Funds)

**Neosho**—39-67 K-6417-01 - K-39 Neosho River bridge 1.8 miles (2.9 kilometers) east of the south junction of old U.S. 169, bridge replacement. (Federal Funds)

**Neosho**—67 K-8000-01 - South Santa Fe from 18th Street to 21st Street in Chanute, grading and surfacing. (State Funds)

## District Five - Southcentral

**Barber**—281-4 K-4051-03 - U.S. 281 from the north city limits of Medicine Lodge northwest to the Barber-Pratt county line, 0.06 mile (0.1 kilometer), drainage and channel construction. (State Funds)

**Butler**—8 K-7897-01 - Hunter Road from old K-254 north to K-254 in Towanda, 0.6 mile (0.9 kilometer), grading and surfacing. (State Funds)

**Butler**—54-8 K-8026-01 - U.S. 54 and Santa Fe Lake Road, 0.3 mile (0.5 kilometer), traffic signals. (State Funds)

**Reno**—78 K-8827-01 - U.S. 50 from the Stafford-Reno county line east to the junction of K-14; K-17 from Pretty Prairie Road north to north of Trails West Road, 30 miles (48.4 kilometers), crack repair. (State Funds)

**Sedgwick**—54-87 K-8893-01 - U.S. 54/I-235 interchange in Wichita, 1.6 miles (2.6 kilometers), pavement marking. (State Funds)

Proposals will be issued upon request to all prospective bidders who have been prequalified by the Kansas Department of Transportation on the basis of financial condition, available construction equipment and experience. Also, a statement of unearned contracts (Form No. 284) must be filed. There will be no discrimination against anyone because of race, age, religion, color, sex, handicap or national origin in the award of contracts.

Each bidder shall file a sworn statement executed by or on behalf of the person, firm, association, or corporation submitting the bid, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid.

This sworn statement shall be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the state to administer oaths. The required form of affidavit will be provided by the state to each prospective bidder. Failure to submit the sworn statement as part of the bid approval package will make the bid nonresponsive and not eligible for award consideration.

Plans and specifications for the projects may be examined at the office of the respective county clerk or at the KDOT district office responsible for the work.

E. Dean Carlson  
Secretary of Transportation

Doc. No. 027945

## State of Kansas

### Social and Rehabilitation Services

#### Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 10:30 a.m. Wednesday, July 24, in Room C, SRS Organizational Development, 2650 S.W. East Circle Drive, Topeka, to consider the adoption of amendments to an existing rule and regulation on a permanent basis effective 15 days after publication in the Kansas Register. Telephone conference will not be available.

This 60-day notice of the public hearing shall constitute a public comment period for the proposed regulation. All interested parties may submit written comments prior to or during the hearing to Hope Burns, Office of the Secretary for SRS, Room 603-N, Docking State Office Building, 915 S.W. Harrison, Topeka, 66612. All interested parties will be given a reasonable opportunity to present their views, but it may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Hope Burns at (785) 296-3969 or by calling the Kansas Relay Center at 1-800-766-3777.

The adoption of the regulation will take place at 1 p.m. Monday, July 29, in the SRS executive conference room, 603-N, Docking State Office Building. Telephone conference will not be available.

Copies of the regulation and the economic impact statement may be obtained by contacting Hope Burns. A summary of the proposed regulation and the economic impact follows:

#### Article 64—Developmental Disabilities— Community Development Disability Organizations (CDDOs)

**30-64-24. Case management.** This regulation is being amended to make the following changes relative to case management services for Kansans with developmental disabilities:

- > Modifying the definitions of core duties to reflect language changes developed through a stakeholder work group process, clarifying some duties, and specifying the duty of monitoring and followup to ensure implementation of planned supports;
- > Including the requirement of obtaining a license and completing SRS/HCP-based (stakeholder developed) training/assessment process, replacing the existing training and adequate performance requirements;
- > Relaxing the prohibition against case managers providing other direct services (if the person is not receiving direct services from the organization that employs the case manager); and
- > Changing the average caseload maximum from 25 to 30.

**Economic Impact:** The economic impact is anticipated to be managed by a shift in duties for case management providers (that is, the training and assessment required by this regulation are as a substitute for some of the prior provider-based and CDDO-based training requirements), and by an effort to absorb the extra duties by SRS/HCP staff in central office and field staff who currently monitor and license service providers.

**Bearer of Cost:** Providers of case management, CDDOs and SRS/HCP will shift costs or absorb costs associated with these changes.

**Affected Parties:** CDDOs in their service monitoring role, community service providers of targeted case management and people receiving services are all anticipated to be affected by enhanced training, clarification of service standards and expectations, and more formalized monitoring relationship.

**Other Methods:** This approach was determined to be the most appropriate method to achieve the desired outcomes after an extensive stakeholder work group effort—including dozens of provider/CDDO representatives, advocacy group representatives and consumer representatives—that addressed definitions, service expectations, training, options for monitoring and ensuring responsiveness and quality of services.

Janet Schalansky  
Secretary of Social and  
Rehabilitation Services

Doc. No. 027934

## State of Kansas

**Department of Administration  
Division of Facilities Management**

**Notice of Commencement of  
Negotiations for Architectural Services**

Notice is hereby given of the commencement of negotiations for architectural services for the design of general renovations to the following groups of armories:

<b>Group One</b>	<b>Group Two</b>
Norton	Sabetha
Phillipsburg	Hiawatha
Smith Center	Horton
Belleville	Holton
Concordia	Ottawa
Junction City	Troy
Abilene	Olathe
	Lenexa
	Paola

Bidding will be in two packages, one for each group, to complete all the work at all locations in that group. The scope of work will include updating the buildings to meet current codes ADA compliance; upgrade electrical and HVAC service; replace windows, roofing and exterior overhead and personnel doors; upgrade and reconfigure restrooms; provide efficient interior lighting; provide efficient locker and storage facilities; renovate kitchen/breakroom; reconfigure classrooms and office areas; upgrade parking and walks; and provide new interior finishes of the walls and ceilings in the assembly hall and maintenance bay.

For information regarding the scope of services, contact Captain Shawn C. Manley, Facility Designs Project Manager, (785) 274-1132.

If interested, an original and six copies (seven total) of the SF 255 form (plus relevant attachments of information regarding similar projects) should be submitted. These submittals should be concise, relevant to the project and follow the State Building Advisory Commission guidelines for submittal. Copies of the guidelines have previously been distributed to firms; if copies of the guidelines are required, contact Gary Grimes, Division of Facilities Management, Room 152, Landon State Office Building, 900 S.W. Jackson, Topeka, 66612, (785) 368-7471. Submittals not complying with the guidelines will be returned without consideration.

Expressions of interest and the SF 255 submittals should be received by Gary Grimes before 5 p.m. June 7.

Joe Fritton, P.E.  
Director, Division of  
Facilities Management

Doc. No. 027958

## State of Kansas

**Social and Rehabilitation Services**

**Request for Comments**

The Department of Social and Rehabilitation Services is accepting comments on the federal fiscal year 2002 Social Service Block Grant (SSBG) Plan. Any organization or individual wishing to obtain a copy of the block grant plan should call (785) 296-6216. Comments can be mailed to the office of the Secretary of SRS, Attn: Hope Burns, 6th Floor, Docking State Office Building, 915 S.W. Harrison, Topeka, 66612. Comments are due by June 10.

Janet Schalansky  
Secretary of Social and  
Rehabilitation Services

Doc. No. 027953

## State of Kansas

**Department of Administration  
Division of Facilities Management**

**Notice of Commencement of  
Negotiations for Engineering Services**

Notice is hereby given of the commencement of negotiations for civil engineering services to design a security perimeter fence around the Topeka National Guard Complex, 2800 S.W. Topeka Blvd., Topeka.

Services will include the location and alignment of approximately 6,000 LF of fencing, preparing fencing details, designing approximately 1,600 LF of sidewalk off Topeka Blvd., preparing drawings and specifications, reviewing shop drawings and submittal and conducting a final inspection. A utility location survey has been completed and an existing fence study will be utilized.

For information regarding the scope of services, contact Captain Shawn C. Manley, Facility Designs Project Manager, (785) 274-1132.

If interested, an original and six copies (seven total) of the SF 255 form (plus relevant attachments of information regarding similar projects) should be submitted. These submittals should be concise, relevant to the project and follow the State Building Advisory Commission guidelines for submittal. Copies of the guidelines have previously been distributed to firms; if copies of the guidelines are required, contact Gary Grimes, Division of Facilities Management, Room 152, Landon State Office Building, 900 S.W. Jackson, Topeka, 66612, (785) 368-7471. Submittals not complying with the guidelines will be returned without consideration.

Expressions of interest and the SF 255 submittals should be received by Gary Grimes before 5 p.m. June 7.

Joe Fritton, P.E.  
Director, Division of  
Facilities Management

Doc. No. 027959



## State of Kansas

**Department of Administration  
Division of Facilities Management**

**Notice of Commencement of  
Negotiations for Architectural Services**

Notice is hereby given of the commencement of negotiations for "on-call" architectural services for Kansas State University. Services will include work on small projects for a one-year period, renewable for two additional years.

For information regarding the scope of services, contact Abe Fattaey, Associate Director/University Engineer, Division of Facilities, Kansas State University, (785) 532-6377.

If interested, an original and six copies (seven total) of the SF 255 form (plus relevant attachments of information regarding similar projects) should be submitted. These submittals should be concise, relevant to the project and follow the State Building Advisory Commission guidelines for submittal. Copies of the guidelines have previously been distributed to firms; if copies of the guidelines are required, contact Gary Grimes, Division of Facilities Management, Room 152, Landon State Office Building, 900 S.W. Jackson, Topeka, 66612, (785) 368-7471. Submittals not complying with the guidelines will be returned without consideration.

Expressions of interest and the SF 255 submittals should be received by Gary Grimes before 5 p.m. June 7.

Joe Fritton, P.E.  
Director, Division of  
Facilities Management

Doc. No. 027960

## State of Kansas

**Attorney General**

**Opinion 2002-15**

**Elections—Advance Voting; Voters Eligible; Deceased Voter; Effect on Canvassing Ballot.**

**Elections—Original Canvass of Elections—Reading, Counting and Recording Votes; Rules for Canvassers; Deceased Voter. Ron Thornburgh, Secretary of State, Topeka, March 14, 2002.**

A ballot that has been properly cast by depositing it in a locked ballot box or voting machine at a polling place on election day is to be counted regardless whether the person who marked and submitted the ballot may have died prior to canvassing of the ballot. An advance voting ballot that has been properly cast by depositing it in a locked ballot box or voting machine at the office of the county election officer or a satellite voting office during the period allowed for advance voting is to be counted regardless whether the person who marked and submitted the ballot may have died prior to the time the ballot is canvassed. If the board of county canvassers determines that an advance voting ballot marked as "provisional" by the special election board was submitted by a person who died after marking the advance voting ballot and prior to the canvassing of the ballot, the ballot should

remain unopened and uncounted. Cited herein: K.S.A. 25-215; 25-414; 25-601; 25-1119; 25-1120; 25-1122a; 25-1123; K.S.A. 2001 Supp. 25-1124; K.S.A. 25-1132; 25-1133; 25-1134; 25-1135; 25-1136; 25-1138; 25-2302; 25-2427; 25-2701; 25-2905; 25-3002; 25-4401; 25-4601; 25-4609; L. 1995, Ch. 192; Kan. Const., Bill of Rights, § 1, Art. 5, §§ 1, 3 (repealed); U.S. Const., Amends. I, XIV. RDS

**Opinion 2002-16**

**Cities and Municipalities—General Provisions—Police Power; Federal Fair Housing Act; Rental Ordinance.**

**Constitution of the United States—Searches and Seizures—City Inspection of Rental Units; Administrative Search Warrants. Senator Chris Steinger, 6th District, Kansas City, March 14, 2002.**

Because a subsequently enacted ordinance excepts group homes and adult care homes from the provisions of City of Lawrence Ordinance No. 7326, the ordinance is not a violation of the Federal Fair Housing Act's prohibition on housing discrimination based on disability. Moreover, the definition of "family" in the Lawrence ordinance does not limit the number of persons related by blood, marriage, legal adoption, guardianship or any other legally authorized custodial relationship who may reside in single family residences and, therefore, does not otherwise run afoul of the Federal Fair Housing Act.

The guidelines stated in *Camara v. Municipal Court of the City and County of San Francisco*, *City of Overland Park v. Niewald* and *Board of County Comm'rs of Johnson County v. Grant* will be applied in determining whether probable cause for an administrative search warrant has been established. Because a tenant has a reasonable expectation of privacy in his or her dwelling, a tenant's consent or a warrant must be obtained prior to an attempt to gain access to inspect the tenant's residence. Cited herein: K.S.A. 12-736, 12-16,123; U.S. Const., Amend. 4; 42 U.S.C. §§ 3601, 3602, 3604, 3607. MF

**Opinion 2002-17**

**Constitution of the State of Kansas—Judicial—Judicial Power; Authority to Assess an Emergency Surcharge. Representative Jeff Peterson, 66th District, Manhattan, March 26, 2002.**

The Kansas Supreme Court has inherent authority to take action necessary to ensure that it is adequately funded to carry out its judicial functions. As long as the court has made the necessary findings of urgency and necessity, its order dated March 22, 2002, is a proper exercise of this inherent power. Cited herein: K.S.A. 20-101; K.S.A. 2001 Supp. 20-1a04; 60-2001; Kan. Const., Art. 2, § 24, Art. 3, § 1. JLM

**Opinion 2002-18**

**District Officers and Employees—District Attorneys—Assistants, Deputies, Stenographic, Investigative and Clerical Hire; Appointment; Compensation; Assessment of Fees for Review of Building Plans for Compliance with Accessibility Standards.**

**Personal and Real Property—Public Buildings—Accessibility Standards for Public Buildings or Facilities; As-**  
*(continued)*

assessment of Fees by District Attorney for Review of Building Plans. Robert D. Hecht, District Attorney, Third Judicial District, Topeka, March 27, 2002.

There is no statutory authority for a district attorney to contract with a city or county to provide the service of reviewing building plans and specifications to determine compliance with the Kansas Architectural Accessibility Standards Act and the Americans with Disabilities Act. Cited herein: K.S.A. 22a-106; 58-1301; K.S.A. 2001 Supp. 58-1304; K.S.A. 58-1308; 58-1309; 42 U.S.C. § 12101. DMV

#### Opinion 2002-19

**Schools—Miscellaneous Provisions—Employment of Lobbyists; Definitions; Compensation; Dues; Political Action Committee.** Representative Ralph M. Tanner, 10th District, Baldwin; Representative Bonnie Huy, 87th District, Wichita, March 27, 2002.

Monies held in the general fund of a unified school district may be expended for payment of any expenses incurred in connection with the school district's employment of a lobbyist. A board of education for a unified school district may not expend monies derived from tax levies for the payment of dues or otherwise provide financial support to a political action committee. Cited herein: K.S.A. 2001 Supp. 25-4143; K.S.A. 46-222; 46-225; 72-132; 72-3607; 72-4523; K.S.A. 2001 Supp. 72-4525; K.S.A. 72-5326; 72-53,108; 72-6407; K.S.A. 2001 Supp. 72-6409; 72-6420; K.S.A. 72-6421; 72-6422; 72-6423; 72-6424; K.S.A. 2001 Supp. 72-6426; 72-6430; 72-6433; K.S.A. 72-8205; K.S.A. 2001 Supp. 72-8237; 72-8238; K.S.A. 72-8803; 72-9302; 72-9905; 72-9609. RDS

#### Opinion 2002-20

**Legislature—State Governmental Ethics—State Officer or Employee Defined; Kansas Judicial Council Employees.**

**Courts—Judicial Council—Duties of Judicial Council; Application of State Governmental Ethics Law to Judicial Council Employees.** Daniel J. Sevart, Chairman, Governmental Ethics Commission, Topeka, May 8, 2002.

A Judicial Council employee is an employee of the judicial branch and, therefore, is not a "state officer or employee" for purposes of the State Governmental Ethics law. To this extent, our conclusion in Attorney General Opinion No. 2002-3 is hereby modified. Cited herein: K.S.A. 20-152, 20-158, 20-162, 20-2203, 20-2201, 46-214a, 46-221, 46-222, 46-232, 46-233, 46-237, 46-237a, 46-243, 46-262, 46-263, 46-276. MF

#### Opinion 2002-21

**Cities and Municipalities—Code for Municipal Courts; General Provisions—Costs; Authority of City to Assess.** John B. Barrett, Goddard City Attorney Goddard, May 8, 2002.

In order to offset the expense of court proceedings, a city may charter out of K.S.A. 12-4112 and assess reasonable costs against a municipal court defendant who exercises the right to trial and who is found guilty. Cited

herein: K.S.A. 12-4112; 12-4501; 12-4502; K.S.A. 2001 Supp. 22-4513. MF

#### Opinion 2002-22

**Automobiles and Other Vehicles—Driving Under Influence of Alcohol or Drugs; Related Provisions—Alcohol and Drug Safety Action Program; Certification of Programs; Fees; Disposition.** Chief Judge Edward E. Bouker, 23rd Judicial District, Hays, May 8, 2002.

An administrative judge may certify more than one community-based alcohol and drug safety action program in a judicial district. The administrative judge may not designate one of the programs to serve as the financial administrator of the alcohol and drug safety action fund. Cited herein: K.S.A. 8-1008. CN

#### Opinion 2002-23

**State Boards, Commissions, and Authorities—Board of Examiners for Hearing Aids—Practice of Dispensing Hearing Aids; Certain Acts Prohibited; Unlawful Practice.** Terry Brewster, Chair, Kansas Board of Hearing Aid Examiners, Topeka, May 8, 2002.

Making or taking an earmold impression for the purpose of fitting or adapting a hearing aid is within the purview of a licensed hearing aid dispenser. A licensed audiologist is not authorized to make an earmold impression for the purpose of fitting or adapting a hearing aid unless also licensed as a hearing aid dispenser or specifically exempted from those licensing requirements. Cited herein: K.S.A. 2001 Supp. 65-6501; K.S.A. 65-6504; 74-5807; 74-5810. GE

#### Opinion 2002-24

**Waters and Watercourses—Groundwater Management Districts—Management Program; Board of Directors' and Chief Engineer's Function and Duties; Hearings; Approval and Adoption; Periodic Review; Waters and Watercourses; Initiation of Proceedings for Designation of Intensive Groundwater Use Control Areas; Duties of Chief Engineer; Findings.** Senator Stan Clark, 40th District, Oakley, May 9, 2002.

An interpretation of K.S.A. 82a-1036 that limits the chief engineer's ability, on his own initiative, to establish an intensive groundwater use control area inside the boundaries of a groundwater management district does not comport with the clear intent of the legislative scheme authorizing the chief engineer to regulate water. The definition of an eligible voter found in K.S.A. 82a-1021 does not violate the one man, one vote rule of the United States Constitution. Whether a reduction of a water right constitutes a compensable taking depends upon the purpose for which the reduction is made. Without consideration of the purpose for which the reduction is made, no balancing test can be applied to determine whether the taking is compensable. Cited herein: K.S.A. 82a-701; 82a-1020; 82a-1021; 82a-1028; 82a-1036; K.S.A. 2001 Supp. 82a-1038; K.S.A. 82a-1039; U.S. Const., Amend V. GE

Carla J. Stovall  
Attorney General

Doc. No. 027943

## State of Kansas

## Advisory Committee on Trauma

## Notice of Meeting

The Advisory Committee on Trauma will meet from 10 a.m. to 3 p.m. Wednesday, May 29, at the Kansas Medical Society, 623 S.W. 10th Ave., Topeka. For further information, contact the KDHE/Office of Local and Rural Health at (785) 296-1200.

Clyde D. Graeber  
Secretary of Health  
and Environment

Doc. No. 027956

## State of Kansas

## Department of Administration

Permanent Administrative  
Regulations

## Article 2.—DEFINITIONS

**1-2-31. Demotion.** "Demotion" means the involuntary movement for disciplinary purposes under K.A.R. 1-10-6 or the voluntary movement of an employee from a position in one class to a position in another class having a lower pay grade. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 2001 Supp. 75-2949, K.S.A. 75-2949d, and 75-3746; effective May 1, 1979; amended Dec. 17, 1995; amended June 7, 2002.)

**1-2-42. Exempt employee.** "Exempt employee" means an employee who is in a position that is determined by the director, or by an appointing authority with delegated authority under K.S.A. 75-2938, and amendments thereto, not to be eligible for overtime pay under 29 U.S.C. § 213, as amended on October 31, 1998 and hereby adopted by reference. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746; effective Dec. 17, 1995; amended June 7, 2002.)

**1-2-42a. Non-exempt employee.** "Non-exempt employee" means an employee who is in a position that is determined by the director, or by an appointing authority with delegated authority under K.S.A. 75-2938, and amendments thereto, to be eligible for overtime pay under 29 U.S.C. § 213, as amended on October 31, 1998 and hereby adopted by reference. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746; effective Dec. 17, 1995; amended June 7, 2002.)

**1-2-48.** (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746 and K.S.A. 75-2948, as amended by 1995 SB 175, § 12; effective May 1, 1984; amended Dec. 17, 1995; revoked June 7, 2002.)

## Article 5.—COMPENSATION

**1-5-22. Payment for two or more positions.** (a) Each employee who is employed in two or more regular, part-time positions shall receive separate pay for the duties performed in each position. Except as provided in subsection (c), the percentage of time worked on all positions shall not exceed 100 percent.

(b) Each employee in multiple regular, part-time positions shall receive benefits commensurate with the total time worked on all regular, part-time positions.

(c) Any classified exempt employee may hold one or more additional unclassified exempt positions teaching or conducting research in a state educational institution without limit on total pay, if the appointing authority in the classified service certifies that the position does not detract from the time for which the employee is being paid as a classified exempt employee. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1983; amended Dec. 17, 1995; amended May 31, 1996; amended Oct. 1, 1999; amended June 7, 2002.)

**1-5-29. Longevity bonus pay.** (a) Upon completion of 10 years of length of service, each classified employee in a regular position shall be eligible for longevity bonus pay.

(b) The longevity bonus payment for each eligible employee shall be computed by multiplying \$40 by the number of full years of state service, not to exceed 25 years.

(c) Longevity bonus pay shall increase the regular rate applying to overtime pay for hours worked during the 12 months preceding the date the longevity bonus is paid to the employee and shall be considered in calculating the payment of compensatory time to an employee upon termination as provided in K.A.R. 1-5-24. (Authorized by K.S.A. 75-5541; implementing K.S.A. 75-5541 and K.S.A. 75-2943; effective, T-1-7-27-89, July 27, 1989; effective Nov. 20, 1989; amended, T-1-9-19-94, Sept. 19, 1994; amended Nov. 21, 1994; amended Dec. 17, 1995; amended June 7, 2002.)

## Article 6.—RECRUITING AND STAFFING

**1-6-3. Filling vacancies.** (a) For each classification, required selection criteria shall be established by the director concerning education, experience, age, physical requirements, character, and other factors that are related to ability to perform satisfactorily the duties of positions in the class. Each required selection criterion shall relate directly to the duties of positions in the class. Optional selection criteria may be established by the director for one or more classes, which may be designated by the appointing authority as preferred or required for particular positions in the classes.

(b) Each applicant certified to the pool of eligible candidates shall meet the required selection criteria for that class and position at the time of hire. If the required selection criteria for a class or position includes a degree requirement, any applicant who is expected to complete the degree requirement by the end of the current academic term may be certified to the pool of eligible candidates for that class or position and extended a conditional offer of employment. The applicant shall meet the degree requirement at the time of hire.

(c) Any agency may establish preferred selection criteria, in addition to those provided under subsection (a), in order to determine the capacity and fitness of each eligible candidate in the pool to perform the position's specific duties. (Authorized by K.S.A. 2001 Supp. 75-3747;

(continued)

implementing K.S.A. 75-2939, K.S.A. 75-2943, and K.S.A. 75-2944; effective May 1, 1979; amended Dec. 17, 1995; amended June 7, 2002.)

**1-6-21. Candidate pools for regular positions.** (a) For each vacancy in a regular position that is to be filled, the appointing authority shall hire from among those persons certified as eligible to fill either that position or another vacant position that meets both of the following conditions:

(1) The other vacant position is in the same class as the position that is to be filled, and the duties of the two positions are substantially the same.

(2) The applicant is offered the position or extended a conditional offer of employment within 30 days of the date that the job requisition for the other vacant position closes.

(b) Errors in candidate pools may be corrected by the appointing authority or the director.

(c) Each candidate shall be given equal consideration by the agency when applying additional, job-related selection criteria.

(d) To be eligible for veterans' preference points, each veteran shall meet the required selection criteria of the vacant position for which the veteran is applying. Each candidate who is verified to be eligible for veterans' preference shall receive points equalling five percent of the total available points of the job skill requirements. Each candidate verified to be eligible for disabled veterans' preference shall receive points equalling 10 percent of the total available points of the job skill requirements. (Authorized by K.S.A. 2001 Supp. 75-3747 and K.S.A. 75-2955; implementing K.S.A. 75-2943 and 75-2955; effective May 1, 1979; amended May 1, 1983; amended May 1, 1985; amended, T-1-9-19-94, Sept. 19, 1994; amended Nov. 21, 1994; amended Dec. 17, 1995; amended Aug. 1, 1997; amended June 7, 2002.)

**1-6-26a. Limited-term positions.** (a) "Limited-term position" means a position in the classified service that is scheduled to terminate within a predetermined period of time, as stipulated in grant specifications or other contractual agreements.

(b) Each individual in a limited-term position shall be notified at the time of hiring of the expiration date of the grant or contractual agreement. No employee with permanent status may be transferred to a limited-term position without the written consent of that employee. The end date of the position shall be entered on the employee's personnel record at the time of hiring.

(c) Each individual in a limited-term position shall be terminated on the end date of that position, subject to any extensions of the limited-term position. The termination of any employee who serves the full length of a limited-term position shall not be considered a layoff of that employee, and the provisions of K.S.A. 75-2948, and amendments thereto, and any regulations adopted under that statute shall not apply to the employee. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746 and 75-2948; effective June 7, 2002.)

**Article 9.—HOURS; LEAVES; EMPLOYEE-MANAGEMENT RELATIONS**

**1-9-4. Vacation leave.** (a) (1) Each classified employee in a regular position shall be entitled to vacation with pay, which shall be earned and accumulated in accordance with this regulation. Vacation leave earned each payroll period, the maximum amount of vacation leave that may be accumulated, and the increments in which vacation leave may be used shall be determined as follows.

(A) Each non-exempt employee shall accrue vacation leave in accordance with the following table.

**Vacation Leave Table for Non-Exempt Employees**  
Hours Earned Per Pay Period Based on Length of Service

Hours in Pay Status Per Pay Period	Less Than 5 Years	5 Years & Less Than 10 Years	10 Years & Less than 15 Years	15 Years & Over
0-7	0.0	0.0	0.0	0.0
8-15	0.4	0.5	0.6	0.7
16-23	0.8	1.0	1.2	1.4
24-31	1.2	1.5	1.8	2.1
32-39	1.6	2.0	2.4	2.8
40-47	2.0	2.5	3.0	3.5
48-55	2.4	3.0	3.6	4.2
56-63	2.8	3.5	4.2	4.9
64-71	3.2	4.0	4.8	5.6
72-79	3.6	4.5	5.4	6.3
80-	3.7	4.7	5.6	6.5
Maximum Accumulation of Hours	144.0	176.0	208.0	240.0

(i) Non-exempt employees shall use vacation leave only in increments of a quarter of an hour.

(ii) For purposes of this regulation, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time.

(B) Each exempt employee in a position that is eligible for benefits shall accrue vacation leave in accordance with the following table.

**Vacation Leave Table for Exempt Employees**  
Hours Earned Per Pay Period Based on Length of Service

Time in Pay Status Per Pay Period	Less Than 5 Years	5 Years & Less Than 10 Years	10 Years & Less than 15 Years	15 Years & Over
0	0.0	0.0	0.0	0.0
>0	3.7	4.7	5.6	6.5
Maximum Accumulation of Hours	144.0	176.0	208.0	240.0

(i) Exempt employees, including part-time exempt employees, shall use vacation leave only in either half-day or full-day increments.

(ii) For purposes of this regulation, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time.

(C) Each exempt employee in a position that is not eligible for benefits shall earn one-half the amount of leave set out in paragraph (a) (1) (B), based on the employee's length of service.

(2) At the end of the last payroll period paid in each fiscal year, up to 20 hours of any accrued vacation leave that exceeds an employee's maximum accumulation of hours established in paragraphs (a)(1)(A) and (B) shall be converted to sick leave. After this conversion, all remaining vacation leave over the maximum accumulation of hours shall be forfeited at the end of the last payroll period paid in that fiscal year.

(3) If an employee terminates from the service, and if at the time of termination, the employee has more than the maximum accumulation of vacation leave to which the employee is permitted in paragraphs (a) (1) (A) and (B), the employee shall not be paid for any vacation leave in excess of the maximum accumulation to which the employee is entitled.

(b) Increased rates of vacation leave earnings based on length of service shall not be retroactive. Length of service shall be calculated in accordance with K.A.R. 1-2-46.

(c) The appointing authority shall not be arbitrary in approving or rejecting vacation leave requests. The appointing authority shall not unreasonably defer the taking of vacations so that for all practical purposes the employee is deprived of vacation rights.

(d) Vacation leave earned by an employee during a pay period shall be available for use on the first day of the following pay period. If the employee resigns or is otherwise separated from the service, any vacation leave earned in the pay period in which the separation occurs shall be credited to the employee, and payment for that leave shall be made to the employee as provided in K.A.R. 1-9-13.

(e) Any holiday on which state offices are closed that occurs during the period of an employee's vacation shall not be charged against the employee's vacation leave.

(f) If an employee, or a member of the employee's family as defined in K.A.R. 1-9-5(e)(2), becomes ill while the employee is taking vacation leave and, for all intents and purposes, the employee is deprived of all or a significant portion of the vacation due to the illness, the appointing authority, upon request of the employee, may charge to sick leave some or all of the time the employee or family member was ill during the vacation. For purposes of this subsection, "illness" shall include any of the reasons for sick leave identified in K.A.R. 1-9-5(e)(1).

(g) Vacation leave for school employees. Any classified employee in a school institution having scheduled vacation periods at stated times when school is not in session, including Thanksgiving and Christmas, who does not work during the scheduled vacation periods because the employee's services are not required may be granted leave without pay or vacation leave for those periods. Vacation leave taken for this purpose may be charged against accrued vacation leave or against vacation leave that will be accrued during the school term for which the employee is employed. Any classified employee at a school institution that is separated from the service before the end of the school term for which the employee is employed shall be charged on the final pay voucher for any vacation leave used in excess of accrued vacation leave. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended, E-81-23, Aug. 27, 1980; amended May 1, 1981; amended May 1,

1983; amended May 1, 1984; amended May 1, 1985; amended Jan. 6, 1992; amended Aug. 3, 1992; amended Dec. 17, 1995; amended June 7, 2002.)

**1-9-5. Sick leave.** (a) Each classified employee in a regular position shall be credited and accumulate sick leave as provided in this regulation.

(b) The maximum sick leave credit an employee may accrue in any payroll period shall be 3.7 hours. The amount of sick leave hours earned each payroll period and the increments in which sick leave may be used shall be determined as follows.

(1) Each non-exempt employee shall accrue sick leave in accordance with the following table.

Sick Leave Table for  
Non-Exempt Employees

Hours in Pay Status Per Pay Period	Hours Earned Per Pay Period
0-7	0.0
8-15	0.4
16-23	0.8
24-31	1.2
32-39	1.6
40-47	2.0
48-55	2.4
56-63	2.8
64-71	3.2
72-79	3.6
80-	3.7

(A) Non-exempt employees shall use sick leave only in increments of a quarter of an hour.

(B) For purposes of this regulation, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time.

(2) Each exempt employee in a position that is eligible for benefits shall accrue sick leave in accordance with the following table.

Sick Leave Table for  
Exempt Employees

Time in Pay Status Per Pay Period	Hours Earned Per Pay Period
0	0.0
>0	3.7

(A) Exempt employees, including part-time exempt employees, shall use sick leave only in half-day or full-day increments.

(B) For purposes of this regulation, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time.

(3) Each exempt employee in a position that is not eligible for benefits shall earn one-half the amount of leave set out in paragraph (b) (2).

(c) Sick leave earned by an employee during a pay period shall be available for use on the first day of the following pay period.

(d) Any employee may be required by the appointing authority or the director of personnel services to provide evidence necessary to establish that the employee is entitled to use sick leave under the circumstances of the request. If the employee fails to provide this evidence, the

(continued)

requested use of sick leave may be denied by the appointing authority or director. The appointing authority, with the director's approval, may require an examination of an employee by a licensed health care or mental health care professional ultimately responsible for patients' health care, as designated by the agency and at the agency's expense. An appointing authority with delegated authority under K.S.A. 75-2938, and amendments thereto, shall not be required to obtain the director's approval before requiring an examination of an employee.

(e)(1) Sick leave with pay shall be granted only for the following reasons:

(A) Illness or disability of the employee, including pregnancy, childbirth, miscarriage, abortion, and recovery therefrom, and personal appointments with a physician, dentist, or other recognized health practitioner;

(B) illness or disability, including pregnancy, childbirth, miscarriage, abortion, and recovery therefrom, of a family member, and a family member's personal appointments with a physician, dentist, or other recognized health practitioner, when the illness, disability, or appointment reasonably requires the employee to be absent from work;

(C) legal quarantine of the employee; or

(D) the adoption of a child by an employee or initial placement of a foster child in the home of an employee, when the adoption or initial placement reasonably requires the employee to be absent from work.

(2) For purposes of this regulation, "family member" means the following:

(A) Any person related to the employee by blood, marriage, or adoption; and

(B) any minor residing in the employee's residence as a result of court proceedings pursuant to the Kansas code for care of children or the Kansas juvenile offenders code.

(f) If an appointing authority has evidence that an employee cannot perform the employee's duties because of illness or disability, if the employee has accumulated sick leave, and if the employee refuses or fails to apply for sick leave, the appointing authority may require the employee to use sick leave. Upon exhaustion of this employee's sick leave, the appointing authority may require the employee to use any accumulated vacation leave. An appointing authority may request a written release by a licensed health care or mental health care professional ultimately responsible for patients' health care before the employee is allowed to return to work. If the employee has exhausted all sick leave or accumulated vacation leave, the appointing authority may grant the employee leave without pay as provided in K.A.R. 1-9-6(c).

(g) Each employee who is injured on the job and awarded workers compensation shall be granted use of accumulated leave upon the employee's request. The compensation for accumulated leave used each payroll period shall be that amount which, together with workers compensation, equals the regular pay for the employee. Unless the employee requests otherwise, vacation leave and compensatory time credits shall be used only after sick leave credits have been exhausted. The appointing authority shall not require the use of accumulated compensatory time credits in conjunction with workers compensation.

(h) Each former employee who had unused sick leave at the time of separation and who returns to state service in a regular position within a year shall have the unused sick leave returned to the employee's credit. This provision shall not apply to a person who has retired from state service.

(i) Payments for sick leave accumulated by the date of retirement, in accordance with K.S.A. 75-5517, and amendments thereto, shall be calculated using the hourly or salary rates set forth in K.A.R. 1-5-21. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1979; amended, E-81-23, Aug. 27, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended Sept. 26, 1988; amended July 16, 1990; amended Jan. 6, 1992; amended Aug. 3, 1992; amended July 26, 1993; amended Dec. 17, 1995; amended June 7, 2002.)

#### Article 11.—NON-DISCIPLINARY TERMINATION

**1-11-1. Resignation.** (a) An employee wishing to resign in good standing shall file with the appointing authority, at least two weeks before the employee's last day at work, a written resignation stating the date it will become effective and the reasons for leaving. If the employee fails to give the required written notice of resignation, the appointing authority may have a statement concerning this failure inserted in the employee's official personnel record. An agency may consider the fact that a person did not give the required notice when the person resigned from earlier employment with the state, as grounds for refusal to employ that person.

(b) With the approval of the appointing authority, an employee may withdraw a resignation.

(c) An appointing authority may consider as abandonment of the job and a presumed resignation any unauthorized absence from work for a period of five consecutive working days for which the employee does not provide a satisfactory explanation. Before terminating an employee for a presumed resignation, the appointing authority shall make a reasonable effort to obtain a satisfactory explanation from the employee, and a summary of the steps taken to try to obtain the explanation from the employee shall be submitted to the director when the presumed resignation is processed. An appointing authority with delegated authority under K.S.A. 75-2938, and amendments thereto, shall not be required to submit a summary to the director. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1985; amended May 31, 1996; amended June 7, 2002.)

#### Article 14.—LAYOFF PROCEDURES AND ALTERNATIVES TO LAYOFF

**1-14-12a.** (Authorized by K.S.A. 75-3706, and K.S.A. 1996 Supp. 75-4370, 75-4371 and 75-4377; implementing K.S.A. 1996 Supp. 75-4370, 75-4371, 75-4372, 75-4373, 75-4374, 75-4375 and 75-4376; effective, T-1-11-21-96, Nov. 21, 1996; effective Feb. 21, 1997; revoked June 7, 2002.)

Joyce Glasscock  
Secretary of Administration

Doc. No. 027937

State of Kansas

**Department of Wildlife and Parks**

**Public Notice**

The Kansas Department of Wildlife and Parks has reached agreement for the purchase of a tract of land in Pratt County. The parcel consists of 503 acres and is described as follows: SE/4 of S33-T26S-R15W; NE/4 of S4-T27S-R15W; SW/4NW/4 and Lots 2, 3, and 4 of S3-T27S-R15W. The tract was appraised at \$100,000 and will be purchased for \$100,000. This tract will be part of the Pratt Sandhills Wildlife Area and will remain on the county tax rolls.

J. Michael Hayden  
Secretary of Wildlife and Parks

Doc. No. 027939

(Published in the Kansas Register May 23, 2002.)

**Summary Notice of Bond Sale  
Unified School District No. 445**

**Montgomery County, Kansas (Coffeyville)  
\$19,975,000**

**General Obligation Bonds, Series 2002**

**(General obligation bonds payable from  
unlimited ad valorem taxes)**

**Bids**

Subject to the notice of bond sale dated May 13, 2002, sealed, facsimile and electronic bids will be received by the clerk of Unified School District No. 445, Montgomery County, Kansas (Coffeyville) (the issuer), in the case of sealed and facsimile bids, on behalf of the governing body at the office of the Board of Education, 615 Ellis, P.O. Box 968, Coffeyville, KS 67337, and in the case of electronic bids, through i-Deal's BiDCOMP/PARITY electronic bid submission system, until 3 p.m. May 30, 2002, for the purchase of \$19,975,000 principal amount of General Obligation Bonds, Series 2002. No bid of less than 100 percent of the principal amount of the bonds and accrued interest thereon to the date of delivery will be considered.

**Bond Details**

The bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The bonds will be dated June 1, 2002, and will become due on April 1 in the years as follows:

Year	Principal Amount
2004	\$ 250,000
2005	325,000
2006	300,000
2007	550,000
2008	550,000
2009	570,000
2010	600,000
2011	635,000
2012	1,065,000
2013	1,125,000
2014	1,195,000
2015	1,265,000
2016	1,325,000

2017	1,400,000
2018	1,475,000
2019	1,550,000
2020	1,625,000
2021	1,725,000
2022	1,100,000
2023	800,000
2024	545,000

The bonds will bear interest from the date thereof at rates to be determined when the bonds are sold as hereinafter provided, which interest will be payable semiannually on April 1 and October 1 in each year, beginning April 1, 2003.

**Optional Book-Entry-Only System**

The successful bidder may elect to have the bonds registered under a book-entry-only system administered through DTC.

**Paying Agent and Bond Registrar**

Kansas State Treasurer, Topeka, Kansas.

**Good Faith Deposit**

Each bid shall be accompanied by a good faith deposit in the form of a cashier's or certified check drawn on a bank located in the United States or a qualified financial surety bond in the amount of \$399,500 (2 percent of the principal amount of the bonds).

**Delivery**

The issuer will pay for printing the bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or about June 18, 2002, to DTC for the account of the successful bidder or at such bank or trust company in the contiguous United States as may be specified by the successful bidder, or elsewhere at the expense of the successful bidder.

**Assessed Valuation and Indebtedness**

The equalized assessed tangible valuation for computation of bonded debt limitations for the year 2001 is \$94,169,191. The total general obligation indebtedness of the issuer as of the date of delivery of the bonds, including the bonds being sold, is \$19,975,000.

**Approval of Bonds**

The bonds will be sold subject to the legal opinion of Gilmore & Bell, P.C., Wichita, Kansas, bond counsel, whose approving legal opinion as to the validity of the bonds will be furnished and paid for by the issuer, printed on the bonds and delivered to the successful bidder when the bonds are delivered.

**Additional Information**

Additional information regarding the bonds may be obtained from the clerk, (620) 252-6800, fax (620) 252-6807; or from the financial advisors, Stifel, Nicolaus & Company, Inc., Wichita, Kansas, Attention: Larry L. McKown, (316) 337-8498 or (800) 351-5955, fax (316) 337-8492; or Fahnstock & Co., Inc., Topeka, Kansas, Attention: John C. McArthur, (785) 235-9281, fax (785) 235-1027.

Dated May 13, 2002.

Unified School District No. 445  
Montgomery County, Kansas (Coffeyville)

Doc. No. 027949

(Published in the Kansas Register May 23, 2002.)

**Summary Notice of Bond Sale  
Unified School District No. 487  
Dickinson County, Kansas (Herington)  
\$200,000  
General Obligation School Bonds  
Series 2002-A  
(General obligation bonds payable from  
unlimited ad valorem taxes)**

**Bids**

Subject to the notice of bond sale dated May 13, 2002, written bids will be received by the clerk of Unified School District No. 487, Dickinson County, Kansas (Herington) (the issuer), on behalf of the governing body at the office of the Board of Education, 19 N. Broadway, Herington, KS 67449, until 2 p.m. June 10, 2002, for the purchase of \$200,000 principal amount of General Obligation School Bonds, Series 2002-A. No bid of less than 100 percent of the principal amount of the bonds and accrued interest thereon to the date of delivery will be considered.

**Bond Details**

The bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The bonds will be dated June 15, 2002, and will become due on September 1 in the years as follows:

Year	Principal Amount
2003	\$35,000
2004	40,000
2005	40,000
2006	40,000
2007	45,000

The bonds will bear interest from the date thereof at rates to be determined when the bonds are sold as hereinafter provided, which interest will be payable semiannually on March 1 and September 1 in each year, beginning September 1, 2003.

**Book-Entry-Only System**

The bonds will be registered under a book-entry-only system administered through DTC.

**Paying Agent and Bond Registrar**

Kansas State Treasurer, Topeka, Kansas.

**Good Faith Deposit**

Each bid shall be accompanied by a good faith deposit in the form of a cashier's or certified check drawn on a bank located in the United States or a qualified financial surety bond in the amount of \$4,000 (2 percent of the principal amount of the bonds).

**Delivery**

The issuer will pay for printing the bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or about June 25, 2002, to DTC for the account of the successful bidder.

**Assessed Valuation and Indebtedness**

The equalized assessed tangible valuation for computation of bonded debt limitations for the year 2001 is

\$15,988,025. The total general obligation indebtedness of the issuer as of the date of delivery of the bonds, including the bonds being sold, is \$200,000.

**Approval of Bonds**

The bonds will be sold subject to the legal opinion of Gilmore & Bell, P.C., Wichita, Kansas, bond counsel, whose approving legal opinion as to the validity of the bonds will be furnished and paid for by the issuer, printed on the bonds and delivered to the successful bidder when the bonds are delivered.

**Additional Information**

Additional information regarding the bonds may be obtained from the clerk, (785) 258-2263, fax (785) 258-2982; or from the financial advisor, George K. Baum & Company, 435 Nichols Road, Suite 200, Kansas City, MO 64112, Attention: David Arteberry or Kyle Patino, 1-800-821-7195, fax (816) 283-5326.

Dated May 13, 2002.

Unified School District No. 487  
Dickinson County, Kansas (Herington)

Doc. No. 027950

(Published in the Kansas Register May 23, 2002.)

**Summary Notice of Bond Sale  
City of Ogden, Kansas  
\$201,500**

**General Obligation Internal Improvement Bonds**

**(General obligation bonds payable from  
unlimited ad valorem taxes)**

**Details of the Sale**

Subject to the terms and conditions of the complete official notice of bond sale dated May 15, 2002, of the City of Ogden, Kansas, in connection with the city's General Obligation Internal Improvement Bonds, Series 2002, hereinafter described, written bids shall be received at the office of the city clerk at City Hall, 222 Riley Ave., Ogden, Kansas, or by facsimile at (785) 539-3115, until 7:30 p.m. Wednesday, June 5, 2002, for the purchase of the bonds. All bids shall be publicly opened, read aloud and tabulated on said date and at said time, and shall thereafter be immediately considered and acted upon by the city.

No oral or auction bids for the bonds shall be considered, and no bids for less than the entire amount of the bonds shall be considered.

Bids shall be accepted only on the official bid form that has been prepared for the public bidding on these bonds, which may be obtained from the city clerk. Bids may be submitted by mail or delivered in person, or may be submitted by facsimile at (785) 539-3115, and must be received at the place and not later than the date and time hereinbefore specified. Each bid shall be accompanied by a good faith deposit in the form of a certified or cashier's check drawn on a bank located within the United States and made payable to the order of the city, or in the form of a financial surety bond payable to the order of the city and meeting requirements set forth in the official notice of bond sale, and shall be in an amount equal to 2 percent of the principal amount of the bonds.



**Details of the Bonds**

The bonds to be sold are in the aggregate principal amount of \$201,500 and shall bear a dated date of June 15, 2002. The bonds shall be issued as fully registered bonds in the denomination of \$5,000, or any integral multiple thereof not exceeding the principal amount of bonds maturing in any year, except that one bond maturing in the initial year of maturity shall be in the denomination of \$6,500. The bonds shall bear interest, payable as hereinafter set forth, at the rates specified by the successful bidder for the bonds. The bonds are not subject to optional redemption and payment prior to their maturities.

Interest on the bonds shall be payable semiannually on June 1 and December 1 in each year, commencing June 1, 2003, and the bonds shall mature serially on December 1 in each of the years and principal amounts as follows:

Principal Amount	Maturity Date
\$ 6,500	2003
10,000	2004
10,000	2005
10,000	2006
10,000	2007
10,000	2008
15,000	2009
15,000	2010
15,000	2011
15,000	2012
15,000	2013
15,000	2014
15,000	2015
20,000	2016
20,000	2017

**Redemption of Bonds**

The bonds are not subject to optional redemption and payment prior to their maturities. A bidder may elect to have all or a portion of the bonds shown in the above maturity schedule issued as one or more term bonds, which would be subject to mandatory redemption requirements. (Reference is made to the official notice of bond sale for complete details regarding redemption of the bonds.)

**Payment of Principal and Interest**

The Kansas State Treasurer shall serve as the bond registrar and paying agent for the bonds, and the principal of the bonds shall be payable upon surrender at the paying agent's principal offices in the City of Topeka, Kansas. Interest shall be paid by the mailing of a check or draft of the paying agent to the registered owners of the bonds.

**Form of Bonds**

The successful bidder may elect to have the bonds registered under a book-entry-only system administered through the Depository Trust Company, New York, New York.

**Security for the Bonds**

The bonds and the interest thereon shall constitute general obligations of the city, and the full faith, credit and resources of the city shall be pledged to the payment thereof. The bonds shall be payable as to both the principal of and the interest thereon, in part, from the collec-

tion of special assessment taxes that have been levied against certain real properties in the city. To the extent the proceeds of such special assessment taxes are insufficient, the city is obligated to levy ad valorem taxes without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the city for the purpose of paying the bonds and the interest thereon.

**Delivery of the Bonds**

The bonds, duly printed, executed and registered, shall be furnished and delivered at the expense of the city on or before Wednesday, June 26, 2002, to the successful bidder, or at its direction, to DTC for the account of the successful bidder or at such bank or trust company or other qualified depository in the State of Kansas or Kansas City, Missouri, as may be specified by the successful bidder. Delivery elsewhere shall be made at the expense of the successful bidder.

**Legal Opinion**

The bonds will be sold subject to the legal opinion of Hinkle Elkouri Law Firm, L.L.C., Wichita, Kansas, bond counsel, whose fees will be paid by the city. Bond counsel's approving legal opinion as to the validity of the bonds will be printed on the bonds and delivered to the successful bidder upon delivery of the bonds. (Reference is made to the official notice of bond sale for a discussion of tax exemption and other legal matters.)

**Financial Matters**

The city's current equalized assessed tangible valuation is as follows:

Assessed Valuation of Taxable Tangible Property	\$3,800,478
Taxable Value of Motor Vehicles	660,619
Assessed Tangible Valuation for Computation of Bonded Debt Limitations	\$4,461,097

K.S.A. 10-308 provides that the authorized and outstanding bonded indebtedness of any city shall not exceed 30 percent of the assessed valuation of the city. As of June 5, 2002, the city's total outstanding general obligation indebtedness will be \$763,500. The total indebtedness, after statutory adjustments, as of June 5, 2002, will be \$361,610, which is 8 percent of the assessed valuation of the city.

**Official Statement**

The city has prepared a preliminary official statement relating to the bonds, copies of which may be obtained from the city or the city's bond counsel. The preliminary official statement is in a form "deemed final" by the city for the purpose of Securities and Exchange Commission Rule 15c2-12(b)(1), but is subject to revision, amendment and completion in the final official statement. The city will provide the purchaser of the bonds or its designated agent, within seven business days after the date of the sale, copies of the city's final official statement, in sufficient quantity to comply with the rules of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

**Continuing Disclosure**

Securities and Exchange Commission Rule 15c2-12, as amended effective July 3, 1995, provides that brokers, *(continued)*

dealers and municipal securities dealers must comply with certain requirements before acting as an underwriter in a primary offering of municipal securities with an aggregate principal amount of \$1,000,000 or more.

The bonds described herein will be offered in a primary offering with an aggregate principal amount of less than \$1,000,000. Accordingly, in the opinion of bond counsel, the offering and sale of the bonds described herein does not constitute an offering as defined by the rule, and the requirements of the rule do not apply to brokers, dealers and municipal securities dealers acting as underwriters in connection with the bonds described herein.

#### Additional Information

For additional information regarding the city, the bonds and the public sale, interested parties are invited to request copies of the complete official notice of bond sale and official bid form and the city's preliminary official statement for the bonds, all of which may be obtained from the city clerk at the address and telephone number shown below.

Vincent L. Kramer II, City Clerk  
City Hall  
222 Riley Ave.  
P.O. Box C  
Ogden, KS 66517-0843  
(785) 539-0311

Doc. No. 027964

(Published in the Kansas Register May 23, 2002.)

### Summary Notice of Bond Sale City of Lakin, Kansas \$130,000

General Obligation Bonds, Series 2002  
(General obligation bonds payable from  
unlimited ad valorem taxes)

#### Bids

Subject to the notice of bond sale dated May 20, 2002, written bids will be received by the clerk of the City of Lakin, Kansas (the issuer), on behalf of the governing body at City Hall, 121 N. Main, Lakin, KS 67860, until 5 p.m. June 3, 2002, for the purchase of \$130,000 principal amount of General Obligation Bonds, Series 2002. No bid of less than 100 percent of the principal amount of the bonds and accrued interest thereon to the date of delivery will be considered.

#### Bond Details

The bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The bonds will be dated July 1, 2002, and will become due on September 1 in the years as follows:

Year	Principal Amount
2003	\$10,000
2004	10,000
2005	10,000
2006	10,000
2007	15,000
2008	15,000
2009	15,000

2010	15,000
2011	15,000
2012	15,000

The bonds will bear interest from the date thereof at rates to be determined when the bonds are sold as hereinafter provided, which interest will be payable semiannually on March 1 and September 1 in each year, beginning March 1, 2003.

#### Optional Book-Entry-Only System

The successful bidder may elect to have the bonds registered under a book-entry-only system administered through DTC.

#### Paying Agent and Bond Registrar

Kansas State Treasurer, Topeka, Kansas.

#### Good Faith Deposit

Each bid shall be accompanied by a good faith deposit in the form of a cashier's or certified check drawn on a bank located in the United States or a qualified financial surety bond in the amount of \$2,600 (2 percent of the principal amount of the bonds).

#### Delivery

The issuer will pay for printing the bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or about July 1, 2002, to DTC for the account of the successful bidder or at such bank or trust company in the contiguous United States as may be specified by the successful bidder, or elsewhere at the expense of the successful bidder.

#### Assessed Valuation and Indebtedness

The equalized assessed tangible valuation for computation of bonded debt limitations for the year 2001 is \$10,142,347. The total general obligation indebtedness of the issuer as of the date of delivery of the bonds, including the bonds being sold but excluding temporary notes to be retired in conjunction therewith, is \$1,920,000.

#### Approval of Bonds

The bonds will be sold subject to the legal opinion of Gilmore & Bell, P.C., Wichita, Kansas, bond counsel, whose approving legal opinion as to the validity of the bonds will be furnished and paid for by the issuer, printed on the bonds and delivered to the successful bidder when the bonds are delivered.

#### Additional Information

Additional information regarding the bonds may be obtained from the clerk, (620) 355-6252, fax (620) 355-6052.

Dated May 20, 2002.

City of Lakin, Kansas

Doc. No. 027961

State of Kansas

Department of Administration  
Division of Purchases

Notice to Bidders

Sealed bids for the following items will be received by the Director of Purchases, Room 102, Landon State Office Building, 900 S.W. Jackson, Topeka, 66612, until 2 p.m. on the date indicated and then will be publicly opened. Interested bidders may call (785) 296-2377 for additional information:

Monday, June 3, 2002

04958

Department of Administration, Division of Facilities Management—All Labor and Material for Concrete Work

04976

Department of Transportation—Truck Mounted Hydraulic Derrick

04997

University of Kansas—Laboratory Services

Tuesday, June 4, 2002

04957

Department of Revenue—Armored Car Transportation Services, Various Locations

04981

Department of Health and Environment—Compressed Gases

Wednesday, June 5, 2002

04861

Statewide—Dairy Products

05000

University of Kansas Medical Center—Laboratory Equipment

05001

University of Kansas Medical Center—Microarray Printer/Scanner and Gamma Counter

05002

University of Kansas Medical Center—Thermal Cyclor

05003

Kansas State University—Plant Growth Room, Installed

Thursday, June 6, 2002

04989

Department of Transportation—Slope Mower, Hutchinson

04995

Department of Transportation—Truck Mounted Paint Striper, Hutchinson

05005

State Corporation Commission—Abandoned Well Plugging, Ham Lease Project

Friday, June 7, 2002

04992

Department of Transportation—Tractor Truck, Hutchinson

Tuesday, June 11, 2002

A-9292

Department of Transportation—Area Shop Renovation, Independence

Monday, June 17, 2002

04983

Kansas State University—Property Insurance

Tuesday, June 18, 2002

A-9213 Rev.

Kansas State University—Reroof Various Buildings, Jardine Terrace

Wednesday, June 19, 2002

04920

Hutchinson Correctional Facility—Commissary Bagging Service

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Request for Proposals

Tuesday, June 4, 2002

04972

Storage Area Network for Kansas State University

04975

Motor Graders for the Department of Transportation, Various Locations

Wednesday, June 5, 2002

04977

Industrial Loader-Backhoe for the Department of Transportation

Thursday, June 6, 2002

04987

4-Wheel Drive Loader for the Department of Transportation, Various Locations

John T. Houlihan  
Director of Purchases

Doc. No. 027962

State of Kansas

Department of Health  
and Environment

Notice of Hearing on Proposed  
Administrative Regulations

The Kansas Department of Health and Environment, Division of Environment, Bureau of Air and Radiation, will conduct a public hearing at 11 a.m. Tuesday, July 23, in the Prairie Room, third floor, Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of new air quality regulation K.A.R. 28-19-350, a proposed amendment to existing air quality regulation K.A.R. 28-19-17, and the revocation of existing air quality regulations K.A.R. 28-19-17a to 28-19-17q. These new, amended and revoked regulations apply to the Kansas prevention of significant deterioration (PSD) preconstruction permitting program. A summary of the proposed new, amended and revoked regulations and their economic impact follows.

(continued)

**Proposed new K.A.R. 28-19-350.** K.A.R. 28-19-350 will replace the K.A.R. 28-19-17 series of regulations relating to the requirements of the Kansas PSD program. In addition, the adoption of new K.A.R. 28-19-350 is being used to clarify that the Kansas PSD program is consistent with the federal PSD program and has adopted those provisions of the federal PSD regulations relating to the PM10 increment; the clean coal technology exemptions to the definition of major modification; other control technology exemptions to the definition of major modification; incorporation of the WEPCO decision into the PSD definitions; significance levels for emissions of non-methane organic compounds from municipal solid waste landfills; and significance levels for emissions of specified organics, metals and acid gases from municipal waste combustors.

**Proposed amendments to K.A.R. 28-19-17.** The proposed amendment to K.S.A. 28-19-17 will assure that a reference to the K.A.R. 28-19-17 series of regulations, either individually or collectively, in any other regulation will be interpreted as a reference to the corresponding provisions of K.A.R. 28-19-350, which will replace this series.

**Proposed revocation of K.A.R. 28-19-17a to 28-19-17q.** These regulations are being superseded by proposed new regulation K.A.R. 28-19-350.

The rulemaking action will not result in additional costs to the public, regulated sources or the agency.

The time period between the publication of this notice and the scheduled hearing constitutes a public comment period for the purpose of receiving written public comments on the proposed regulatory action. All interested parties may submit written comments prior to the hearing to Ralph J. Kieffer, Bureau of Air and Radiation, Suite 310, Curtis State Office Building, 1000 S.W. Jackson, Topeka, 66612. All interested parties will be given a reasonable opportunity to present their views orally on the proposed regulatory action during the hearings. In order to give all parties an opportunity to present their views, it may be necessary to require each participant to limit any oral presentation to five minutes.

Copies of the proposed regulations and the economic impact and environmental benefit statements may be obtained from the Kansas Department of Health and Environment, Bureau of Air and Radiation, (785) 296-6428. Questions pertaining to these proposed amendments should be directed to Ralph J. Kieffer, (785) 296-6428, or to Chuck Layman, (785) 296-1579.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed amendments and the economic impact and environmental benefit statements in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Ralph J. Kieffer at (785) 296-6428.

Clyde D. Graeber  
Secretary of Health  
and Environment

State of Kansas

## Department of Health and Environment

### Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment, Division of Environment, Bureau of Air and Radiation, will conduct a public hearing at 10 a.m. Tuesday, July 23, in the Prairie Room, third floor, Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of amended air quality regulation K.A.R. 28-19-564. The amended regulation involves developing a Class II operating permit-by-rule for facilities with actual emission equal to less than 50 percent of major source thresholds. A summary of the proposed amended regulation and the economic impact follows.

**Proposed amendments to K.A.R. 28-19-564.** The proposed amendments to K.A.R. 28-19-564 will assure that the permit requirements are federally enforceable, thereby reducing the potential-to-emit below the major source threshold of a facility operating under, and in compliance with, the requirements of the amended regulation. The proposed amendments also will require each facility operating under the terms of the amended regulation to annually submit a summary of the records being kept by the facility demonstrating that emissions comply with the requirements of the amended regulation. Finally, the proposed amendments will require facilities operating under the "General Class II Air Emission Source Air Operating Permit for facilities that have actual emissions below 50% of the major source thresholds" to apply to operate under the proposed rule or other applicable operating permit within six months after EPA has approved the proposed rule as a modification to the state implementation plan. The rule amendment is not expected to have a significant economic impact.

The time period between the publication of this notice and the scheduled hearing constitutes a public comment period for the purpose of receiving written public comments on the proposed regulatory action. All interested parties may submit written comments prior to the hearing to Ralph J. Kieffer, Bureau of Air and Radiation, Suite 310, Curtis State Office Building, 1000 S.W. Jackson, Topeka, 66612. All interested parties will be given a reasonable opportunity to present their views orally on the proposed regulatory action during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to require each participant to limit any oral presentation to five minutes.

Copies of the proposed amendments and the economic impact and environmental benefit statements may be obtained from the Kansas Department of Health and Environment, Bureau of Air and Radiation, (785) 296-6428. Questions pertaining to these proposed amendments should be directed to Ralph J. Kieffer, (785) 296-6428, or to Chuck Layman, (785) 296-1579.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed amendments and the economic impact and environmental benefit statements in an acces-

sible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Ralph J. Kieffer at (785) 296-6428.

Clyde D. Graeber  
Secretary of Health  
and Environment

Doc. No. 027947

State of Kansas

Department of Health  
and Environment

Request for Comments

The Kansas Department of Health and Environment is soliciting comments regarding a proposed air quality operating permit. Cloud Ceramics has applied for a Class II operating permit in accordance with the provisions of K.A.R. 28-19-540. Emissions of oxides of nitrogen (NOx), carbon monoxide (CO), particulate matter (PM), particulate matter equal to or less than 10 micrometers in diameter (PM<sub>10</sub>), volatile organic compounds (VOCs), oxides of sulfur (SOx), hydrogen fluoride and hydrochloric acid were evaluated during the permit review process. The purpose of a Class II permit is to limit the potential-to-emit for these pollutants to below major source thresholds.

Cloud Ceramics, Concordia, is requesting synthetic minor to limit hazardous air pollutant emissions located at Rural Route 3 (Lincoln Road), Concordia.

A copy of the proposed permit, permit application, all supporting documentation and all information relied upon during the permit application review process is available for public review for a period of 30 days from the date of publication during normal business hours at the KDHE, Bureau of Air and Radiation, 1000 S.W. Jackson, Suite 310, Topeka; and at the KDHE North Central District Office, 2501 Market Place, Suite D, Salina. To obtain or review the proposed permit and supporting documentation, contact Julie Ingoli, (785) 368-6683, at the KDHE central office; or Joan Ratzlaff, (913) 827-9639, at the KDHE North Central District Office. The standard departmental cost will be assessed for any copies requested.

Direct written comments or questions regarding the proposed permit to Julie Ingoli, KDHE, Bureau of Air and Radiation, 1000 S.W. Jackson, Suite 310, Topeka, 66612-1366. In order to be considered in formulating a final permit decision, written comments must be received by the close of business June 24.

A person may request a public hearing be held on the proposed permit. The request for a public hearing shall be in writing and set forth the basis for the request. The written request must be submitted to Connie Carreno, Bureau of Air and Radiation, not later than the close of business June 24 in order for the Secretary of Health and Environment to consider the request.

Clyde D. Graeber  
Secretary of Health  
and Environment

Doc. No. 027955

State of Kansas

Department of Health  
and Environment

Notice Concerning Kansas  
Water Pollution Control Permits

In accordance with Kansas Administrative Regulations 28-16-57 through 63, 28-18-1 through 15, 28-18a-1 through 32, 28-16-150 through 154, 28-46-7, and the authority vested with the state by the administrator of the U.S. Environmental Protection Agency, draft permits have been prepared and/or permit applications have been received for discharges to the waters of the United States and the State of Kansas for the class of discharges described below.

The determinations for permit content are based on staff review, applying the appropriate standards, regulations and effluent limitations of the State of Kansas and the EPA, and when issued will result in a State Water Pollution Control Permit and National Pollutant Discharge Elimination System Authorization subject to certain conditions.

All Kansas Department of Health and Environment district office addresses and telephone numbers are listed below.

Public Notice No. KS-AG-02-126/128  
Pending Permits for Confined Feeding Facilities

Name and Address of Applicant	Legal Description	Receiving Water
Horned Lark Roy J. Henry 615 Indian Road Longford, KS 67458	SW/4 of Section 28, T09S, R02E, Clay County	Smoky Hill River Basin

Kansas Permit No. A-SHCY-S011

This is a permit renewal for an existing facility for 2,400 head (960 animal units) of swine. Construction provisions remain in the renewed permit because only two of the four proposed units are in place.

Wastewater will be impounded for subsequent application to agricultural land for beneficial use. Wastewater storage capacity is provided that meets or exceeds KDHE minimum requirements. The manure/waste management plan developed by the designer and approved by the department shall be adhered to as a condition of the permit.

Name and Address of Applicant	Legal Description	Receiving Water
Knight Feedlot, Inc. Mark Knight 1768 Ave. J Lyons, KS 67554	E/2 of Section 23, T19S, R8W, Rice County	Lower Arkansas River Basin

Kansas Permit No. A-ARRC-C002

Federal Permit No. KS0116157

This permit is for a modification to an existing facility for 20,000 head (20,000 animal units) of cattle. The proposed modifications consist of reshaping and reconstructing the wastewater controls for the south half of the facility into two sedimentation basins and an earthen lagoon, with associated site modifications within the existing footprint of the facility.

Wastewater will be impounded for subsequent application to agricultural land for beneficial use. Wastewater storage capacity is provided that meets or exceeds KDHE minimum requirements. This is Phase Two of a two-phase upgrade to the existing stormwater run-off controls. The manure/waste management plan most recently approved by the department shall be adhered to as a condition of the permit.

Permeability tests shall be conducted on the earthen wastewater retention structure(s) prior to being placed in service.

(continued)

Name and Address of Applicant	Legal Description	Receiving Water
Syracuse Dairy Dan Senestraro HC01 Box 61 Syracuse, KS 67878	NE/4 of Section 36, T26S, R41W, Hamilton County	Cimarron River Basin

Kansas Permit No. A-CIHM-D001 Federal Permit No. KS0090638  
This is an expansion of the existing 3,300 head (4,620 animal units) dairy to 4,000 head (5,600 animal units) of mature dairy cattle and for the addition of facilities for 3,000 head (3,000 animal units) of replacement dairy heifers.

Wastewater will be impounded for subsequent application to agricultural land for beneficial use. Wastewater storage capacity is provided that meets or exceeds KDHE minimum requirements. The manure/waste management plan most recently approved by the department shall be adhered to as a condition of the permit.

### Public Notice No. KS-02-072/079

Name and Address of Applicant	Waterway	Type of Discharge
Andale, City of P.O. Box 338 Andale, KS 67001-0338	Arkansas River via Cowskin Creek via Unnamed Tributary	Treated Domestic Wastewater

Kansas Permit No. M-AR03-OO01 Federal Permit No. KS0092223  
Legal: SW $\frac{1}{4}$ , SW $\frac{1}{4}$ , NE $\frac{1}{4}$ , S11, T26S, R3W, Sedgwick County

Facility Description: The proposed action is to reissue an existing permit for operation of an existing wastewater treatment facility treating primarily domestic wastewater. The proposed permit includes limits for biochemical oxygen demand, total suspended solids, fecal coliform and pH. Monitoring for ammonia also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Anthony, City of 124 S. Bluff P.O. Box 504 Anthony, KS 67003	Bluff Creek via Spring Creek	Treated Domestic Wastewater

Kansas Permit No. M-AR04-OO02 Federal Permit No. KS0095338  
Legal: NE $\frac{1}{4}$ , NE $\frac{1}{4}$ , S35, T33S, R7W, Harper County

Facility Description: The proposed action is to reissue an existing permit for operation of an existing wastewater treatment facility treating primarily domestic wastewater. The proposed permit includes limits for biochemical oxygen demand, total suspended solids, fecal coliform and pH. Monitoring for ammonia also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Ashland, City of P.O. Box 547 Ashland, KS 67831	Cimarron River via Bear Creek	Treated Domestic Wastewater

Kansas Permit No. M-CI01-OO02 Federal Permit No. KS0089575  
Legal: Center of NW $\frac{1}{4}$ , S18, T33S, R22W, Clark County

Facility Description: The proposed action is to reissue an existing permit for operation of an existing wastewater treatment facility treating primarily domestic wastewater. The proposed permit includes limits for biochemical oxygen demand, total suspended solids and pH. Monitoring for ammonia and fecal coliform also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are technology based.

Name and Address of Applicant	Waterway	Type of Discharge
Atwood, City of 106 S. 3rd St. Atwood, KS 67730	Beaver Creek	Treated Domestic Wastewater

Kansas Permit No. M-UR02-OO01 Federal Permit No. KS0095265

Legal: S $\frac{1}{2}$ , SE $\frac{1}{4}$ , NW $\frac{1}{4}$ , and N $\frac{1}{2}$ , NE $\frac{1}{4}$ , SW $\frac{1}{4}$ , S4, T3S, R33W, Rawlins County

Facility Description: The proposed action is to reissue an existing permit for operation of an existing wastewater treatment facility treating primarily domestic wastewater. The proposed permit includes limits for biochemical oxygen demand, total suspended solids, fecal coliform and pH. Monitoring for ammonia also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Board of Public Utilities 1211 N. 8th St. Kansas City, KS 66101	Missouri River and Sortor Creek	Treated Process Wastewater

Kansas Permit No. I-MO25-PO10 Federal Permit No. KS0095354  
Legal: SW $\frac{1}{4}$ , S13, T10S, R24E, Wyandotte County

Facility Name: Nearman Water Treatment Plant

Facility Location: 4301 Brenner Road, Kansas City, KS 66104

Facility Description: The proposed action is to modify and reissue an existing permit for treatment and discharge of wastewater from an existing potable water treatment facility. This permit is being modified to add additional outfalls for various emergency and maintenance discharges that could occur during infrequent times and under special conditions. Wastewater and residuals generated from the potable water treatment processes consist of sedimentation basins underflows, filter backwash water, filter-to-waste water and miscellaneous potable water. The proposed permit includes limits for total residual chlorine and pH. Monitoring for effluent flow also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Conway Springs, City of 208 W. Spring P.O. Box 187 Conway Springs, KS 67031	Arkansas River via Slate Creek	Treated Domestic Wastewater

Kansas Permit No. M-AR25-OO01 Federal Permit No. KS0030651  
Legal: NE $\frac{1}{4}$ , NE $\frac{1}{4}$ , SW $\frac{1}{4}$ , S34, T30S, R3W, Sumner County

Facility Description: The proposed action is to reissue an existing permit for operation of an existing wastewater treatment facility treating primarily domestic wastewater. The proposed permit includes limits for biochemical oxygen demand, total suspended solids and pH. Monitoring for ammonia and fecal coliform also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are technology based.

Name and Address of Applicant	Waterway	Type of Discharge
Maize, City of P.O. Box 245 Maize, KS 67101	Big Slough Creek	Treated Domestic Wastewater

Kansas Permit No. M-AR58-OO02 Federal Permit No. KS0092258  
Legal: NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , SW $\frac{1}{4}$ , S17, T26S, R1W, Sedgwick County

Facility Description: The proposed action is to reissue an existing permit for operation of an existing wastewater treatment facility treating primarily domestic wastewater. The proposed permit includes limits for biochemical oxygen demand, total suspended solids, ammonia, fecal coliform and pH. Monitoring for chlorides and effluent flow also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Senior Aerospace Composites 2700 S. Custer Wichita, KS 67277	Arkansas River via Storm Sewer	Noncontact Cooling Water

Kansas Permit No. I-AR94-CO50 Federal Permit No. KS0089010

Legal: NE¼, S1, T28S, R1W, Sedgwick County.

Facility Description: The proposed action is to reissue an existing permit for operation of an existing facility. This facility manufactures aircraft parts. On site well water, used for noncontact, additive-free autoclave cooling, and air conditioner condensate is discharged to the storm sewer. The proposed permit includes limits for pH. Monitoring for temperature, volatile organic compounds, chloride, sulfate and effluent flow also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Persons wishing to comment on or object to the draft permits and/or permit applications must submit their comments in writing to the Kansas Department of Health and Environment if they wish to have the comments or objections considered in the decision making process. Comments or objections should be submitted to the attention of Glenda Newquist for agricultural permits or applications, or to the permit clerk for all other permits, at the Kansas Department of Health and Environment, Division of Environment, Bureau of Water, 1000 S.W. Jackson, Suite 420, Topeka, 66612-1367.

All comments regarding the draft permit or application notice postmarked or received on or before June 22 will be considered in the formulation of final determinations regarding this public notice. Please refer to the appropriate Kansas permit number (KS-AG-02-126/128, KS-02-072/079) and name of applicant/application as listed when preparing comments.

If no objections are received during the public notice period regarding any proposed permit, the Secretary of Health and Environment will issue the final determination regarding issuance or denial of the proposed permit. If response to this notice indicates significant public interest, a public hearing may be held in conformance with K.A.R. 28-16-61 (28-46-21 for UIC). Media coordination for publication and/or announcement of the public notice or public hearing is handled by the Kansas Department of Health and Environment.

For agricultural permits and applications, a copy of the permit application, supporting documentation and a KDHE-developed fact sheet, if appropriate, is available for review at the appropriate district office:

- Northwest District Office, 2301 E. 13th,  
Hays, 67601-2651, (785) 625-5664
- North Central District Office, 2501 Market Place,  
Salina, 67401-7699, (785) 827-9639
- Northeast District Office, 800 W. 24th, Lawrence,  
66046-4417, (785) 842-4600
- Southwest District Office, 302 W. McArtor Road,  
Dodge City, 67801-6098, (620) 225-0596
- South Central District Office, 130 S. Market, 6th Floor,  
Wichita, 67202-3802, (316) 337-6020
- Southeast District Office, 1500 W. 7th, Chanute, 66720,  
(620) 431-2390

Application information and components of plans and specifications for all new facilities and for expansions of existing swine facilities may be reviewed on the Internet at <http://www.kdhe.state.ks.us/feedlots>.

For all other proposed permits, the draft permit(s), including proposed effluent limitations and special conditions, fact sheets as appropriate, comments received and

other information, are on file and may be inspected at the offices of the Kansas Department of Health and Environment, Bureau of Water.

Division of Environment offices are open from 8 a.m. to 5 p.m. Monday through Friday, excluding holidays. These documents are available upon request at the copying cost assessed by KDHE. Additional copies of this public notice also may be obtained at the Division of Environment.

Clyde D. Graeber  
Secretary of Health  
and Environment

Doc. No. 027954

State of Kansas

Secretary of State

Certification of New State Laws

I, Ron Thornburgh, Secretary of State of the State of Kansas, do hereby certify that each of the following bills is a correct copy of the original enrolled bill now on file in my office.

Ron Thornburgh  
Secretary of State

(Published in the Kansas Register May 23, 2002.)

HOUSE BILL No. 2690

AN ACT concerning the state board of regents; relating to scientific research and development facilities for educational institutions under the control and supervision of the state board of regents.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 12 and amendments thereto shall be known and may be cited as the university research and development enhancement act.

Sec. 2. (a) The legislature of the state of Kansas hereby finds and declares that:

- (1) The performance of scientific research is essential to promote the economic development of the state; and
- (2) the needs of the citizens of the state of Kansas and of the state educational institutions under the control and supervision of the board of regents will be best served if the board of regents is granted specific authority to assist the state educational institutions in the provision of scientific research.

(b) The exercise of the powers authorized by this act are deemed an essential governmental function in matters of public necessity for the entire state in the provision of scientific research.

Sec. 3. As used in this act, the following words and phrases have the following meanings unless a different meaning clearly appears from the content:

(a) "Board of regents" means the state board of regents of the state of Kansas established by K.S.A. 2001 Supp. 74-3202a and amendments thereto.

(b) "Bonds" means any bonds, notes, lease certificates of participation or other evidences of indebtedness, whether or not the interest on which is subject to federal income taxation, issued by the Kansas development finance authority on behalf of the board of regents pursuant to this act to finance a scientific research and development facility.

(c) "Scientific research and development facility" means any facility, including real and personal property, for which the primary purpose is to promote scientific research and development and which is under the control of a state educational institution.

(d) "State" means the state of Kansas.

(e) "State educational institution" means any Fort Hays state university, Emporia state university, Pittsburg state university, Kansas state uni-

(continued)

versity of agriculture and applied science, university of Kansas, university of Kansas medical center and Wichita state university.

(f) "This act" means the university research and development enhancement act.

Sec. 4. The board of regents shall have all the powers necessary to carry out the purposes and provisions of this act, including, without limitation, the following powers:

(a) To make and execute contracts, guarantees or any other instruments and agreements necessary or convenient for the exercise of its powers and functions under authority of this act including, without limitation, the power to make and execute contracts with respect to the operation and management of scientific research and development facilities;

(b) to borrow money from the Kansas development finance authority to finance the costs of acquiring, constructing and equipping scientific research and development facilities and to pledge any or all revenues derived from any scientific research and development facilities to the repayment of such borrowed money, including moneys credited to the sponsored research overhead funds and other special revenue funds of the state educational institutions having jurisdiction over such scientific research and development facilities;

(c) to purchase, lease, trade, exchange or otherwise acquire, maintain, hold, improve, mortgage, sell, lease, and dispose of scientific research and development facilities and any interest therein and to maintain, hold, improve, mortgage, lease and otherwise transfer such scientific research and development facilities;

(d) to contract for and to accept any gifts, grants and loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, or any other source, or any combination thereof, and to comply with the provisions of the terms and conditions thereof;

(e) to acquire space, equipment, services, supplies and insurance necessary to carry out the purposes of this act, except that scientific research and development facilities shall be included under insurance coverage acquired for state buildings and facilities;

(f) do any and all things necessary or convenient to exercise the powers authorized by this act; and

(g) to participate in joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations, insurers or other entities to facilitate any activities or programs consistent with the public purpose and intent of this act.

Sec. 5. The board of regents is hereby authorized and shall form one subsidiary corporation under K.S.A. 17-6001 *et seq.*, and amendments thereto, in accordance with the procedures therein contained, to perform or to assist the board of regents in the performance of powers, duties and functions under this act. The subsidiary corporation shall be subject to the same restrictions and limitations as to the powers and purposes under this act to which the board of regents is subject. The board of regents may delegate any of its powers, obligations and duties under this act to the subsidiary corporation by inclusion of such powers, obligations and duties in the articles of incorporation of the subsidiary corporation. The subsidiary corporation so formed shall constitute a legal entity separate and distinct from the board of regents and the state. The board of regents shall not be liable for the debts or obligations or for any actions or inactions of its subsidiary corporation unless the board of regents expressly agrees otherwise in writing. The board of directors of the subsidiary corporation shall be composed of seven voting members and one nonvoting member. The seven voting members shall be appointed as follows: (1) One voting member shall be appointed by the speaker of the house of representatives, (2) one voting member shall be appointed by the minority leader of the house of representatives, (3) one voting member shall be appointed by the president of the senate, (4) one voting member shall be appointed by the minority leader of the senate, and (5) three voting members shall be appointed by the board of regents. Each voting member of the board of directors shall serve at the pleasure of the officer or board making the appointment. The voting members appointed by the speaker of the house of representatives, the minority leader of the house of representatives, the president of the senate and minority leader of the senate may be, but are not required to be, members of the legislature. Of the three voting members appointed by the board of regents, not more than two may be members of the board of regents. Any vacancy occurring in the board of directors shall be filled in the same manner as the original appointment. The secretary of administration, or the secretary's designee who shall serve at the pleasure of the secretary of administration, shall

serve as the nonvoting member of the board of directors. All members of the board of directors shall serve without compensation. Each member of the board of directors shall be appointed on or before 60 days following the effective date of this act. After all members have been appointed, the executive director of the state board of regents shall call the first organizational meeting of the board of directors. The executive director of the state board of regents shall serve as the temporary, nonvoting chairperson at the first organizational meeting until a chairperson is elected as provided by this section. The members of the board of directors shall organize by electing from its membership a chairperson and a vice-chairperson. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson. Any vacancy occurring in the chairperson or vice-chairperson positions shall be filled in the same manner as the original election. The state, any municipality or any state commission, public authority, agency, officer, department, board or division authorized and empowered to enter into agreements with, to grant, convey, lease or otherwise transfer any property to, or to otherwise transact business with the board of regents, shall have the same authorization and power to engage in these activities with the subsidiary corporation of the board of regents. The subsidiary corporation formed pursuant to this section shall be dissolved by the board of regents after completion and official acceptance by the board of regents of all of the capital improvement projects initiated for research and development facilities for state educational institutions under this act or at such earlier time as may be prescribed or determined in accordance with the provisions of the articles of incorporation of the subsidiary corporation.

Sec. 6. (a) The board of regents is authorized to acquire, construct and equip scientific research and development facilities on state-owned property of the board of regents or any state educational institution for purposes of scientific research from any moneys of the board of regents available therefor, except that no such scientific research and development facilities shall be acquired, constructed or equipped and no moneys shall be expended therefor unless the board of regents has first advised and consulted with the joint committee on state building construction regarding the proposed scientific research and development facilities and on each capital improvement project proposed therefor. The scientific research and development facilities shall become the property of the state upon completion and acceptance by the board of regents.

(b) The board of regents is authorized to initiate and complete capital improvement projects to repair, remodel or renovate state buildings and facilities of the state educational institutions for use as scientific research and development facilities from any moneys of the board of regents, except that no such capital improvement project for such repair, remodeling or renovation shall be initiated unless the board of regents has first advised and consulted with the joint committee on state building construction regarding the proposed scientific research and development facilities and each capital improvement project proposed therefor.

Sec. 7. (a) (1) The Kansas development finance authority is hereby authorized to issue from time to time bonds on behalf of the board of regents in such principal amounts as the Kansas development finance authority and the board of regents determine to be necessary to provide sufficient funds to finance scientific research and development facilities, including, but not limited to, the payment of interest on such bonds, the establishment of reserves to secure such bonds, costs of issuance, refunding any outstanding bonds, and all other expenditures of the board of regents incident to and necessary or convenient to carry out the powers and functions authorized by this act. The Kansas development finance authority shall not issue any bond or bonds on behalf of the corporation formed by the board of regents under this act. The Kansas development finance authority shall not issue bonds under this act for more than \$120,000,000, in the aggregate, plus all amounts required for costs of any bond issuance, costs of interest on any bond issued or obtained for such scientific research and development facilities and any required reserves for payment of principal and interest on any such bond.

(2) Except as may otherwise be expressly provided by the board of regents, every obligation of the board of regents with respect to such bonds shall be an obligation of the board of regents payable out of any revenues or moneys of the board of regents derived from annual appropriations of the legislature. Subject only to any agreements with holders of particular bonds pledging any particular revenues, the board of regents shall use moneys derived from scientific research and development facilities to provide funds sufficient to pay principal and interest on any bonds issued pursuant to this act commencing after the date a project is com-



pleted and has been accepted by the board of regents. Subject to the provisions of appropriation acts, payment of principal and interest on the bonds shall be made by the state board of regents from annual appropriations by the legislature from such revenues as are furnished by the board of regents, or from any other available funds, in amounts sufficient to pay principal and interest on the bonds until the bonds are finally paid.

(3) Upon acceptance by the board of regents of each project initiated and completed under this act and upon a determination by the board of regents that the period for repayment of debt for such project is to commence, the board of regents shall certify to the director of accounts and reports that principal and interest payments for such project are to commence and the dates and amounts of all principal and interest payments for such project. Pursuant to each such certification and commencing on or after July 1, 2004, the director of accounts and reports shall transfer, from the state general fund to the debt service fund or funds at a state educational institution as specified in the certification for such project, the amount certified on or before the respective payment date therefor. Transfers shall be made under this section pursuant to any such certification on or after July 1, 2004. The aggregate of all such transfers from the state general fund during any fiscal year shall not exceed \$10,000,000 and the aggregate of all such transfers from the state general fund under this section shall not exceed \$50,000,000. The Kansas development finance authority and the board of regents shall enter into contracts with respect to the scientific research and development facilities financed under this act prescribing the obligation of the board of regents and the state educational institutions to provide for repayment of amounts of bond debt service in addition to those amounts provided for by transfers under this section from the state general fund.

(b) (1) The bonds shall be authorized by a resolution adopted by the board of directors of the Kansas development finance authority.

(2) Except as otherwise provided in this act, bonds issued by the Kansas development finance authority under authority of this act shall be subject to the provisions of K.S.A. 74-8901 *et seq.*, and amendments thereto.

(c) Any resolution authorizing the board of regents to incur any obligation with respect to bonds issued by the Kansas development finance authority may contain such provisions as deemed appropriate by the board of regents for the purpose of carrying out the purposes of this act and securing such bonds, which shall be a part of the contract with the holders thereof, including, but not limited to, provisions:

(1) Pledging all or any part of the revenues of the board of regents derived from scientific research and development facilities to secure the payment of the bonds or of any issue thereof, subject to such agreements with bondholders as may then exist;

(2) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

(3) limitations on the issuance of additional bonds or other obligations, the terms upon which additional bonds or obligations may be issued and secured, and the refunding of outstanding or other bonds;

(4) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the board of regents to the Kansas development finance authority, the applicable bond trustee or the holders of the bonds, except that such rights and remedies shall not be inconsistent with the general laws of this state and the other provisions of this act; and

(5) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(d) Any of the provisions relating to any bonds described in this section may be set forth in a trust indenture, loan agreement, lease agreement or other financing document authorized by a resolution of the board of regents or the board of directors of the Kansas development finance authority.

(e) The bonds of each issue may, in the discretion of the board of directors of the Kansas development finance authority, be made redeemable before maturity at such prices and under such terms and conditions as may be determined by the board of directors of the Kansas development finance authority. Bonds issued on behalf of the board of regents shall mature at such time, not exceeding 30 years from their date of issue, as may be determined by the board of regents and the board of directors of the Kansas development finance authority. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The bonds shall bear interest at such rate either fixed or variable, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such

manner, be payable in such medium of payment and at such place, and be subject to such terms of redemption as provided in the resolution of trust indenture. The bonds may be sold by the Kansas development finance authority, at public or private sale, at such price as the board of directors of the Kansas development finance authority shall determine.

(f) In case any officer of the Kansas development finance authority whose signature or a facsimile of whose signature appears on any bonds or coupons attached thereto ceases to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

(g) Any bonds issued by the Kansas development finance authority pursuant to this section, and the income therefrom (including any profit from the sale thereof) shall at all times be free from taxation by the state or any agency, political subdivision or instrumentality of the state, including income, inheritance and property taxes.

(h) Any holder of bonds issued under the provisions of this act, or any coupons appertaining thereto and the trustee under any trust agreement or resolution authorizing the issuance of such bonds, except the rights under this act may be restricted by such trust agreement or resolution, may, either at law or in equity by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted under this act or under such agreement or resolution, or under any other contract executed by the board of regents pursuant to this act, and may enforce and compel the performance of all duties required by this act or by such trust agreement or resolution to be performed by the board of regents or by an officer thereof.

(i) the bonds shall be special, limited obligations of the Kansas development finance authority and the state shall not be liable for bonds issued by the Kansas development finance authority on behalf of the board of regents, and such bonds shall not constitute a debt of the state.

(j) Neither the board of regents, the board of the Kansas development finance authority nor any authorized employee of the board of regents or the Kansas development finance authority shall be personally liable for such bonds by reason of the issuance thereof.

(k) Nothing in this act shall be construed as a restriction or limitation upon any other powers which the board of regents might otherwise have under any other law of this state, and this act is cumulative to any such powers. This act does and shall be construed to provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds under the provisions of this act need not comply with the requirements of any other state law applicable to the issuance of bonds. No proceedings, notice or approval shall be required for the issuance of any bonds or any instrument as security therefor, except as is provided in this act.

(l) Any of the provisions relating to bonds described in this section may be included in any contracts between the board of regents and the Kansas development finance authority relating to obligations of the Kansas development finance authority issued on behalf of the board of regents.

Sec. 8. Purchases by the board of regents relating to scientific research and development facilities shall not be subject to sales tax under K.S.A. 79-3601 *et seq.*, and amendments thereto, or use tax under K.S.A. 79-3701 *et seq.*, and amendments thereto.

Sec. 9. This act shall be liberally construed. Except as otherwise expressly provided, nothing contained in this act is or shall be construed as a restriction or limitation upon any powers which the board of regents or the Kansas development finance authority might otherwise have under other law of this state, and the provisions of this act are cumulative to such powers. The provisions of this act do and shall be construed to provide a complete, additional and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to any other laws. Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, specific or local, the provisions of this act shall be controlling.

Sec. 10. (a) As used in this section, unless the context expressly provides otherwise:

(1) "Ancillary technical services" include, but shall not be limited to, geology services and other soil or subsurface investigation and testing services, surveying, adjusting and balancing of air conditioning, ventilating, heating and other mechanical building systems, testing and consultant

(continued)

services that are determined by the board of regents to be required for a project;

(2) "architectural services" means those services described by subsection (e) of K.S.A. 74-7003, and amendments thereto;

(3) "construction services" means the work performed by a construction contractor to commence and complete a project;

(4) "construction management at-risk services" means the services provided by a firm which has entered into a contract with the board of regents to be the construction manager at risk for the value and schedule of the contract for a project, which is to hold the trade contracts and execute the work for a project in a manner similar to a general contractor and which is required to solicit competitive bids for the trade packages developed for a project and to enter into the trade contracts for a project with the lowest responsible bidder therefor, and may include, but are not limited to, such services as scheduling, value analysis, systems analysis, constructability reviews, progress document reviews, subcontractor involvement and prequalification, subcontractor bonding policy, budgeting and price guarantees, and construction coordination;

(5) "division of facilities management" means the division of facilities management of the department of administration;

(6) "engineering services" means those services described by subsection (i) of K.S.A. 74-7003, and amendments thereto;

(7) "firm" means (A) with respect to architectural services, an individual, firm, partnership, corporation, association or other legal entity which is: (i) permitted by law to practice the profession of architecture; and (ii) maintaining an office in Kansas staffed by one or more architects who are licensed by the board of technical professions; or (iii) not maintaining an office in Kansas, but which is qualified to perform special architectural services that are required in special cases where in the judgment of the board of regents it is necessary to go outside the state to obtain such services; (B) with respect to engineering services or land surveying, an individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the profession of engineering and provide engineering services or practice the profession of land surveying and provide land surveying services, respectively; (C) with respect to construction management at-risk services, a qualified individual, firm, partnership, corporation, association or other legal entity permitted by law to perform construction management at-risk services; (D) with respect to ancillary technical services or other services that are determined by the board of regents to be required for a project, a qualified individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the required profession or perform the other required services, as determined by the board of regents; and (E) with respect to construction services, a qualified individual, firm, partnership, corporation, association, or other legal entity permitted by law to perform construction services for a project;

(8) "land surveying" means those services described in subsection (j) of K.S.A. 74-7003, and amendments thereto;

(9) "negotiating committee" means the board of directors of the subsidiary corporation formed under section 5, and amendments thereto;

(10) "project" means (A) the project for the KSU food safety and security research facility, (B) the project for the KUMC biomedical research facility, (C) the project for the WSU engineering complex expansion and research laboratory, or (D) the project for the acquisition and installation of equipment for the KU biosciences research building, which are funded from the proceeds of the bonds authorized to be issued under section 7, and amendments thereto, within the limitation of \$120,000,000, in the aggregate, plus all amounts required for costs of any bond issuance, costs of interest on any bond issued or obtained for such scientific research and development facilities and any required reserves for payment of principal and interest on any such bond, and from any moneys received as gifts, grants or otherwise from any public or private nonstate source;

(11) "project services" means architectural services, engineering services, land surveying, construction management at-risk services, construction services, ancillary technical services or other construction-related services determined by the board of regents to be required for a project; and

(12) "state building advisory commission" means the state building advisory commission created by K.S.A. 75-3780, and amendments thereto.

(b) The board of regents, when acting under authority of this act, and each project authorized by the board of regents under this act are exempt from the provisions of K.S.A. 75-1269, 75-3738 through 75-3741b, 75-

3742 through 75-3744, and 75-3783, and amendments thereto, except as otherwise specifically provided by this act.

(c) Notwithstanding the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, or the provisions of any other statute to the contrary, all contracts for any supplies, materials or equipment for a project authorized by the board of regents under this act, shall be entered into in accordance with procurement procedures determined by the board of regents, subject to the provisions of this section, except that, in the discretion of the board of regents, any such contract may be entered into in the manner provided in and subject to the provisions of any such statute otherwise applicable thereto. Notwithstanding the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, if the board of regents does not obtain construction management at-risk services for a project, the construction services for such project shall be obtained pursuant to competitive bids and all contracts for construction services for such project shall be awarded to the lowest responsible bidder in accordance with procurement procedures determined and administered by the board of regents which shall be consistent with the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.

(d) When it is necessary in the judgment of the board of regents to obtain project services for a particular project by conducting negotiations therefor, the board of regents shall publish a notice of the commencement of negotiations for the required project services at least 15 days prior to the commencement of such negotiations in the Kansas register in accordance with K.S.A. 75-430a, and amendments thereto, and in such other appropriate manner as may be determined by the board of regents.

(e) (1) Notwithstanding the provisions of subsection (b) of K.S.A. 75-1251, and amendments thereto, or the provisions of any other statute to the contrary, as used in K.S.A. 75-1250 through 75-1270, and amendments thereto, with respect to the procurement of architectural services for a project authorized by the board of regents under this act, "negotiating committee" shall mean the board of directors of the subsidiary corporation formed under section 5, and amendments thereto, and such board of directors shall negotiate a contract with a firm to provide any required architectural services for the project in accordance with the provisions of K.S.A. 75-1250 through 75-1270, and amendments thereto, except that no limitation on the fees for architectural services for the project shall apply to the fees negotiated by the board of directors for such architectural services.

(2) Notwithstanding the provisions of subsection (e) of K.S.A. 75-5802, and amendments thereto, or the provisions of any other statute to the contrary, as used in K.S.A. 75-5801 through 75-5807, and amendments thereto, with respect to the procurement of engineering services or land surveying services for a project authorized by the board of regents under this act, "negotiating committee" shall mean the board of directors of the subsidiary corporation formed under section 5, and amendments thereto, and such board of directors shall negotiate a contract with a firm to provide any required engineering services or land surveying services for the project in accordance with the provisions of K.S.A. 75-5801 through 75-5807, and amendments thereto.

(3) In any case of a conflict between the provisions of this section and the provisions of K.S.A. 75-1250 through 75-1270, or 75-5801 through 75-5807, and amendments thereto, with respect to a project authorized by the board of regents under this act, the provisions of this section shall govern.

(f) (1) For the procurement of construction management at-risk services for projects under this act, the secretary of administration shall encourage firms engaged in the performance of construction management at-risk services to submit annually to the secretary of administration and to the state building advisory commission a statement of qualifications and performance data. Each statement shall include data relating to (A) the firm's capacity and experience, including experience on similar or related projects, (B) the capabilities and other qualifications of the firm's personnel, and (C) performance data of all consultants the firm proposes to use.

(2) Whenever the board of regents determines that a construction manager at risk is required for a project under this act, the board of regents shall notify the state building advisory commission and the state building advisory commission shall prepare a list of at least three and not more than five firms which are, in the opinion of the state building advisory commission, qualified to serve as construction manager at risk for the project. Such list shall be submitted to the negotiating committee, without any recommendation of preference or other recommendation. The negotiating committee shall have access to statements of qualifica-

tions of and performance data on the firms listed by the state building advisory commission and all information and evaluations regarding such firms gathered and developed by the secretary of administration under K.S.A. 75-3783, and amendments thereto.

(3) The negotiating committee shall conduct discussions with each of the firms so listed regarding the project. The negotiating committee shall determine which construction management at-risk services are desired and then shall proceed to negotiate with and attempt to enter into a contract with the firm considered to be most qualified to serve as construction manager at risk for the project. The negotiating committee shall proceed in accordance with the same process with which negotiations are undertaken to contract with a firm to be a project architect under K.S.A. 75-1257, and amendments thereto, to the extent that such provisions can be made to apply. Should the negotiating committee be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be terminated and shall undertake negotiations with the second most qualified firm, and so forth, in accordance with that statute.

(4) The contract to perform construction management at-risk services for a project shall be prepared by the division of facilities management and entered into by the board of regents with the firm contracting to perform such construction management at-risk services.

(g) (1) To assist in the procurement of construction services for projects under this act, the secretary of administration shall encourage firms engaged in the performance of construction services to submit annually to the secretary of administration and to the state building advisory commission a statement of qualifications and performance data. Each statement shall include data relating to (A) the firm's capacity and experience, including experience on similar or related projects, (B) the capabilities and other qualifications of the firm's personnel, (C) performance data of all subcontractors the firm proposes to use, and (D) such other information related to the qualifications and capability of the firm to perform construction services for projects as may be prescribed by the secretary of administration.

(2) The construction manager at risk shall publish a construction services bid notice in the Kansas register and in such other appropriate manner as may be determined by the board of regents. Each construction services bid notice shall include the request for bids and other bidding information prepared by the construction manager at risk and the state board of regents with the assistance of the division of facilities management. The current statements of qualifications of and performance data on the firms submitting bid proposals shall be made available to the construction manager at risk and the board of regents by the state building advisory commission along with all information and evaluations developed regarding such firms by the secretary of administration under K.S.A. 75-3783, and amendments thereto. Each firm submitting a bid proposal shall be bonded in accordance with K.S.A. 60-1111, and amendments thereto, and shall present evidence of such bond to the construction manager at risk prior to submitting a bid proposal. If a firm submitting a bid proposal fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection. At the time for opening the bids, the construction manager at risk shall evaluate the bids and shall determine the lowest responsible bidder. The construction manager at risk shall enter into contracts with each firm performing the construction services for the project and make a public announcement of each firm selected in accordance with this subsection.

(h) The division of facilities management shall provide such information and assistance as may be requested by the board of regents or the negotiating committee for a project, including all or part of any project services as requested by the board of regents, and (1) shall prepare the request for proposals and publication information for each publication of notice under this section, subject to the provisions of this section, (2) shall prepare each contract for project services for a project, including each contract for construction services for a project, (3) shall conduct design development reviews for each project, (4) shall review and approve all construction documents for a project prior to soliciting bids or otherwise soliciting proposals from construction contractors or construction service providers for a project, (5) shall obtain and maintain copies of construction documents for each project, and (6) shall conduct periodic inspections of each project, including jointly conducting the final inspection of each project.

(i) Notwithstanding the provisions of any other statute, the board of regents shall enter into one or more contracts with the division of facilities management for each project for the services performed by the division

of facilities management for the project as required by this section or at the request of the board of regents. The division of facilities management shall receive fees from the board of regents to recover the costs incurred to provide such services pursuant to such contracts.

(j) Design development reviews and construction document reviews conducted by the division of facilities management shall be limited to ensuring only that the construction documents do not change the project description and that the construction documents comply with the standards established under K.S.A. 75-3783, and amendments thereto, by the secretary of administration for the planning, design and construction of buildings and major repairs and improvements to buildings for state agencies, including applicable building and life safety codes and appropriate and practical energy conservation and efficiency standards.

(k) Each project for a state educational institution shall receive a final joint inspection by the division of facilities management and the board of regents. Each such project shall be officially accepted by the board of regents before such project is occupied or utilized by the state educational institution, unless otherwise agreed to in writing by the contractor and the board of regents as to the satisfactory completion of the work on part of the project that is to be occupied and utilized, including any corrections of the work thereon.

(l) (1) The board of regents shall issue monthly reports of progress on each project and shall advise and consult with the joint committee on state building construction regarding each project. Change orders and changes of plans for a project shall be authorized or approved by the board of regents.

(2) No change order or change of plans for a project involving either cost increases of \$75,000 or more or involving a change in the proposed use of a project shall be authorized or approved by the board of regents without having first advised and consulted with the joint committee on state building construction.

(3) Change orders or changes in plans for a project involving a cost increase of less than \$75,000 and any change order involving a cost reduction, other than a change in the proposed use of the project, may be authorized or approved by the board of regents without prior consultation with the joint committee on state building construction. The board of regents shall report to the joint committee on state building construction all action relating to such change orders or changes in plans.

(4) If the board of regents determines that it is in the best interest of the state to authorize or approve a change order, a change in plans or a change in the proposed use of any project that the board of regents is required to first advise and consult with the joint committee on state building construction prior to issuing such approval and if no meeting of the joint committee is scheduled to take place within the next 10 business days, then the board of regents may use the procedure authorized by subsection (d) of K.S.A. 75-1264, and amendments thereto, in lieu of advising and consulting with the joint committee at a meeting. In any such case, the board of regents shall mail a summary description of the proposed change order, change in plans or change in the proposed use of any project to each member of the joint committee on state building construction and to the director of the legislative research department. If the board of regents provides notice and information to the members of the joint committee and to such director in the manner required and subject to the same provisions and conditions that apply to the secretary of administration under such statute, and if less than two members of the joint committee contact the director of the legislative research department within seven business days of the date the summary description was mailed and request a presentation and review of any such proposed change order, change in plans or change in use at a meeting of the joint committee, then the board of regents shall be deemed to have advised and consulted with the joint committee about such proposed change order, change in plans or change in proposed use and may authorize or approve such proposed change order, change in plans or change in proposed use.

(m) The provisions of this section shall apply to each project authorized by the board of regents under this act and shall not apply to any other capital improvement project of the board of regents or of any state educational institution that is specifically authorized by any other statute.

Sec. 11. (a) Each contract entered into by a state agency for any nonfederal aid, public works project for a scientific research and development facility under the university research and development enhancement act shall be based on bid or contract specifications prescribing and

(continued)

requiring that employees of any contractor or subcontractor shall be paid not less than the hourly wages, including fringe benefits, paid to corresponding classes of laborers and mechanics employed on similar projects in the county where the project is to be performed. Such minimum wage shall be the wage paid to the majority of the laborers or mechanics, unless the same wages are not paid to a majority, in which case the minimum wage shall be the average wages paid, weighted by the total employed in the classification. In the alternative, the minimum wage shall be that determined under federal law which would be required to be paid on federally-funded projects at the location of the public works project.

(b) Employees employed by contractors or subcontractors in the execution of any nonfederal aid, public works project contract subject to this section with any state agency shall be paid not less than the wages as determined pursuant to subsection (a).

(c) As used in this section, "state agency" means the board of regents, the subsidiary corporation of the board of regents formed pursuant to section 5, and amendments thereto, any firm performing construction management at-risk services under section 10, and amendments thereto, or any state educational institution.

(d) The provisions of this section shall apply only to contracts for the following projects under the university research and development enhancement act: (1) The project for the KUMC bio-medical research facility, and (2) the project for the WSU engineering complex expansion and research laboratory.

Sec. 12. If any provision of this act or any application thereof is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 13. The state board of regents is hereby authorized to initiate and complete capital improvement projects for the acquisition and installation of laboratories and equipment for icing and wind tunnels, crash testing and advanced manufacturing, including associated construction, remodeling or renovation, and such capital improvement projects are hereby approved for the National Institute for Aviation Research for the purposes of subsection (b) of K.S.A. 74-8905, and amendments thereto, and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute. In accordance with the provisions of appropriation acts, the board of regents is hereby authorized to make expenditures from the aviation research facility fund which is hereby established in the state treasury for the acquisition, construction, installation and equipment of the capital improvement projects authorized by this section. In accordance with the provisions of appropriation acts, the board of regents may make expenditures from the aviation research facility fund for the payment of debt service on any revenue bonds issued to finance such project. The aggregate amount of all such revenue bonds issued for such capital improvement project shall not exceed \$13,000,000, plus all amounts required for costs of bond issuance, costs of interest on any bonds issued for such capital improvement project during the period of acquisition, installation and construction, remodeling or renovation for such project and any required reserve for the payment of principal and interest on the bonds. All moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants. Debt service for any such bonds for such capital improvement project shall be financed by appropriations from the state general fund or any appropriate special revenue fund or funds, and shall be in addition to any other amounts authorized within this act.

Sec. 14. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

Senate Substitute for HOUSE BILL No. 2831

AN ACT concerning the interlocal agreement act; relating to the powers and duties of public agencies thereunder; amending K.S.A. 12-2903 and 12-2904 and repealing the existing sections;

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-2903 is hereby amended to read as follows: 12-2903. For the purposes of this act: (a) The term "public agency" shall mean As used in the interlocal cooperation act:

(a) "Public agency" means:

(1) Any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, or fire district or;

(2) any entity created pursuant to K.S.A. 12-2901 et seq. or chapter 72 of the Kansas Statutes Annotated, and amendments thereto;

(3) any other municipal corporation, quasi-municipal corporation or political subdivision of this state or of any other state and which is not specified in paragraphs (1) and (2);

(4) any state officer; and

(5) any agency or instrumentality of this state or any other state or of the United States;

(b) The term "state" shall mean "State" means a state of the United States and the District of Columbia;

(c) The term "private agency" shall mean "Private agency" means an individual, firm, association or corporation.

(d) "State officer" shall mean the governor, attorney general, secretary of state, state treasurer and insurance commissioner of the state of Kansas.

(e) "Native American Indian tribes" shall mean federally-recognized Native American Indian tribes.

(f) "Gaming compact" shall mean a gaming compact as defined by K.S.A. 46-2301, and amendments thereto.

Sec. 2. K.S.A. 12-2904 is hereby amended to read as follows: 12-2904. (a) Subject to the limitations of subsection (g), any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state including but not limited to those functions relating to economic development, public improvements, public utilities, police protection, libraries, data processing services, educational services, building and related inspection services, flood control and storm water drainage, weather modification, sewage disposal, refuse disposal, park and recreation programs and facilities, ambulance service, fire protection, the Kansas tort claims act or claims for civil rights violations, may be exercised and enjoyed jointly with any other public agency of this state or with any private agency, and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public or private agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency.

(b) Any public agency may enter into agreements with one or more public or private agencies for joint or cooperative action pursuant to the provisions of this act. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any public agency may enter into agreements with Native American Indian tribes for joint or cooperative actions. Such agreements shall be considered to be an interlocal agreement and shall be subject to the procedures and limitations of the interlocal cooperation act.

The provisions of this subsection shall not be construed as authorizing a public agency to enter into a gaming compact pursuant to the interlocal cooperation act.

(d) Any such agreement shall specify the following:

(1) Its duration.

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.

(3) Its purpose or purposes.

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

(6) Any other necessary and proper matters.

(e) In the event that addition to the requirements of subsection (d), if the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement, in addition to items 1, 3, 4, 5 and 6 enumerated in subdivision (c) hereof, also shall contain the following:

(1) Provision for an administrator or a joint board or one of the participating public agencies to be responsible for administering the joint or

cooperative undertaking. In the case of a joint board public agencies party to the agreement shall be represented.

(2) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

(e) (f) No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, such performance may be offered in satisfaction of the obligation or responsibility.

(f) (g) Every agreement made hereunder, except agreements between two or more public agencies establishing a council or other organization of local governments for the study of common problems of an area or region and for the promotion of intergovernmental cooperation, prior to and as a condition precedent to its entry into force, shall be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted hereunder unless the attorney general shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public and private agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

New Sec. 3. Any interlocal agreement entered into by the board of trustees of a community college in accordance with the provisions of the interlocal cooperation act prior to the effective date of this act is hereby authorized and validated and shall be deemed to have been entered into under the authority of law.

Sec. 4. K.S.A. 12-2903 and 12-2904 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

#### HOUSE BILL No. 3031

AN ACT concerning natural gas; amending K.S.A. 55-102 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 55-102 is hereby amended to read as follows: 55-102. (a) Except as provided in subsection (b), it shall be unlawful for any person, firm or corporation having possession or control of any ~~natural gas or natural gas well~~, oil well or coalbed natural gas well, whether as a contractor, owner, lessee, agent or manager, to use or permit the use of gas by direct well pressure for pumping of oil or for blowing oil out of wells, or for operating any machinery by direct well pressure of gas, or to allow or permit the flow of gas or oil from any such well to escape into the open air without being confined within such well or proper pipes or other safe receptacle for a longer period than two days after gas or oil shall have been struck in such well, except that a reasonable time, not exceeding five days, shall be allowed such contractor, owner, lessee, agent or manager, in addition to such two days, in which to place in the well the casing, tubing, packers and other appliances necessary to properly operate the same and obtain the products therefrom or, in case such contractor, owner, lessee, agent or manager shall not desire to operate such well, to securely enclose the same, so as to prevent the escape of oil or gas therefrom, and thereafter all such gas or oil shall be safely and securely confined in such well, pipes, or other proper receptacle. The provisions of this section shall not be construed to apply to the escape of gas or oil during continuous drilling. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall be fined in the sum not less than \$50 nor more than \$200, or by imprisonment in the county jail for not less than 30 days nor more than six months, and each day that the violation continues shall constitute a separate offense.

(b) Natural gas produced in connection with the production of oil, or coalbed natural gas produced from natural gas wells or from coal seams or associated shale, may be flared, vented or used in any manner if such use or flaring or venting is authorized by an order, rule or regulation of the state corporation commission.

Sec. 2. K.S.A. 55-102 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

#### SENATE BILL No. 403

AN ACT concerning the postsecondary education savings program; amending K.S.A. 2001 Supp. 60-2308 and 75-646 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2001 Supp. 60-2308 is hereby amended to read as follows: 60-2308. (a) Money received by any debtor as pensioner of the United States within three months next preceding the issuing of an execution, or attachment, or garnishment process, cannot be applied to the payment of the debts of such pensioner when it appears by the affidavit of the debtor or otherwise that such pension money is necessary for the maintenance of the debtor's support or a family support wholly or in part by the pension money. The filing of the affidavit by the debtor, or making proof as provided in this section, shall be *prima facie* evidence of the necessity of such pension money for such support. It shall be the duty of the court in which such proceeding is pending to release all moneys held by such attachment or garnishment process, immediately upon the filing of such affidavit, or the making of such proof.

(b) Except as provided in subsection (c), any money or other assets payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan which is qualified under sections 401(a), 403(a), 403(b), 408, 408A or 409 of the federal internal revenue code of 1986 and amendments thereto shall be exempt from any and all claims of creditors of the beneficiary or participant. Any such plan shall be conclusively presumed to be a spendthrift trust under these statutes and the common law of the state. ~~All records of the debtor concerning such plan or arrangement and of the plan concerning the debtor's participation in the plan or arrangement shall be exempt from the subpoena process.~~

(c) Any plan or arrangement described in subsection (b) shall not be exempt from the claims of an alternate payee under a qualified domestic relations order. However, the interest of any and all alternate payees under a qualified domestic relations order shall be exempt from any and all claims of any creditor, other than the state department of social and rehabilitation services, of the alternate payee. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" have the meaning ascribed to them in section 414(p) of the federal internal revenue code of 1986 and amendments thereto.

(d) The provisions of subsections (b) and (c) shall apply to any proceeding which: (1) Is filed on or after July 1, 1986; or (2) was filed on or after January 1, 1986, and is pending or on appeal July 1, 1986.

(e) Money held by the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto, the state department of social and rehabilitation services, any clerk of a district court or any district court trustee in connection with a court order for the support of any person, whether the money is identified as child support, spousal support, alimony or maintenance, shall be exempt from execution, attachment or garnishment process.

(f) (1) *The provisions of this subsection shall apply to any proceeding which:*

(A) *Is filed on or after January 1, 2002; or*

(B) *was filed prior to January 1, 2002, and is pending on or on appeal after January 1, 2002.*

(2) *Except as provided by paragraphs (3) and (4) of this subsection, if the designated beneficiary of a family postsecondary education savings account established pursuant to K.S.A. 2001 Supp. 75-640 et seq., and amendments thereto, is a lineal descendant of the account owner, all moneys in the account shall be exempt from any claims of creditors of the account owner or designated beneficiary.*

(3) *The provisions of paragraph (2) of this subsection shall not apply to:*

(A) *Claims of any creditor of an account owner, as to amounts contributed within a one-year period preceding the date of the filing of a bankruptcy petition under 11 USC section 101 et seq.; or*

(continued)

(B) claims of any creditor of an account owner, as to amounts contributed within a one-year period preceding an execution on judgment for such claims against the account owner.

(4) The provisions of paragraph (2) of this subsection shall not apply to:

(A) Claims of any creditor of an account owner, as to amounts exceeding \$5,000 contributed within a period of time which is more than one year but less than two years preceding the date of the filing of a bankruptcy petition under 11 USC section 101 et seq.; or

(B) claims of any creditor of an account owner, as to amounts exceeding \$5,000 contributed within a period of time which is more than one year but less than two years preceding an execution on judgment for such claims against the account owner.

Sec. 2. K.S.A. 2001 Supp. 75-646 is hereby amended to read as follows: 75-646. (a) Family postsecondary education savings accounts established pursuant to the provisions of K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto shall be governed by the provisions of this section.

(b) A family postsecondary education savings account may be opened by any person or persons who desire to save money for the payment of the qualified higher education expenses of the designated beneficiary. Such persons shall be considered the account owner.

(1) An application for such account shall be in the form prescribed by the state treasurer and contain the following:

(A) The name, address and social security number or employer identification number of the account owner or owners;

(B) the designation of a designated beneficiary;

(C) the name, address and social security number of the designated beneficiary;

(D) the certification relating to no excess contributions; and

(E) such other information as the state treasurer may require.

(2) The state treasurer may establish a nominal nonrefundable application fee for such application.

(c) ~~Only the account owner or owners~~ From and after January 1, 2002, any person may make contributions to the account after the account is opened.

(d) Contributions to accounts may be made only in cash.

(e) An account owner may withdraw all or part of the balance from an account on sixty-days notice or such shorter period as may be authorized under rules and regulations governing the program. ~~Such rules and regulations shall include provisions that will generally enable the determination as to whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal. Such rules and regulations may require one or more of the following:~~

(1) ~~An account owner seeking to make a qualified withdrawal must provide certification of qualified higher education expenses in a form and manner and pursuant to the method consistent with the requirements of K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto; and~~

(2) ~~withdrawals not meeting the requirements of K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto shall be treated as nonqualified withdrawals by the program manager and if such withdrawals are subsequently deemed qualified withdrawals, the account owner must seek any refund of penalties directly from the program.~~

(f) (1) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established pursuant to the provisions of K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto.

(2) An account owner may transfer all or a portion of an account to another family postsecondary education savings account, the designated beneficiary of which is a member of the family as defined in section 529 of the federal internal revenue code of 1986, as amended.

(3) Changes in designated beneficiaries and transfers under this subsection shall not be permitted to the extent that they would constitute excess contributions or unauthorized investment choices.

(g) ~~In the case of any nonqualified withdrawal from an account, an amount equal to 10% of the portion of the withdrawal constituting earnings as determined in accordance with the principles of section 529 of the federal internal revenue code of 1986, as amended, shall be withheld as a penalty and paid to the Kansas postsecondary education savings program.~~

(h) ~~The penalty prescribed in subsection (g) may be increased if the state treasurer determines that the amount of such penalty must be in-~~

creased to constitute a greater than de minimis penalty for purposes of qualifying the program as a qualified state tuition program as defined in section 529 of the federal internal revenue code of 1986, as amended.

(i) ~~If an account owner makes a nonqualified withdrawal and no penalty amount is withheld pursuant to subsection (g) or the amount withheld was less than the amount required to be withheld under such subsection for nonqualified withdrawals, the account owner shall pay the unpaid portion of the penalty to the program at the same time that the account owner files the earlier of the account owner's state or federal income tax return for the taxable year of the withdrawal or if such account owner does not file such return, the due date for such returns but in any event on or before the due date for such return taking into account any authorized extensions.~~

(j) The program shall provide separate accounting for each designated beneficiary.

(k) ~~(h) No account owner or designated beneficiary~~ Subject to the provisions of section 529 of the internal revenue code of 1986, in effect on January 1, 2002, or later versions as established in rules and regulations adopted by the treasurer, an account owner of any account shall be permitted to direct the investment of any contributions to an account or the earnings thereon.

(l) (i) Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

(j) ~~Except as provided in K.S.A. 2001 Supp. 75-640 through 75-648, and amendments thereto, or section 529 of the federal internal revenue code of 1986, as amended, any withdrawal made within one year after an account has been opened under a qualified tuition program as defined in section 529 of the federal internal revenue code of 1986, as amended, is a nonqualified withdrawal.~~

(m) (k) (1) The state treasurer shall adopt rules and regulations to prevent contributions on behalf of a designated beneficiary in excess of an amount equal to the average amount of the qualified higher education expenses that would be incurred for five years of study at institutions of postsecondary education located in the midwest states. Such amount shall be determined annually by the state treasurer.

(2) Such rules and regulations shall include requirements that any excess contributions with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or transferred to another account.

(n) (l) (1) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, such distribution shall be reported to the federal internal revenue service and the account owner or owners, the designated beneficiary, or the distributee to the extent required by federal law or regulation.

(2) Statements shall be provided to each account owner at least once each year within 60 days after the end of the twelve-month period to which they relate. The statement shall identify the contributions made during a preceding twelve-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the state treasurer shall require to be reported to the account owner.

(3) Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.

(o) (m) (1) A state or local government, or agency or instrumentality thereof, or organization described in section 501(c) (3) of the federal internal revenue code of 1986, as amended, may open and become the account owner of an account to fund scholarships for persons whose identity will be determined upon disbursement.

(2) In the case of any account opened pursuant to provision (1) of this subsection, the requirement set forth in subsection (b) that a designated beneficiary be designated when an account is opened shall not apply and each individual who receives an interest in such account as a scholarship shall be treated as a designated beneficiary with respect to such interest.

(p) (n) An annual fee may be imposed upon the account owner or owners for the maintenance of the account.

(q) ~~An account must be open at least two years before a qualified withdrawal can be made. The state treasurer may adopt rules and regulations providing for exceptions to the foregoing requirements for such extenuating circumstances as the state treasurer deems necessary and appropriate.~~

(o) An account owner or designated beneficiary of a Kansas postsecondary education savings account must be a citizen or resident of the United States of America.

(p) The program shall disclose the following information in writing to each account owner and prospective account owner of a family postsecondary education savings account:

(1) The terms and conditions for purchasing a family postsecondary education savings account;

(2) any restrictions on the substitution of beneficiaries;

(3) the person or entity entitled to terminate the savings agreement;

(4) the period of time during which a beneficiary may receive benefits under the savings agreement;

(5) the terms and conditions under which money may be wholly or partially withdrawn from the program, including, but not limited to, any reasonable charges and fees that may be imposed for withdrawal;

(6) the probable tax consequences associated with contributions to and distributions from accounts; and

(7) all other rights and obligations pursuant to savings agreements, and any other terms, conditions and provisions deemed necessary and appropriate by the state treasurer.

(q) Nothing in K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto, or in any savings agreement entered into pursuant to K.S.A. 2001 Supp. 75-640 to 75-648, and amendments thereto, shall be construed as a guarantee by the state of Kansas or any institution of postsecondary education that a beneficiary will be admitted to the institution of postsecondary education or, upon admission to any institution of postsecondary education, will be permitted to continue to attend or will receive a degree from such institution of postsecondary education.

(r) *The amendments to this section by this act shall apply to any action or transaction taken or occurring from and after January 1, 2002.*

Sec. 3. K.S.A. 2001 Supp. 60-2308 and 75-646 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

Substitute for SENATE BILL No. 545

AN ACT relating to public utilities; concerning public right-of-way and certain fees and costs; providing for recovery of certain costs of security measures of certain public utilities.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. As used in sections 1 and 2, and amendments thereto:

(a) "Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the easements obtained by utilities or private easements in platted subdivisions or tracts.

(b) "Public utility" means all public utilities as defined in K.S.A. 66-104, and amendments thereto, except that it does not include any public utilities included in the definitions set forth in K.S.A. 66-1,187, and amendments thereto.

Sec. 2. (a) Without prejudice to a public utility's other rights and authorities, a public utility which is assessed by a city and collects and remits fees associated with the utility's use, occupancy or maintenance of such utility's facilities in the public right-of-way may file a tariff with the state corporation commission to add to such utility's end-user customer's bill, statement or invoice a surcharge equal to the pro rata share of any such fees.

(b) Costs which are incurred by a public utility in excess of those normal and reasonable costs incurred by a public utility applying good utility practices due to actions of a city's governing body may file a tariff with the state corporation commission to add to the bill, statement or invoice of each end-user customer located within such city through a surcharge equal to a pro rata share of such costs.

(c) For purposes of this section and section 2, and amendments thereto, costs shall not include expenses specifically covered by any other cost recovery mechanism in existence as of April 1, 2002, including but not limited to franchise fees and relocation expenses.

(d) The fees and costs incurred by the utility identified in subsections (a) and (b) in excess of the amount included in the utility's existing rates shall be subject to review by the state corporation commission upon filing for recovery of the costs in a surcharge. Upon a finding by the commission that (1) the fees included for recovery in such surcharge were required to be paid by the utility as the result of action of the governing body of a city, (2) the costs were incurred as a result of action of the governing body of such city, (3) such costs were reasonably incurred to meet the requirements imposed by the governing body of such city and (4) the surcharge is applied to bills in a reasonable manner and is calculated to substantially collect the increase in fees and costs charged on the books and records of the utility, or reduce any existing surcharge based upon a decrease in fees and costs incurred on the books and records of the utility, the commission shall approve such tariffs within 30 days of the filing. If the commission determines that the surcharge is not applied to bills in a reasonable manner, the costs or portions thereof do not meet the above requirements or that the calculation is not adequately supported by the documentation provided in the filing, the commission, at its option, may either disapprove such tariff within 30 days of the filing and require re-submission by the utility, suspend the effective date of the tariff for an additional 60 days to receive appropriate documentation from the utility and/or modify such tariff in a manner that recovers in a reasonable manner the costs or portions thereof which meet the above requirements. Any over or under collection of the actual fees and costs charged to expense on the books of the utility shall be either credited or collected through the surcharge in subsequent periods. The establishment of a surcharge under this section shall not be deemed to be a rate increase for purposes of this act.

(e) Upon the filing of a tariff with the corporation commission pursuant to this act, the utility shall deliver to the affected city a complete copy of the filing. Such copy shall be delivered within 10 days of the filing with the corporation commission.

Sec. 3. (a) Section 1, and amendments thereto, shall affect only such costs and fees which are incurred between April 1, 2002, and June 30, 2003.

(b) The provisions of this section and sections 1 and 2, and amendments thereto, shall expire on June 30, 2003.

Sec. 4. (a) As used in this section:

(1) "Electric public utility" means any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto.

(2) "Natural gas public utility" means any natural gas public utility, as defined in K.S.A. 66-1,200, and amendments thereto.

(b) On and after July 1, 2002, the state corporation commission, upon application and request, shall authorize electric public utilities and natural gas public utilities to recover the utility's prudent expenditures for security measures reasonably required to protect the utility's electric generation and transmission assets or natural gas production and transportation assets by an adjustment to the utility's customers' bills. The application and request shall be subject to such procedures and conditions, including review, in an expedited manner, of the prudence of the expenditures and the reasonableness of the measures, as the commission deems appropriate. Such application and request shall be confidential and subject to protective order of the commission.

(c) The provisions of this section shall expire on July 1, 2004.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

HOUSE BILL No. 2718

AN ACT concerning the department of health and environment; relating to vital statistics; amending K.S.A. 23-110, 65-2417 and 65-2434 and K.S.A. 2001 Supp. 65-2418, 65-2422d and 65-2423 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 65-2418a.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 23-110 is hereby amended to read as follows: 23-110. The secretary of health and environment shall index all records received pursuant to K.S.A. 23-109 and amendments thereto and, upon request, shall issue a certified copy or abstract of them which in all courts and for all purposes shall be prima facie evidence of the facts stated in

(continued)

them. For each certified copy or abstract a fee shall be paid to the secretary in an amount prescribed in accordance with, and disposed of in the manner provided by, K.S.A. 65-2418 and amendments thereto.

Sec. 2. K.S.A. 65-2417 is hereby amended to read as follows: 65-2417. (a) Subject to the requirements of K.S.A. 65-2421, ~~65-2422~~, 65-6422d and 65-2423 and amendments thereto, the state registrar shall, upon request, furnish to any applicant a certified copy or a certified abstract of any certificate, or any part thereof.

(b) Copies or abstracts of the contents of any certificate on file or any part thereof, certified by the state registrar shall be considered for all purposes the same as the original subject to the requirements of K.S.A. 65-2421, ~~65-2422~~, 65-2422d and 65-2423.

Sec. 3. K.S.A. 2001 Supp. 65-2418 is hereby amended to read as follows: 65-2418. (a) Except as otherwise provided in this section, the secretary shall fix and charge the fees, if any, to be paid for certified copies or abstracts of certificates or for search of the files or records when no certified copy or abstract is made. Fees for certified copies or abstracts of certificates shall be fixed by rules and regulations of the secretary except that the fee for the first copy of a birth or death certificate or abstract shall include a \$3 surcharge and the fee for each additional copy of the same birth or death certificate or abstract requested at the same time shall include a \$1 surcharge. The secretary shall not charge any fee for a certified copy of a certificate or abstract or for a search of the files or records if the certificate, abstract or search is requested by a person who exhibits correspondence from the United States ~~veterans administration~~ department of veterans affairs or the Kansas commission on veterans' affairs which indicates that the person is applying for benefits from the United States ~~veterans administration~~ department of veterans affairs and that such person needs the requested information to obtain such benefits, except that, for a second or subsequent certified copy of a certificate, abstract or search of the files requested by the person, the usual fee shall be charged. The secretary may provide by rules and regulations for exemptions from such fees.

(b) Subject to K.S.A. 65-2420, and amendments thereto, the national office of vital statistics may be furnished copies or data it requires for national statistics. The state shall be reimbursed for the cost of furnishing the data. The data shall not be used for other than statistical purposes by the national office of vital statistics unless so authorized by the state registrar of vital statistics.

(c) (1) The secretary shall remit all moneys received by or for the secretary from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, other than remittances for fees for birth certificates or abstracts, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(2) Upon receipt of any such remittance of a fee for a birth certificate or abstract, \$3 of each such fee for the first copy of a birth certificate or abstract and \$1 of each such fee for each additional copy of the same birth certificate or abstract requested at the same time shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the permanent families account of the family and children investment fund created by K.S.A. 38-1808, and amendments thereto. Upon receipt of any such remittance of a fee for a death certificate or abstract, \$3 of each such fee for the first copy of a death certificate or abstract and \$1 of each such fee for each additional copy of the same death certificate or abstract requested at the same time shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the district coroners fund created by K.S.A. 22a-245, and amendments thereto. The balance of the money received for a fee for a birth certificate or abstract shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) Upon receipt of any fee for a certified copy or abstract of a birth, death, fetal death, marriage or divorce certificate, \$1 of each such fee shall be remitted to the state treasurer who shall deposit the entire amount of each such remittance in the state treasury and credit it to the vital statistics maintenance fee fund created under K.S.A. 2001 Supp. 65-2418b, and amendments thereto. For the purposes of the vital statistics maintenance

fee fund, the secretary of health and environment shall adopt rules and regulations providing for an increase of \$1 in the fees charged by the state registrar for providing a certified copy or abstract of a birth, death, fetal death, marriage or divorce certificate.

Sec. 4. K.S.A. 2001 Supp. 65-2422d is hereby amended to read as follows: 65-2422d. (a) The records and files of the division of health pertaining to vital statistics shall be open to inspection, subject to the provisions of this act and rules and regulations of the secretary. It shall be unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized by this act and the secretary, and it shall be unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized by law.

(b) No information concerning the birth of a child shall be disclosed in a manner that enables determination that the child was born out of wedlock, except upon order of a court in a case where the information is necessary for the determination of personal or property rights and then only for that purpose.

(c) The state registrar shall not permit inspection of the records or issue a certified copy or abstract of a certificate or part thereof unless the state registrar is satisfied the applicant therefor has a direct interest in the matter recorded and the information contained in the record is necessary for the determination of personal or property rights. The state registrar's decision shall be subject, however, to review by the secretary or by a court in accordance with the act for judicial review and civil enforcement of agency actions, subject to the limitations of this section.

(d) The secretary shall permit the use of data contained in vital statistical records for research purposes only, but no identifying use of them shall be made.

(e) Subject to the provisions of this section the secretary may direct the state registrar to release birth, death and stillbirth certificate data to federal, state or municipal agencies.

(f) On or before the 20th day of each month, the state registrar shall furnish to the county election officer of each county, without charge, a list of deceased residents of the county who were at least 18 years of age and for whom death certificates have been filed in the office of the state registrar during the preceding calendar month. The list shall include the name, age or date of birth, address and date of death of each of the deceased persons and shall be used solely by the election officer for the purpose of correcting records of their offices.

(g) No person shall prepare or issue any certificate which purports to be an original, certified copy or abstract or copy of a certificate of birth, death or fetal death, except as authorized in this act or rules and regulations adopted under this act.

(h) Records of births, deaths or marriages which are not in the custody of the secretary of health and environment and which were created before July 1, 1911, pursuant to chapter 129 of the 1885 Session Laws of Kansas, and any copies of such records, shall be open to inspection by any person and the provisions of this section shall not apply to such records.

(i) Social security numbers furnished pursuant to K.S.A. ~~65-2409~~ 65-2409a and amendments thereto shall only be used as permitted by title IV-D of the federal social security act and amendments thereto or as permitted by section 7(a) of the federal privacy act of 1974 and amendments thereto. The secretary shall make social security numbers furnished pursuant to K.S.A. 65-2409 65-2409a and amendments thereto available to the department of social and rehabilitation services for purposes permitted under title IV-D of the federal social security act.

(j) Fact of death information may be disseminated to state and federal agencies administering benefit programs. Such information shall be used for file clearance purposes only.

Sec. 5. K.S.A. 2001 Supp. 65-2423 is hereby amended to read as follows: 65-2423. (a) In cases of adoption the state registrar upon receipt of a certified decree of adoption, or a similar document or documents which evidences finalization of the adoption in the foreign country, and the report of adoption form shall prepare a supplementary certificate or abstract in the new name of the adopted person and seal and file the original certificate of birth with such certified copy or abstract attached thereto. Such sealed documents may be opened by the state registrar only upon the demand of the adopted person if of legal age or by an order of court. Upon receipt of a certified copy of a court order of annulment of adoption the state registrar shall restore the original certificate to its original place in the files.



(b) For any child born in a foreign country but adopted in Kansas or born and adopted in a foreign country and such adoption is filed and entered pursuant to K.S.A. 59-2144, and amendments thereto, the state registrar, upon request, shall complete and register a birth certificate upon receipt of a certified copy of the decree of adoption, or a similar document or documents which evidences finalization of the adoption in the foreign country, the report of adoption form and proof of the date and place of the child's birth. The certificate shall show the new name of the child as specified in the decree of adoption, or a similar document or documents which evidences finalization of the adoption in the foreign country, and such further information concerning the adopting parents as may be necessary to complete the birth certificate. The certificate shall show the true country of birth and the date of birth of the child, and that the certificate is not evidence of United States citizenship.

Sec. 6. K.S.A. 65-2434 is hereby amended to read as follows: 65-2434. (1) Any person who willfully makes or alters any certificate or certified copy thereof or abstract provided for in this act, except in accordance with the provisions of this act, shall be ~~fin~~ed not more than \$1,000, or be imprisoned not exceeding six months, or both fined and imprisoned guilty of a class B misdemeanor.

(2) Any person who knowingly transports or accepts for transportation, a dead body located in this state to a location outside the boundaries of this state without an accompanying permit issued in accordance with the provisions of K.S.A. 65-2428a, shall be ~~fin~~ed not more than \$500 guilty of a class C misdemeanor.

(3) Except where a different penalty is provided in this section, any person who violates any of the provisions of this act or neglects or refuses to perform any of the duties imposed upon such person by this act, shall be fined not more than \$100 \$200.

Sec. 7. K.S.A. 23-110, 65-2417 and 65-2434 and K.S.A. 2001 Supp. 65-2418, 65-2418a, 65-2422d and 65-2423 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

#### SUBSTITUTE for SENATE BILL No. 508

AN ACT concerning the emergency medical services board; relating to financial support therefor; amending K.S.A. 75-1508 and K.S.A. 2001 Supp. 75-1514 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The emergency medical services board shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the emergency medical services operating fund. All expenditures from the emergency medical services operating fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the administrator of the board or by a person or persons designated by the administrator.

(b) The provisions of this section shall expire on June 30, 2004.

Sec. 2. K.S.A. 75-1508 is hereby amended to read as follows: 75-1508. (a) For the purpose of maintaining the department of the state fire marshal and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the commissioner of insurance, on or before March 15 each year, beginning with the year 1984, and each year thereafter, in addition to the taxes, fees and charges now required by law to be paid by it, such levy as may be made by the state fire marshal. The levy shall not be more than ~~1.25%~~ 1.0% for calendar years 2003 and 2004, and 1.25% for calendar year 2005 and ensuing years, of a sum equal to the gross cash receipts as premiums of such company on all fire business transacted by it in the state of Kansas during the year next preceding, as shown by its annual statement under oath to the state insurance department.

(b) For the purposes of maintaining the emergency medical services board and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the commissioner of insurance, on or before March 15 each year, beginning with the year 2003, and each year thereafter, in addition to the taxes, fees and charges

now required by law to be paid by it, such levy as may be made by the emergency medical services board. The levy shall not be more than .25% of a sum equal to the gross cash receipts as premiums of such company on all fire business transacted by it in the state of Kansas during the year next preceding, as shown by its annual statement under oath to the state insurance department. The provisions of this subsection (b) shall expire on December 31, 2004.

Sec. 3. K.S.A. 2001 Supp. 75-1514 is hereby amended to read as follows: 75-1514. (a) The commissioner of insurance shall remit all moneys received by the commissioner under subsection (a) of K.S.A. 75-1508, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. ~~The state treasurer shall credit 20% of each such deposit to the state general fund and shall credit the remainder of each such deposit to the credit of the fire marshal fee fund for the fiscal years ending June 30, 2003, and June 30, 2004, and the state treasurer shall credit 20% of each such deposit to the state general fund and shall credit the remainder of each such deposit to the fire marshal fee fund for the fiscal year ending June 30, 2005, and ensuing fiscal years.~~

(b) There is hereby created the fire marshal fee fund in the state treasury. All expenditures from the fire marshal fee fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state fire marshal or a person or persons designated by the state fire marshal.

(c) The commissioner of insurance shall remit all moneys received by the commissioner under subsection (b) K.S.A. 75-1508, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the emergency medical services board operating fund.

Sec. 4. K.S.A. 75-1508 and K.S.A. 2001 Supp. 75-1514 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

#### HOUSE BILL No. 2709

AN ACT concerning the uniform commercial code; relating to secured and other transactions thereunder; amending K.S.A. 34-2,101, 34-2,112, 58-204, 58-244, 66-1217, 66-1219, 79-2616 and 79-2617 and K.S.A. 2001 Supp. 17-630, 84-1-105, 84-9-102, 84-9-104, 84-9-109, 84-9-306, 84-9-311, 84-9-316, 84-9-317, 84-9-331, 84-9-334, 84-9-406, 84-9-509, 84-9-513, 84-9-515, 84-9-525, 84-9-608, 84-9-613, 84-9-615, 84-9-625, 84-9-628, 84-9-702 and 84-9-705 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 17-630 is hereby amended to read as follows: 17-630. Every mortgage or deed of trust, or satisfaction thereof, covering any real or personal property situated in this state, made to secure the payment of bonds issued or to be issued thereafter by any corporation which is an interstate gas pipeline company, or by any public utility as defined in K.S.A. 66-104 and amendments thereto except nothing herein shall apply to or affect railroad corporations, and every mortgage or deed of trust, or satisfaction thereof, covering any real or personal property situated in this state made to secure any indebtedness incurred under the rural electrification act of 1936, as amended (U.S. code, title 7, chapter 31), shall be executed and duly acknowledged and certified, as other instruments affecting real estate. Such mortgage or deed of trust, or satisfaction thereof shall be filed in the office of the secretary of state accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the instrument is filed in accordance with this section. The secretary shall certify that the instrument has been filed in the secretary's office by endorsing upon the original signed instrument the word "filed" and the date and hour of its filing. This endorsement is the "filing date" of the instrument and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary of state shall thereupon file and index the endorsed instrument in accordance with part 5 of article 9 of the uniform commercial code, and amendments thereto. The instrument shall be effective upon the record until terminated and the secretary of state shall remove

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the record one year after termination. The filing of such instrument in the office of the secretary of state shall be notice to all persons of the contents thereof and to all subsequent purchasers and encumbrancers of the rights and interests of the parties thereto as to property described in the filed instrument and property acquired subsequent to the execution thereof if the instrument so provides. Notwithstanding any provision of law to the contrary, no other filing of any such instrument shall be necessary. Any such mortgage or deed of trust filed in the office of the register of deeds of any county in this state may be refiled in the office of the secretary of state in the manner provided in this section. Such refiling shall thereafter as to any property not previously released from such mortgage or deed of trust be of the same effect as if the instrument had been originally filed in the office of the secretary of state. *The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code, and amendments thereto.*

Sec. 2. K.S.A. 58-244 is hereby amended to read as follows: 58-244. (a) To be perfected, the lien must have attached and the supplier entitled to the lien must have filed a lien-notification statement in the form provided for in K.S.A. 58-242, *and amendments thereto, accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the lien is filed in accordance with this section*, with the appropriate filing office under K.S.A. ~~84-9-491~~ ~~84-9-501~~ and amendments thereto within 20 days after the last date that agricultural production input was furnished. A lien-notification statement filed pursuant to this section shall include the date which notice was mailed to the lender and a statement signed by the supplier indicating that the lender did not respond to the lien-notification statement.

(b) Subject to the provisions of subsection (d) of K.S.A. 58-242, *and amendments thereto*, a lien that is not perfected shall be entitled to the same priority as an unperfected security interest as determined by ~~K.S.A. 84-9-312~~ *part 3 of article 9 of the uniform commercial code* and amendments thereto.

(c) The filing officer shall file, index, amend, maintain, remove and destroy the lien-notification statement in the same manner as a financing statement filed under part 4 5 of article 9 of the uniform commercial code *and amendments thereto*. The ~~secretary of state~~ *filing officer* shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 4 5 of article 9 of the uniform commercial code *and amendments thereto*.

Sec. 3. K.S.A. 66-1217 is hereby amended to read as follows: 66-1217. Any mortgage of real property or of both real property and personal property, including fixtures, or a security interest in fixtures alone, made by a corporation which is a railroad company as defined in K.S.A. 66-180, *and amendments thereto*, or a public utility as defined in K.S.A. 66-104, *and amendments thereto*, shall be recorded in the office of the register of deeds of the county or counties in which the real property is located, and when so recorded shall be a lien on the real property and fixtures described in the mortgage or security agreement from the time of recording ~~and~~. If the instrument so provides, *the instrument* shall be a lien on any real property and fixtures thereafter acquired subject to the mortgage or security agreement from the time of acquisition. If ~~such~~ *such* mortgage or security agreement includes personal property, a copy of ~~said~~ *said* mortgage or security agreement certified as true by the debtor or creditor, or an officer of either, shall also be filed with the secretary of state, ~~and when in accordance with part 5 of article 9 of the uniform commercial code and amendments thereto and accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the lien is filed in accordance with this section~~. When so filed *the mortgage or security agreement* shall be a lien on ~~said~~ *said* such property described in ~~said~~ *said* such mortgage or security agreement from the time of ~~said~~ *said* such filing, and if the instrument so provides, shall be a lien on any property thereafter acquired subject to the mortgage or security agreement from the time of acquisition, ~~and~~. The lien thereon shall be enforceable in accordance with the laws of this state governing mortgages of real estate. No other recording or filing of any such instrument shall be necessary, notwithstanding the provisions of any other statute. *The instrument shall be effective upon the record until terminated and the filing officer shall remove the record one year after termination.*

Sec. 4. K.S.A. 66-1219 is hereby amended to read as follows: 66-1219. The secretary of state shall maintain a file for mortgages, security agreements, and releases thereof of railroads and public utilities filed pursuant to this act, ~~and he shall receive for such filing a fee of five dollars~~

~~(§5). The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code and amendments thereto.~~

Sec. 5. K.S.A. 79-2616 is hereby amended to read as follows: 79-2616. (a) If a notice of federal lien, a refiling of a notice of federal lien or a notice of revocation of any certificate described in subsection (b) is presented to a filing officer who is:

(1) The secretary of state, the secretary shall cause the notice to be marked, held and indexed in accordance with ~~the provisions of subsection (4) of K.S.A. 84-9-403~~ *part 5 of article 9 of the uniform commercial code*, and amendments thereto, as if the notice were a financing statement within the meaning of the uniform commercial code, except the notice shall remain filed for 10 years from the date of filing, if the date of filing was on or after November 5, 1990, and liens filed prior to November 5, 1990, shall remain on file for a period of four years from the close of the preceding required refiling period; or

(2) any other officer described in K.S.A. 79-2614, and amendments thereto, the officer shall endorse thereon the officer's identification and the date and time of receipt and file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice; the date and time of receipt, the title and address of the official or entity certifying the lien and the total amount appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any lien is presented to the secretary of state for filing, the secretary shall:

(1) Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code; and

(2) cause a certificate of discharge or subordination to be marked, held and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing to any other filing officer specified in K.S.A. 79-2614, and amendments thereto, such officer shall enter the refiled notice or the certificate with the date of filing in any alphabetical lien index.

(d) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed pursuant to this act or pursuant to the uniform federal tax lien registration act, K.S.A. 79-2608 *et seq.*, and amendments thereto, as it existed prior to the effective date of this act, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. ~~The fee for a certificate is \$5. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of \$25 per page, unless the filing officer is the secretary of state, in which case, the fee shall be an amount fixed by the secretary of state and approved by the director of accounts and reports pursuant to K.S.A. 45-204, and amendments thereto.~~

Sec. 6. K.S.A. 79-2617 is hereby amended to read as follows: 79-2617. ~~The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is:~~

- ~~(1) For a lien on real estate, \$5;~~
- ~~(2) for a lien on tangible and intangible personal property, \$5;~~
- ~~(3) for a certificate of discharge or subordination, \$5; and~~
- ~~(4) for all other notices, except for a certificate of release or nonattachment, \$2. The filing officer shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code and amendments thereto.~~

Sec. 7. K.S.A. 2001. Supp. 84-9-102 is hereby amended to read as follows: 84-9-102. (a) **Definitions.** In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (B) for services rendered or to be rendered, (C) for a policy of insurance issued or to be issued, (D) for a secondary obligation incurred or to be incurred, (E) for energy provided or to be provided, (F) for the use or hire of a vessel under a charter or other

contract, (G) arising out of the use of a credit or charge card or information contained on or for use with the card, or (H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include: (A) rights to payment evidenced by chattel paper or an instrument, (B) commercial tort claims, (C) deposit accounts, (D) investment property, (E) letter-of-credit rights or letters of credit, or (F) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products: (A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property. Agricultural lien shall not include statutory liens.

(6) "As-extracted collateral" means: (A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and  
(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

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(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in ~~section (2) subsection (2) of K.S.A. 84-7-201 and amendments thereto.~~

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are: (A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to ~~subsection (a) of K.S.A. 2001 Supp. 84-9-519(a) and amendments thereto.~~

(37) "Filing office" means an office designated in K.S.A. 2001 Supp. 84-9-501 and amendments thereto as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to K.S.A. 2001 Supp. 84-9-526 and amendments thereto.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying ~~subsections (a) and (b) of K.S.A. 2001 Supp. 84-9-502(a) and (b) and amendments thereto.~~ The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (A) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (B) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a com-

puter program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument, a writing that would otherwise qualify as a certificate of deposit (defined in subsection (j) of K.S.A. 84-3-104, and amendments thereto) but for the fact that the writing contains a limitation on transfer, or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as a debtor under ~~subsection (d) of K.S.A. 2001 Supp. 84-9-203(d) and amendments thereto~~ by a security agreement previously entered into by another person.

(57) "New value" means (A) money, (B) money's worth in property, services, or new credit, or (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor" *except as used in K.S.A. 2001 Supp. 84-9-310(c), and amendments thereto* means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under *subsection (d) of K.S.A. 2001 Supp. 84-9-203(d) and amendments thereto.*

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

- (A) The spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) an officer or director of, or a person performing similar functions with respect to, the organization;
- (C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
- (D) the spouse of an individual described in subparagraph (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds" *except as used in K.S.A. 2001 Supp. 84-9-609(b), and amendments thereto* means the following property:

- (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) whatever is collected on, or distributed on account of, collateral;
- (C) rights arising out of collateral;
- (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to K.S.A. 2001 Supp. 84-9-620, 84-9-621 and 84-9-622 and amendments thereto.

~~(67) "Public finance transaction" means a secured transaction in connection with which:~~

- ~~(A) Debt securities are issued;~~
- ~~(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and~~
- ~~(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.~~

(68) (67) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

~~(69) (68) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.~~

~~(70) (69) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.~~

~~(71) (70) "Secondary obligor" means an obligor to the extent that:~~

- ~~(A) The obligor's obligation is secondary; or~~
- ~~(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.~~

~~(72) (71) "Secured party" means:~~

- ~~(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;~~
- ~~(B) a person that holds an agricultural lien;~~
- ~~(C) a consignor;~~
- ~~(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;~~
- ~~(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or~~
- ~~(F) a person that holds a security interest arising under K.S.A. 84-2-401, 84-2-505, subsection (3) of 84-2-711(3), subsection (5) of 84-2a-508(5), 84-4-210 and 84-5-118 and amendments thereto.~~

~~(73) (72) "Security agreement" means an agreement that creates or provides for a security interest.~~

~~(74) (73) "Send," in connection with a record or notification, means:~~

- ~~(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~

~~(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).~~

~~(75) (74) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.~~

~~(76) (75) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.~~

~~(77) (76) "Statutory lien" means liens created by K.S.A. 2-1319, 2-2608, 2-3007, 34-239, 47-836, 58-201, 58-203, 58-204, 58-207, 58-218, 58-220, 58-221, 58-241, 58-242, 58-2524, 58-2525, 58-2526, 58-2527, 58-2528 and 84-7-209, and amendments thereto.~~

~~(78) (77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.~~

~~(79) (78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.~~

~~(80) (79) "Termination statement" means an amendment of a financing statement which:~~

- ~~(A) Identifies, by its file number, the initial financing statement to which it relates; and~~
- ~~(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.~~

~~(81) (80) "Transmitting utility" means a person primarily engaged in the business of:~~

- ~~(A) Operating a railroad, subway, street railway, or trolley bus;~~
- ~~(B) transmitting communications electrically, electromagnetically, or by light;~~
- ~~(C) transmitting goods by pipeline or sewer; or~~
- ~~(D) transmitting or producing and transmitting electricity, steam, gas, or water.~~

~~(b) Definitions in other articles. The following definitions in other articles apply to this article:~~

- ~~"Applicant" K.S.A. 84-5-102~~
- ~~"Beneficiary" K.S.A. 84-5-102~~
- ~~"Broker" K.S.A. 84-8-102~~

*(continued)*

"Certificated security"	K.S.A. 84-8-102
"Check"	K.S.A. 84-3-104
"Clearing corporation"	K.S.A. 84-8-102
"Contract for sale"	K.S.A. 84-2-106
"Customer"	K.S.A. 84-4-104
"Entitlement holder"	K.S.A. 84-8-102
"Financial asset"	K.S.A. 84-8-102
"Holder in due course"	K.S.A. 84-3-302
"Issuer" (with respect to a letter of credit or letter-of-credit right)	K.S.A. 84-5-102
"Issuer" (with respect to a security)	K.S.A. 84-8-102
"Lease"	K.S.A. 84-2a-103
"Lease agreement"	K.S.A. 84-2a-103
"Lease contract"	K.S.A. 84-2a-103
"Leasehold interest"	K.S.A. 84-2a-103
"Lessee"	K.S.A. 84-2a-103
"Lessee in ordinary course of business"	K.S.A. 84-2a-103
"Lessor"	K.S.A. 84-2a-103
"Lessor's residual interest"	K.S.A. 84-2a-103
"Letter of credit"	K.S.A. 84-5-102
"Merchant"	K.S.A. 84-2-104
"Negotiable instrument"	K.S.A. 84-3-104
"Nominated person"	K.S.A. 84-5-102
"Note"	K.S.A. 84-3-104
"Proceeds of a letter of credit"	K.S.A. 84-5-114
"Prove"	K.S.A. 84-3-103
"Sale"	K.S.A. 84-2-106
"Securities account"	K.S.A. 84-8-501
"Securities intermediary"	K.S.A. 84-8-102
"Security"	K.S.A. 84-8-102
"Security certificate"	K.S.A. 84-8-102
"Security entitlement"	K.S.A. 84-8-102
"Uncertificated security"	K.S.A. 84-8-102

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 8. K.S.A. 2001 Supp. 84-9-104 is hereby amended to read as follows: 84-9-104. **Requirements for control.** (a) A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the *deposit* account without further consent by the debtor; or

(3) the secured party becomes the bank's customer with respect to the deposit account.

(b) **Debtor's right to direct disposition.** A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Sec. 9. K.S.A. 2001 Supp. 84-9-109 is hereby amended to read as follows: 84-9-109. (a) **General scope of article.** Except as otherwise provided in subsections (c) and (d), this article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under K.S.A. 84-2-401, 84-2-505, *subsection (3) of 84-2-711* or *subsection (5) of 84-2a-508* and amendments thereto, as provided in K.S.A. 2001 Supp. 84-9-110 and amendments thereto; and

(6) a security interest arising under K.S.A. 84-4-201 or 84-5-118 and amendments thereto.

(b) **Security interest in secured obligation.** The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) **Extent to which article does not apply.** This article does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this article;

(2) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(3) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under K.S.A. 84-5-114 and amendments thereto.

(d) **Inapplicability of article.** This article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) a statutory lien, or a lien given by statute or other rule of law for services or materials, but K.S.A. 2001 Supp. 84-9-333 and amendments thereto applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but K.S.A. 2001 Supp. 84-9-315 and 84-9-322 and amendments thereto apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) a right of recoupment or set-off, but:

(A) K.S.A. 2001 Supp. 84-9-340 and amendments thereto applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) K.S.A. 2001 Supp. 84-9-404 and amendments thereto applies with respect to defenses or claims of an account debtor;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in K.S.A. 2001 Supp. 84-9-203 and 84-9-308 and amendments thereto;

(B) fixtures in K.S.A. 2001 Supp. 84-9-334 and amendments thereto;

(C) fixture filings in K.S.A. 2001 Supp. 84-9-501, 84-9-502, 84-9-512, 84-9-516 and 84-9-519 and amendments thereto; and

(D) security agreements covering personal and real property in K.S.A. 2001 Supp. 84-9-604 and amendments thereto;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but K.S.A. 2001 Supp. 84-9-315 and 84-9-322 and amendments thereto apply with respect to proceeds and priorities in proceeds;

(13) an assignment of a deposit account in a consumer transaction, but K.S.A. 2001 Supp. 84-9-315 and 84-9-322 and amendments thereto apply with respect to proceeds and priorities in proceeds; or

(14) an assignment of rights in or under:

(A) A claim or right to receive benefits under any workers compensation, industrial accident or similar statute or regulation which provides benefits for occupational injury or illness; or

(B) a deferred payment or benefit arrangement that enables a participant to exclude or defer recognition of income for purposes of federal or state income taxation; or

(15) a transfer by a government or governmental agency or subdivision.

Sec. 10. K.S.A. 2001 Supp. 84-9-306 is hereby amended to read as follows: 84-9-306. (a) **Governing law: issuers issuer's or nominated person's jurisdiction.** Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) **Issuer's or nominated person's jurisdiction.** For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in K.S.A. 84-5-116 and amendments thereto.

(c) **When section not applicable.** This section does not apply to a security interest that is perfected only under K.S.A. 2001 Supp. 84-9-308(d) and amendments thereto.

Sec. 11. K.S.A. 2001 Supp. 84-9-311 is hereby amended to read as follows: 84-9-311. (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt K.S.A. 2001 Supp. 84-9-310(a) and amendments thereto;

(2) any certificate-of-title law of this state covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and K.S.A. 2001 Supp. 84-9-313 and 84-9-316(d) and (e) and amendments thereto for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) and K.S.A. 2001 Supp. 84-9-316(d) and (e) and amendments thereto, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) **Inapplicability to certain inventory.** During any period in which collateral *subject to a statute specified in subsection (a)(2)* is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

Sec. 12. K.S.A. 2001 Supp. 84-9-316 is hereby amended to read as follows: 84-9-316. (a) **General rule: effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in K.S.A. 2001 Supp. 84-9-301(1) or 84-9-305(c) and amendments thereto remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.** Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interests interest becomes unperfected against purchasers.** A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under K.S.A. 2001 Supp. 84-9-311(b) or 84-9-313 and amendments thereto are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) the expiration of four months after the goods had become so covered.

(f) **Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) **Subsection (f) security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Sec. 13. K.S.A. 2001 Supp. 84-9-317 is hereby amended to read as follows: 84-9-317. (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under K.S.A. 2001 Supp. 84-9-322 and amendments thereto; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) *on the conditions specified in K.S.A. 2001 Supp. 84-9-203 (b)(3) and amendments thereto, is met and* a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee

(continued)

or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-320 and 84-9-321 and amendments thereto, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Sec. 14. K.S.A. 2001 Supp. 84-9-331 is hereby amended to read as follows: 84-9-331. (a) **Rights under Articles 3, 7, and 8 not limited.** This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles 3, 7, and 8.

(b) **Protection under Article 8.** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under article 8.

(c) **Filing not notice.** Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

Sec. 15. K.S.A. 2001 Supp. 84-9-334 is hereby amended to read as follows: 84-9-334. (a) **Security interest in fixtures under this article.** A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.** This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

- (1) The security interest is a purchase-money security interest;
- (2) the interest of the encumbrancer or owner arises before the goods become fixtures; and
- (3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

- (A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
- (B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
- (2) before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

- (A) Factory or office machines;
- (B) equipment that is not primarily used or leased for use in the operation of the real property; or
- (C) replacements of domestic appliances that are consumer goods;
- (3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or
- (4) the security interest is:
  - (A) Created in a manufactured home in a manufactured-home transaction; and
  - (B) perfected pursuant to a statute described in K.S.A. 2001 Supp. 84-9-311(a)(2) and amendments thereto.

(f) **Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) **Continuation of subsection (f) paragraph (f)(2) priority.** The priority of the security interest under subsection (f) paragraph (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) **Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) **Subsection (i) prevails.** Subsection (i) prevails over any inconsistent provisions of law of this state.

Sec. 16. K.S.A. 2001 Supp. 84-9-406 is hereby amended to read as follows: 84-9-406. (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge the account debtor's obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge the account debtor's obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h), notification is ineffective under subsection (a):

- (1) If it does not reasonably identify the rights assigned;
- (2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

- (A) Only a portion of the account, chattel paper, or general payment intangible has been assigned to that assignee;
- (B) a portion has been assigned to another assignee; or
- (C) the account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e), K.S.A. 84-2a-303 and K.S.A. 2001 Supp. 84-9-407, and amendments thereto, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) does not apply to the sale of a payment intangible or promissory note.



(f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in K.S.A. 84-2a-303 and K.S.A. 2001 Supp. 84-9-407 and amendments thereto, and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of any laws, rules, and regulations.

Sec. 17. K.S.A. 2001 Supp. 84-9-509 is hereby amended to read as follows: 84-9-509. (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) property that becomes collateral under K.S.A. 2001 Supp. 84-9-315(a)(2) and amendments thereto, whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under K.S.A. 2001 Supp. 84-9-315(a)(1) and amendments thereto, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under K.S.A. 2001 Supp. 84-9-315(a)(2) and amendments thereto.

(d) **Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by K.S.A. 2001 Supp. 84-9-513(a) or (c) and amendments thereto, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) **Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

Sec. 18. K.S.A. 2001 Supp. 84-9-513 is hereby amended to read as follows: 84-9-513. (a) **Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) **Time for compliance with subsection (a).** To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) **Other collateral.** In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) **Effect of filing termination statement.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-510 and amendments thereto, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. *Except as otherwise provided in K.S.A. 2001 Supp. 84-9-510, and amendments thereto, for purposes of K.S.A. 2001 Supp. 84-9-519(g), K.S.A. 2001 Supp. 84-9-522(a), and K.S.A. 2001 Supp. 84-9-523(c), and amendments thereto, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.*

Sec. 19. K.S.A. 2001 Supp. 84-9-515 is hereby amended to read as follows: 84-9-515. (a) **Five-year effectiveness.** Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) **Public-finance or Manufactured-home transaction.** Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a ~~public-finance transaction or~~ manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a ~~public-finance transaction or~~ manufactured-home transaction.

(c) **Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **When continuation statement may be filed.** A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) **Effect of filing continuation statement.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-510 and amendments thereto, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may

(continued)

be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under subsection (c) of K.S.A. 2001 Supp. 84-9-502(e) and amendments thereto, remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Sec. 20. K.S.A. 2001 Supp. 84-9-525 is hereby amended to read as follows: 84-9-525. (a) **Initial financing statement or other record: general rule.** The fee for filing and indexing a record under this part shall be provided by the secretary of state.

Sec. 21. K.S.A. 2001 Supp. 84-9-608 is hereby amended to read as follows: 84-9-608. (a) **Application of proceeds, surplus, and deficiency if obligation secured.** If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under ~~this section~~ K.S.A. 2001 Supp. 84-9-607, and amendments thereto, in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application non-cash proceeds of collection and enforcement under ~~this section~~ K.S.A. 2001 Supp. 84-9-607, and amendments thereto, unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application non-cash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Sec. 22. K.S.A. 2001 Supp. 84-9-613 is hereby amended to read as follows: 84-9-613. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public sale disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in K.S.A. 2001 Supp. 84-9-614(3) and amendments thereto, when completed, each provides sufficient information:

#### NOTIFICATION OF DISPOSITION OF COLLATERAL

To:

Name of debtor, obligor, or other person to which the notification is sent

From:

Name, address, and telephone number of secured party

Name of Debtor(s):

Include only if debtor(s) are not an addressee

For a public disposition:

We will sell [or lease or license, as applicable] the describe collateral [to the highest qualified bidder] in public as follows:

Day and Date:

Time:

Place:

For a private disposition:

We will sell [or lease or license, as applicable] the describe collateral privately sometime after; [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$\_\_\_\_\_]. You may request an accounting by calling us at [telephone number].

Sec. 23. K.S.A. 2001 Supp. 84-9-615 is hereby amended to read as follows: 84-9-615. (a) **Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition under K.S.A. 2001 Supp. 84-9-610, and amendments thereto, in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) **Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) **Application of noncash proceeds.** A secured party need not apply or pay over for application non-cash proceeds of disposition under ~~this section~~ K.S.A. 2001 Supp. 84-9-610, and amendments thereto, unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application non-cash proceeds shall do so in a commercially reasonable manner.

(d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) **Calculation of surplus or deficiency in disposition to person related to secured party.** The surplus or deficiency following a dispo-

sition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) **Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Sec. 24. K.S.A. 2001 Supp. 84-9-625 is hereby amended to read as follows: 84-9-625. (a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply with a request under K.S.A. 2001 Supp. 84-9-210 and amendments thereto may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-628 and amendments thereto:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under K.S.A. 2001 Supp. 84-9-626 and amendments thereto may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under K.S.A. 2001 Supp. 84-9-626 and amendments thereto may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) **Statutory damages: noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

(1) Fails to comply with K.S.A. 2001 Supp. 84-9-208 and amendments thereto;

(2) fails to comply with K.S.A. 2001 Supp. 84-9-209 and amendments thereto;

(3) files a record that the person is not entitled to file under K.S.A. 2001 Supp. 84-9-509(a) and amendments thereto;

(4) fails to cause the secured party of record to file or send a termination statement as required by K.S.A. 2001 Supp. 84-9-513(a) or (c) and amendments thereto;

(5) fails to comply with K.S.A. 2001 Supp. 84-9-616(b)(1) and amendments thereto, and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with K.S.A. 2001 Supp. 84-9-616(b)(2) and amendments thereto.

(f) **Statutory damages: noncompliance with K.S.A. 2001 Supp. 84-9-210 and amendments thereto.** A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a re-

quest under K.S.A. 2001 Supp. 84-9-210 and amendments thereto. A recipient of a request under K.S.A. 2001 Supp. 84-9-210 and amendments thereto which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: noncompliance with K.S.A. 2001 Supp. 84-9-210 and amendments thereto.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under K.S.A. 2001 Supp. 84-9-210 and amendments thereto, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Sec. 25. K.S.A. 2001 Supp. 84-9-628 is hereby amended to read as follows: 84-9-628. (a) **Limitation of liability to debtor or obligor of secured party for noncompliance with article.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) **Limitation of liability to debtor, obligor, another secured party, or lienholder based on status as secured party.** A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) the identity of the person.

(c) **Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under K.S.A. 2001 Supp. 84-9-625(c)(2) and amendments thereto, for its failure to comply with K.S.A. 2001 Supp. 84-9-616 and amendments thereto.

(e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under K.S.A. 2001 Supp. 84-9-625(c)(2) and amendments thereto, more than once with respect to any one secured obligation.

Sec. 26. K.S.A. 2001 Supp. 84-9-702 is hereby amended to read as follows: 84-9-702. (a) **Pre-effective date transactions or liens.** Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) **Continuing validity.** Except as otherwise provided in subsection (c) and K.S.A. 2001 Supp. 84-9-304 and 84-9-703 through 84-9-709 and amendments thereto:

(1) Transactions and liens that were not governed by former article 9, were validly entered into or created before this act takes effect, and would be subject to this act if they had been entered into or created after this act takes effect; and the rights, duties, and interests flowing from those transactions and liens remain valid after this act takes effect; and

(2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(continued)

(c) **Pre-effective date proceedings.** This act does not affect an action, case, or proceeding commenced before this act takes effect.

Sec. 27. K.S.A. 2001 Supp. 84-9-705 is hereby amended to read as follows: 84-9-705. (a) **Pre-effective date action; one-year perfection period unless reperfected.** If action, other than the filing of a financing statement, is taken before this act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect, the action is effective to perfect a security interest that attaches under this act within one year after this act takes effect. An attached security interest becomes unperfected one year after this act takes effect unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) **Pre-effective date filing.** The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) **Pre-effective date filing in jurisdiction formerly governing perfection.** This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in K.S.A. 84-9-103 prior to the effective date of this act. However, except as otherwise provided in subsections (d) and (e) and K.S.A. 2001 Supp. 84-9-706 and amendments thereto, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) **Continuation statement.** The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(e) **Application of subsection (c)(2) to transmitting utility financing statement.** Subsection (c)(2) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in K.S.A. 84-9-103 prior to the effective date of this act only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) **Application of Part 5.** A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

New Sec. 28. (a) **Pre-effective-date financing statement.** In this section, "pre-effective-date financing statement" means a financing statement filed before this act takes effect.

(b) **Applicable law.** After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending; general rule.** Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this act takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in K.S.A. 2001 Supp. 84-9-501, and amendments thereto;

(2) an amendment is filed in the office specified in K.S.A. 2001 Supp. 84-9-501, and amendments thereto, concurrently with, or after the filing in that office of, an initial financing statement that satisfies K.S.A. 2001 Supp. 84-9-706(c), and amendments thereto; or

(3) an initial financing statement that provides the information as amended and satisfies K.S.A. 2001 Supp. 84-9-706(c), and amendments thereto, is filed in the office specified in K.S.A. 2001 Supp. 84-9-501, and amendments thereto.

(d) **Method of amending; continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under K.S.A. 2001 Supp. 84-9-705(d) and (f), and amendments thereto.

(e) **Method of amending; additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after this act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies K.S.A. 2001 Supp. 84-9-706(c), and amendments thereto, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

Sec. 29. K.S.A. 2001 Supp. 84-1-105 is hereby amended to read as follows: 84-1-105. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. K.S.A. 84-2-402 and amendments thereto.

Applicability of the article on leases. K.S.A. 84-2a-105 and 84-2a-106, and amendments thereto.

Applicability of the article on bank deposits and collections. K.S.A. 84-4-102 and amendments thereto.

Applicability of the article on investment securities. K.S.A. 84-8-110 and amendments thereto.

Governing law in the article on funds transfers. K.S.A. 84-4a-507 and amendments thereto.

Letters of credit. K.S.A. 84-5-116 and amendments thereto.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. K.S.A. 2001 Supp. 84-9-301 through 84-9-307 and amendments thereto.

Sec. 30. K.S.A. 34-2,101 is hereby amended to read as follows: 34-2,101. The provisions of this act relating to licensing, bonding and supervision of warehouses shall not be construed to apply to any public warehouseman who is, or shall hereafter be, duly licensed under the federal warehouse act, *except that the provisions of K.S.A. 34-2,112, and amendments thereto, shall apply to all state and federally licensed warehouses.*

Sec. 31. K.S.A. 34-2,112 is hereby amended to read as follows: 34-2,112. (a) Whenever any amount of grain is received in any public warehouse from a producer and is sold by the producer to the public warehouseman with, or if a grain producer delivers grain for sale pursuant to an agreement with the public warehouseman for deferred payment or deferred pricing, and if upon demand for payment by the producer, the warehouseman fails to make full payment as due or makes payment by check, if the check that fails; because of insufficient funds; to clear the bank or other financial institution on which it is drawn within 15 days after the date the check is issued or the demand is made, excluding Saturdays, Sundays and holidays, the sale of such amount of grain may be voided by the producer by notifying the public warehouseman in writing that the sale is void. In any such case, the public warehouseman shall include such amount of grain in the public warehouseman's daily position record and other records as an open storage obligation upon receiving such written notice voiding the sale.

(b) As used in this section, the words and phrases defined in K.S.A. 34-223 and amendments thereto shall have the meanings ascribed to them in that statute.

(c) This section shall be construed as supplemental to the statutes contained in article 2 of chapter 34 of the Kansas Statutes Annotated and amendments thereto.

Sec. 32. K.S.A. 58-204 is hereby amended to read as follows: 58-204. Any person claiming a lien as ~~afforded~~ as provided in K.S.A. 58-203, and amendments thereto, shall file in the office of the register of deeds of the

county in which said the threshing or harvesting is done, a statement in writing, duly verified by him or her, setting such person. Such statement shall set forth the name of the owner or owners of the grain or grain crops, threshed or harvested, the kind of grain, the number of bushels threshed or acres harvested, the description of the land upon which said such grain or grain crop was raised, the contract price for such threshing or harvesting, or the price or value of such wages, the date of the threshing or harvesting, the amount due and the name of the claimant.

Said Such statement shall be filed and entered by the register of deeds in the same manner and upon the same books as in the case of other financing statements provided for under the uniform commercial code; and the said. The register of deeds shall collect from the person presenting the same statement, a fee equal to the fee for filing financing statements under the uniform commercial code. Such statement shall be filed within fifteen 30 days after the completion of said such threshing or harvesting or the rendering of such services, and in case said threshing or harvesting has begun and the work is interrupted for more than five days, such statement shall be filed within fifteen days after the beginning of such interruption.

Sec. 33. K.S.A. 34-2-101, 34-2-112, 58-204, 58-244, 66-1217, 66-1219, 79-2616 and 79-2617 and K.S.A. 2001 Supp. 17-630, 84-1-105, 84-9-102, 84-9-104, 84-9-109, 84-9-306, 84-9-311, 84-9-316, 84-9-317, 84-9-331, 84-9-334, 84-9-406, 84-9-509, 84-9-513, 84-9-515, 84-9-525, 84-9-608, 84-9-613, 84-9-615, 84-9-625, 84-9-628, 84-9-702 and 84-9-705 are hereby repealed.

Sec. 34. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

#### HOUSE BILL No. 2746

AN ACT concerning electricity; relating to retail electric service and station power; relating to revenues from certain sales of electricity generated from renewable resources or technologies and certain sales of renewable attributes; amending K.S.A. 66-1,170 and 66-1,173 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 66-1,170 is hereby amended to read as follows: 66-1,170. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Distribution line" means an electric line used to furnish retail electric service, including any line from a distribution substation to an electric consuming facility; but such term does not include a transmission facility used for the bulk transfer of energy even if such energy is reduced in voltage and used as station power.

(b) "Electric consuming facility" means any entity which utilizes electric energy from a central station service.

(c) "Commission" means the state corporation commission of the state of Kansas.

(d) "Retail electric supplier" means any person, firm, corporation, municipality, association or cooperative corporation engaged in the furnishing of retail electric service.

(e) "Certified territory" means an electric service territory certified to a retail electric supplier pursuant to this act.

(f) "Existing distribution line" means a distribution line which is in existence on the effective date of this act, and which is being or has been used as such.

(g) "Single certified service territory" means that service area in which only one retail electric supplier has been granted a service certificate by the commission.

(h) "Dual certified service territory" means that service area where more than one retail electric supplier has been granted a service certificate by the commission.

(i) "Station power" means electric energy used for operating equipment necessary for the process of generating electricity at any generating plant owned by a utility or a generating plant specified in subsection (e) of K.S.A. 66-104, and amendments thereto, and placed in use on or after January 1, 2002, whether such electrical energy is generated at such generating plant or provided through the adjacent transformation and transmission interconnect, but does not include electric energy used for heating, lighting, air conditioning and office needs of the buildings at a generating plant site.

Sec. 2. K.S.A. 66-1,173 is hereby amended to read as follows: 66-1,173. Every retail electric supplier shall have the exclusive right and responsibility to furnish retail electric service to all electric consuming facilities located within its certified territory, and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric consuming facilities located within the certified territory of another retail electric supplier. ~~Provided, That except that:~~

(a) Any retail electric supplier, with the approval of the commission, may extend distribution or transmission facilities through the certified territory of another retail electric supplier, if such extension is necessary for such supplier to connect with any of its facilities or those of others to serve consumers within its own certified territory; and

(b) station power shall not be deemed to be retail electric service for the purposes of this act.

New Sec. 3. (a) As used in this section:

(1) "Electric public utility" has the meaning provided by K.S.A. 66-101a, and amendments thereto.

(2) "Renewable attributes" means tradeable renewable energy credits (with or without other features), tradeable emissions credits, emission offsets or other market instruments created or obtained by use of renewable energy resources or technologies.

(3) "Renewable resources or technologies" means wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incineration and landfill gas resources or technologies located in Kansas.

(b) Upon application of an electric public utility, the state corporation commission may authorize such utility to:

(1) Retain 65% of the utility's net revenues from wholesale off-system sales of electricity generated from renewable resources or technologies or from sales of renewable attributes if such electricity or attributes are purchased by the utility at not less than the average price paid by such utility for electricity or renewable attributes purchased pursuant to contracts of five or more years' duration; and

(2) retain 50% of the utility's net revenues from all other wholesale off-system sales of purchased electricity generated from renewable resources or technologies or from sales of purchased renewable attributes from renewable energy procured or constructed principally to serve Kansas retail customers.

Sec. 4. K.S.A. 66-1,170 and 66-1,173 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

#### HOUSE BILL No. 2880

AN ACT concerning crimes, punishment and criminal procedure; relating to specimen collection; examination of victims of sexual assault; amending K.S.A. 2001 Supp. 21-2511 and 65-448 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any offense which requires such person to register as an offender pursuant to the Kansas offender registration act, K.S.A. 22-4901 et seq., any off-grid felony, any nondrug severity level 1 through 6 felony, or; a violation of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508, 21-3602, 21-3715; a violation of K.S.A. 21-4310, subsections (c)(2), (c)(3) and (c)(4) of K.S.A. 65-4142 or K.S.A. 65-4150, and amendments thereto; a violation of K.S.A. 21-3424, and amendments thereto when the victim is less than 18 years of age; a violation of K.S.A. 21-3507, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3515, and amendments thereto, when one of the parties involved is less than 18 years of age; or a violation of K.S.A. 21-3517, and amendments thereto; including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood and saliva to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

(continued)

(1) Convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act;

(2) ordered institutionalized as a result of being convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act; or

(3) convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 22-3717 or 38-1663, and amendments thereto.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act.

(c) Any person required by paragraphs (a)(1) and (a)(2) to provide specimens of blood and saliva shall be ordered by the court to have specimens of blood and saliva collected within 10 days after sentencing or adjudication:

(1) If placed directly on probation, that person must provide specimens of blood and saliva, at a collection site designated by the Kansas bureau of investigation. *Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.* Failure to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall be punishable as contempt of court and constitute grounds to revoke probation;

(2) if sentenced to the secretary of corrections, the specimens of blood and saliva will be obtained ~~immediately~~ *as soon as practical* upon arrival at the Topeka correctional facility; or

(3) if a juvenile offender is placed in the custody of the commissioner of juvenile justice, in a youth residential facility or in a juvenile correctional facility, the specimens of blood and saliva will be obtained ~~immediately~~ *as soon as practical* upon arrival.

(d) Any person required by paragraph (a)(3) to provide specimens of blood and saliva shall be required to provide such samples prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation. *Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.*

(e) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of blood and saliva samples. The collection of samples shall be performed in a medically approved manner. No person authorized by this section to withdraw blood and collect saliva, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices. The withdrawal of blood for purposes of this act may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. The samples shall thereafter be forwarded to the Kansas bureau of investigation ~~for analysis and categorizing.~~ *The bureau shall analyze the samples into genetic marker groupings to the extent allowed by funding available for this purpose.*

(f) ~~The genetic marker groupings DNA (deoxyribonucleic acid) records and DNA samples shall be maintained by the Kansas bureau of investigation. The Kansas bureau of investigation shall establish, implement and maintain a statewide automated personal identification system DNA databank and DNA database capable of, but not limited to, classifying, searching, matching and storing analysis of DNA (deoxyribonucleic acid) and other biological molecules records. The genetic marker grouping analysis information and identification system DNA database as established by this act shall be compatible with the procedures specified by the federal bureau of investigation's combined DNA index system (CODIS). The Kansas bureau of investigation may shall participate in the CODIS program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.~~

(g) ~~The genetic marker grouping analysis information DNA records obtained pursuant to this act shall be confidential and shall be released only to law enforcement officers of the United States, of other states or~~

~~territories, of the insular possessions of the United States, or foreign countries duly authorized to receive the same, to all law enforcement officers of the state of Kansas and to all prosecutor's agencies authorized criminal justice agencies.~~

(h) The Kansas bureau of investigation shall be the state central repository for all ~~genetic marker grouping analysis information DNA records and DNA samples~~ obtained pursuant to this act. The Kansas bureau of investigation ~~may shall~~ promulgate rules and regulations for the form and manner of the collection of ~~blood and saliva samples, maintenance and expungement of DNA samples~~ and other procedures for the operation of this act. ~~These rules and regulations also shall require compliance with national quality assurance standards to ensure that the DNA records satisfy standards of acceptance of such records into the national DNA identification index.~~ The provisions of the Kansas administrative procedure act shall apply to all actions taken under the rules and regulations so promulgated.

Sec. 2. K.S.A. 2001 Supp. 65-448 is hereby amended to read as follows: 65-448. (a) Upon the request of any law enforcement officer and with the written consent of the reported victim, any physician, *a licensed physician assistant, who has been specially trained in performing sexual assault evidence collection, or a registered professional nurse, who has been specially trained in performing sexual assault evidence collection,* on call or on duty at a medical care facility of this state, as defined by subsection (h) of K.S.A. 65-425, and amendments thereto, shall examine persons who may be victims of sexual offenses cognizable as violations of K.S.A. 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3602 or 21-3603, and amendments thereto, using Kansas bureau of investigation sexual assault evidence collection kits or similar kits approved by the Kansas bureau of investigation, for the purposes of gathering evidence of any such crime. If the physician, *licensed physician assistant or registered professional nurse* refuses to perform such physical examination the prosecuting attorney is hereby empowered to seek a mandatory injunction against such physician, *licensed physician assistant or registered professional nurse* to enforce the provisions of this act. Any refusal by a physician, *licensed physician assistant or registered professional nurse* to perform an examination which has been requested pursuant to this section shall be reported by the county or district attorney to the state board of healing arts or the board of nursing, *whichever is applicable,* for appropriate disciplinary action. The department of health and environment, in cooperation with the Kansas bureau of investigation, shall establish procedures for gathering evidence pursuant to this section. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The hospital or medical facility shall give written notice to the parent or guardian of a minor that such an examination has taken place.

(b) Costs of conducting an examination of a victim as herein provided including the costs of the sexual assault evidence collection kits shall be charged to and paid by the county where the alleged offense was committed. Such county may charge the defendant for the costs paid herein as court costs assessed pursuant to K.S.A. 28-172a or 28-172c, and amendments thereto.

Sec. 3. K.S.A. 2001 Supp. 21-2511 and 65-448 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

Substitute for HOUSE BILL No. 2686

AN ACT concerning solid waste; relating to certain industrial waste; amending K.S.A. 2001 Supp. 65-3407, 65-3415b and 65-3415f and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 65-3407 is hereby amended to read as follows: 65-3407. (a) Except as otherwise provided by K.S.A. 2001 Supp. 65-3407c and amendments thereto, no person shall construct, alter or operate a solid waste processing facility or a solid waste disposal area of a solid waste management system, except for clean rubble disposal sites, without first obtaining a permit from the secretary.

(b) Every person desiring to obtain a permit to construct, alter or operate a solid waste processing facility or disposal area shall make ap-

plication for such a permit on forms provided for such purpose by the rules and regulations of the secretary and shall provide the secretary with such information as necessary to show that the facility or area will comply with the purpose of this act. Upon receipt of any application and payment of the application fee, the secretary, with advice and counsel from the local health authorities and the county commission, shall make an investigation of the proposed solid waste processing facility or disposal area and determine whether it complies with the provisions of this act and any rules and regulations and standards adopted thereunder. The secretary also may consider the need for the facility or area in conjunction with the county or regional solid waste management plan. If the investigation reveals that the facility or area conforms with the provisions of the act and the rules and regulations and standards adopted thereunder, the secretary shall approve the application and shall issue a permit for the operation of each solid waste processing or disposal facility or area set forth in the application. If the facility or area fails to meet the rules and regulations and standards required by this act the secretary shall issue a report to the applicant stating the deficiencies in the application. The secretary may issue temporary permits conditioned upon corrections of construction methods being completed and implemented.

(c) Before reviewing any application for permit, the secretary shall conduct a background investigation of the applicant. The secretary shall consider the financial, technical and management capabilities of the applicant as conditions for issuance of a permit. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that:

(1) The applicant currently holds, or in the past has held, a permit under this section and while the applicant held a permit under this section the applicant violated a provision of subsection (a) of K.S.A. 65-3409, and amendments thereto; or

(2) the applicant previously held a permit under this section and that permit was revoked by the secretary; or

(3) the applicant failed or continues to fail to comply with any of the provisions of the air, water or waste statutes, including rules and regulations issued thereunder, relating to environmental protection or to the protection of public health in this or any other state or the federal government of the United States, or any condition of any permit or license issued by the secretary; or if the secretary finds that the applicant has shown a lack of ability or intention to comply with any provision of any law referred to in this subsection or any rule and regulation or order or permit issued pursuant to any such law as indicated by past or continuing violations; or

(4) the applicant is a corporation and any principal, shareholder, or other person capable of exercising total or partial control of such corporation could be determined ineligible to receive a permit pursuant to subsection (c)(1), (2) or (3) above.

(d) Before reviewing any application for a permit, the secretary may request that the attorney general perform a comprehensive criminal background investigation of the applicant; or in the case of a corporate applicant, any principal, shareholder or other person capable of exercising total or partial control of the corporation. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that serious criminal violations have been committed by the applicant or a principal of the corporation.

(e) (1) The fees for a solid waste processing or disposal permit shall be established by rules and regulations adopted by the secretary. The fee for the application and original permit shall not exceed \$5,000. *Except as provided by paragraph (2), the annual permit renewal fee shall not exceed \$2,000.* No refund shall be made in case of revocation. In establishing fees for a construction and demolition landfill, the secretary shall adopt a differential fee schedule based upon the volume of construction and demolition waste to be disposed of at such landfill. All fees shall be deposited in the state treasury and credited to the solid waste management fund. A city, county, other political subdivision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

(2) *The annual permit renewal fee for a solid waste disposal area which is permitted by the secretary, owned and operated by the facility generating the waste and used only for industrial waste generated by such facility shall be not less than \$1,000 nor more than \$4,000. In establishing fees for such disposal areas, the secretary shall adopt a differential fee schedule based upon the characteristics of the disposal area sites.*

(f) Plans, designs and relevant data for the construction of solid waste processing facilities and disposal sites shall be prepared by a professional

engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, alteration or operation of such facility or area. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the environmental impact is minimal and may waive such preparation requirements provided that a review of such plans is conducted by a professional engineer licensed to practice in Kansas.

(g) Each permit granted by the secretary, as provided in this act, shall be subject to such conditions as the secretary deems necessary to protect human health and the environment and to conserve the sites. Such conditions shall include approval by the secretary of the types and quantities of solid waste allowable for processing or disposal at the permitted location.

(h) As a condition of granting a permit to operate any processing facility or disposal area for solid waste, the secretary shall require the permittee to: (1) Provide a trust fund, surety bond guaranteeing payment, irrevocable letter of credit or insurance policy, to pay the costs of closure and postclosure care; or (2) pass a financial test or obtain a financial guarantee from a related entity, to guarantee the future availability of funds to pay the costs of closure and postclosure care. The secretary shall prescribe the methods to be used by a permittee to demonstrate sufficient financial strength to become eligible to use a financial test or a financial guarantee procedure in lieu of providing the financial instruments listed in (1) above. Solid waste processing facilities or disposal areas, except municipal solid waste landfills, may also demonstrate financial assurance for closure and postclosure care costs by use of ad valorem taxing power. In addition, the secretary shall require the permittee to provide liability insurance coverage during the period that the facility or area is active, and during the term of the facility or area is subject to postclosure care, in such amount as determined by the secretary to insure the financial responsibility of the permittee for accidental occurrences at the site of the facility or area. Any such liability insurance as may be required pursuant to this subsection or pursuant to the rules and regulations of the secretary shall be issued by an insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-246b, and amendments thereto, and shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto. Nothing contained in this subsection shall be deemed to apply to any state agency or department or agency of the federal government.

(i) (1) Permits granted by the secretary as provided by this act shall not be transferable except as follows:

(A) A permit for a solid waste disposal area may be transferred if the area is permitted for only solid waste produced on site from manufacturing and industrial processes or on-site construction or demolition activities and the only change in the permit is a name change resulting from a merger, acquisition, sale, corporate restructuring or other business transaction.

(B) A permit for a solid waste disposal area or a solid waste processing facility may be transferred if the secretary approves of the transfer based upon information submitted to the secretary sufficient to conduct a background investigation of the new owner as specified in subsections (c) and (d) of K.S.A. 65-3407, and amendments thereto, and a financial assurance evaluation as specified in subsection (h) of K.S.A. 65-3407, and amendments thereto. Such information shall be submitted to the secretary not more than one year nor less than 60 days before the transfer. If the secretary does not approve or disapprove the transfer within 30 days after all required information is submitted to the secretary, the transfer shall be deemed to have been approved.

(2) Permits granted by the secretary as provided by this act shall be revocable or subject to suspension whenever the secretary shall determine that the solid waste processing or disposal facility or area is, or has been constructed or operated in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating or threatens to create a hazard to persons or property in the area or to the environment, or is creating or threatens to create a public nuisance, or upon the failure to make payment of any fee required under this act.

(3) The secretary also may revoke, suspend or refuse to issue a permit when the secretary determines that past or continuing violations of the provisions of K.S.A. 65-3409, subsection (c)(3) of K.S.A. 65-3407 or K.S.A. 65-3424b, and amendments thereto, have been committed by a

(continued)

permittee, or any principal, shareholder or other person capable of exercising partial or total control over a permittee.

(j) Except as otherwise provided by subsection (i)(1), the secretary may require a new permit application to be submitted for a solid waste processing facility or a solid waste disposal area in response to any change, either directly or indirectly, in ownership or control of the permitted real property or the existing permittee.

(k) In case any permit is denied, suspended or revoked the person, city, county or other political subdivision or state agency may request a hearing before the secretary in accordance with K.S.A. 65-3412, and amendments thereto.

(l) (1) No permit to construct or operate a solid waste disposal area shall be issued on or after the effective date of this act if such area is located within ½ mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(2) Any permit, issued before the effective date of this act, to construct or operate a solid waste disposal area is hereby declared void if such area is not yet in operation and is located within ½ mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(3) The provisions of this subsection shall not be construed to prohibit: (A) Issuance of a permit for lateral expansion onto land contiguous to a permitted solid waste disposal area in operation on the effective date of this act; (B) issuance of a permit for a solid waste disposal area for disposal of a solid waste by-product produced on-site; (C) renewal of an existing permit for a solid waste area in operation on the effective date of this act; or (D) activities which are regulated under K.S.A. 65-163 through 65-165 or 65-171d, and amendments thereto.

(m) Before reviewing any application for a solid waste processing facility or solid waste disposal area, the secretary shall require the following information as part of the application:

(1) Certification by the board of county commissioners or the mayor of a designated city responsible for the development and adoption of the solid waste management plan for the location where the processing facility or disposal area is or will be located that the processing facility or disposal area is consistent with the plan. This certification shall not apply to a solid waste disposal area for disposal of only solid waste produced on site from manufacturing and industrial processes or from on-site construction or demolition activities.

(2) If the location is zoned, certification by the local planning and zoning authority that the processing facility or disposal area is consistent with local land use restrictions or, if the location is not zoned, certification from the board of county commissioners that the processing facility or disposal area is compatible with surrounding land use.

(3) For a solid waste disposal area permit issued on or after July 1, 1999, proof that the permittee owns the land where the disposal area will be located, if the disposal area is: (A) A municipal solid waste landfill; or (B) a solid waste disposal area that has: (i) A leachate or gas collection or treatment system; (ii) waste containment systems or appurtenances with planned maintenance schedules; or (iii) an environmental monitoring system with planned maintenance schedules or periodic sampling and analysis requirements. This requirement shall not apply to a permit for lateral or vertical expansion contiguous to a permitted solid waste disposal area in operation on July 1, 1999, if such expansion is on land leased by the permittee before April 1, 1999.

Sec. 2. K.S.A. 2001 Supp. 65-3415b is hereby amended to read as follows: 65-3415b. (a) There is hereby imposed a state solid waste tonnage fee of \$1.00 for each ton or equivalent volume of solid waste disposed of at any solid waste disposal area in this state other than solid waste enumerated in subsection (c) or solid waste disposal authorized by the secretary pursuant to subsection (a) of K.S.A. 65-3407c, and amendments thereto.

(b) There is hereby imposed a state solid waste tonnage fee of \$1.00 for each ton or equivalent volume of solid waste transferred out of Kansas through a transfer station, other than waste enumerated in subsection (c).

(c) The fees imposed by this section shall not apply to:

(1) Any waste tire, as defined by K.S.A. 65-3424, and amendments thereto, disposed in or at a permitted solid waste disposal area;

(2) any of the following wastes sludges from public drinking water supply treatment plants, when disposed of at a monofill permitted by the department:

(A) sludges from public drinking water supply treatment plants;

(B) cement kiln dust from the manufacture of portland and masonry cement;

(C) flue gas desulfurization sludge, fly ash and bottom ash from coal-fired electric generating facilities; and

(D) foundry sand ~~secretary~~;

(3) clean rubble;

(4) solid waste solely consisting of vegetation from land clearing and grubbing, utility maintenance and seasonal or storm-related cleanup but such exception shall not apply to yard waste; and

(5) construction and demolition waste disposed of by the federal government, by the state of Kansas, or by any city, county or other unit of local government in the state of Kansas, or by any person on behalf thereof; and

(6) industrial waste disposed of at a solid waste disposal area which is permitted by the secretary; owned and operated by the facility generating the waste and used only for industrial waste generated by such facility.

(d) The operator of a solid waste disposal area or transfer station shall pay the fee imposed by this section.

(e) The secretary of health and environment shall administer, enforce and collect the fee imposed by this section. The secretary shall have the authority to waive such fee when large quantities of waste are generated due to major natural disasters such as floods, tornados and fires unless persons paying such fees are able to recover such fees from the federal government. Except as otherwise provided by subsections (a) and (b), all laws and rules and regulations of the secretary of revenue relating to the administration, enforcement and collection of the retailers' sales tax shall apply to such fee insofar as they can be made applicable. The secretary of health and environment shall adopt any other rules and regulations as necessary for the efficient and effective administration, enforcement and collection thereof.

(f) The secretary of health and environment shall remit all moneys collected from fees imposed pursuant to subsections (a) and (b) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the solid waste management fund created by K.S.A. 65-3415a, and amendments thereto.

Sec. 3. K.S.A. 2001 Supp. 65-3415f is hereby amended to read as follows: 65-3415f. (a) As used in this section, terms have the meanings provided by K.S.A. 65-3402 and amendments thereto.

(b) In addition to any other fee provided by law, the board of county commissioners of any county may impose, by resolution adopted pursuant to this section, a solid waste tonnage fee for each ton or equivalent volume of solid waste disposed of at any solid waste disposal area operated by such county. Such fees shall not apply to:

(1) Any waste tire, as defined by K.S.A. 65-3424 and amendments thereto, disposed in or at a permitted solid waste disposal area;

(2) any of the following wastes when disposed of at a monofill permitted by the department: (A) Sludges from public drinking water supply treatment plants; (B) cement kiln dust from the manufacture of portland and masonry cement; (C) flue gas desulfurization sludge, fly ash and bottom ash from coal-fired electric generating facilities; and (D) foundry sand;

(3) clean rubble;

(4) solid waste solely consisting of vegetation from land clearing and grubbing, utility maintenance and seasonal or storm-related cleanup but such exception shall not apply to yard waste; and

(5) construction and demolition waste disposed of by the state of Kansas or by any city or county in the state of Kansas, or by any person on behalf thereof any solid waste exempted from the state solid waste tonnage fee imposed by K.S.A. 65-3415b, and amendments thereto.

(c) Fees imposed pursuant to this section shall be collected by the county and deposited in a special fund in the county treasury. All interest earned on moneys in the fund shall also be deposited in the fund. If there is more than one solid waste disposal area in the county where fees are imposed pursuant to this section, a separate fund for each such disposal area shall be maintained from the fees collected from such disposal area. Money in the fund shall be used only for payment of costs of closure, postclosure actions and contamination remediation associated with the solid waste disposal area until the secretary determines that all requirements for closure, postclosure actions and contamination remediation associated with the disposal area have been met.



(d) The board of county commissioners, by resolution, may modify, discontinue or reinstate the fee authorized by this section.

(e) Transfer or expenditure of moneys in a special fund provided for by this section for any purpose other than authorized by this section is a class A nonperson misdemeanor and constitutes grounds for forfeiture of public office.

(f) If two or more counties jointly operate a solid waste disposal area, the fee provided for by this section on solid waste disposed of at such disposal area may be imposed, modified, discontinued or reinstated only if a majority of the board of county commissioners of each county jointly operating the disposal area votes to impose, modify, discontinue or reinstate the fee.

Sec. 4. K.S.A. 2001 Supp. 65-3407, 65-3415b and 65-3415f are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

Senate Substitute for HOUSE BILL No. 2621

AN ACT concerning retirement; relating to the Kansas public employees retirement system and systems thereunder; benefits; eligibility; purchase of participating service; rollover of distributions; retirement plans and accounts, contributions; death and disability benefits; amending K.S.A. 72-8603, 74-4927g and 75-5524 and K.S.A. 2001 Supp. 74-4902, 74-4919m, 74-4927, 74-4927b, 74-4927f, 74-4966 and 74-49,123 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 74-4919t.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 72-8603 is hereby amended to read as follows: 72-8603. (a) The board of education of any school district or the board of trustees of any community junior college shall contract with any of its employees ~~so requesting, upon request,~~ for reductions in compensation and the contribution thereof for tax sheltered ~~annuities accounts and annuities or deferred compensation plans~~ as permitted under section 403(b) or section 457 of the United States internal revenue code, for the benefit of such employees. Any employee desiring to contract under the provisions of this section shall ~~express his or her wishes in writing to his or her~~ send written notice of such desire to such employee's employer within semiannual thirty-day periods in accordance with rules and regulations of such employer.

(b) *The board of education of any school district and the board of trustees of any community college may contribute to a participant's 403(b) account or annuity or 457 plan contracted for under the provisions of subsection (a).*

Sec. 2. K.S.A. 2001 Supp. 74-4902 is hereby amended to read as follows: 74-4902. As used in articles 49 and 49a of chapter 74 and amendments thereto, unless otherwise provided or the context otherwise requires:

(1) "Accumulated contributions" means the sum of all contributions by a member to the system which are credited to the member's account, with interest allowed thereon;

(2) "acts" means the provisions of articles 49 and 49a of the Kansas Statutes Annotated and amendments thereto;

(3) "actuarial equivalent" means an annuity or benefit of equal value to the accumulated contributions, annuity or benefit, when computed upon the basis of the actuarial tables in use by the system. Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, the assumptions shall be specified in a way that precludes employer discretion;

(4) "actuarial tables" means the actuarial tables approved and in use by the board at any given time;

(5) "actuary" means the actuary or firm of actuaries employed or retained by the board at any given time;

(6) "agent" means the individual designated by each participating employer through whom system transactions and communication are directed;

(7) "beneficiary" means any natural person or persons or estate named by a member to receive any benefits as provided for by this act. Designations of beneficiaries by a member who is a member of more than one retirement system made on or after July 1, 1987, shall be the basis of any benefits payable under all systems unless otherwise provided by law. Except as otherwise provided by subsection (33) of this section,

if there is no named beneficiary living at time of member's death, any benefits provided for by this act shall be paid to: (A) The member's surviving spouse; (B) the member's dependent child or children; (C) the member's dependent parent or parents; (D) the member's nondependent child or children; (E) the member's nondependent parent or parents; (F) the estate of the deceased member; in the order of preference as specified in this subsection.

(8) "board of trustees," "board" or "trustees" means the managing body of the system which is known as the Kansas public employees retirement system board of trustees;

(9) "compensation" means, except as otherwise provided, all salary, wages and other remuneration payable to a member for personal services performed for a participating employer, including maintenance or any allowance in lieu thereof provided a member as part of compensation, but not including reimbursement for travel or moving expenses or on and after July 1, 1994, payment pursuant to an early retirement incentive program made prior to the retirement of the member. Beginning with the employer's fiscal year which begins in calendar year 1991 or for employers other than the state of Kansas, beginning with the fiscal year which begins in calendar year 1992, when the compensation of a member who remains in substantially the same position during any two consecutive years of participating service used in calculating final average salary is increased by an amount which exceeds 15%, then the amount of such increase which exceeds 15% shall not be included in compensation, except that (A) any amount of compensation for accumulated sick leave or vacation or annual leave paid to the member, (B) any increase in compensation for any member due to a reclassification or reallocation of such member's position or a reassignment of such member's job classification to a higher range or level and (C) any increase in compensation as provided in any contract entered into prior to January 1, 1991, and still in force on the effective date of this act, pursuant to an early retirement incentive program as provided in K.S.A. 72-5395 *et seq.* and amendments thereto, shall be included in the amount of compensation of such member used in determining such member's final average salary and shall not be subject to the 15% limitation provided in this subsection. Any contributions by such member on the amount of such increase which exceeds 15% which is not included in compensation shall be returned to the member. Unless otherwise provided by law, beginning with the employer's fiscal year coinciding with or following July 1, 1985, compensation shall include any amounts for tax sheltered annuities or deferred compensation plans. Beginning with the employer's fiscal year which begins in calendar year 1991, compensation shall include amounts under sections 403b, 457 and 125 of the federal internal revenue code of 1986 and, as the board deems appropriate, any other section of the federal internal revenue code of 1986 which defers or excludes amounts from inclusion in income. For purposes of applying limits under the federal internal revenue code "compensation" shall have the meaning as provided in K.S.A. 2001 Supp. 74-49,123 and amendments thereto;

(10) "credited service" means the sum of participating service and prior service and in no event shall credited service include any service which is credited under another retirement plan authorized under any law of this state;

(11) "dependent" means a parent or child of a member who is dependent upon the member for at least ½ of such parent or child's support;

(12) "effective date" means the date upon which the system becomes effective by operation of law;

(13) "eligible employer" means the state of Kansas, and any county, city, township, special district or any instrumentality of any one or several of the aforementioned or any noncommercial public television or radio station located in this state which receives state funds allocated by the Kansas public broadcasting commission whose employees are covered by social security. If a class or several classes of employees of any above defined employer are not covered by social security, such employer shall be deemed an eligible employer only with respect to such class or those classes of employees who are covered by social security;

(14) "employee" means any appointed or elective officer or employee of a participating employer whose employment is not seasonal or temporary and whose employment requires at least 1,000 hours of work per year, and any such officer or employee who is concurrently employed performing similar or related tasks by two or more participating employers, who each remit employer and employee contributions on behalf of such officer or employee to the system, and whose combined employment is not seasonal or temporary, and whose combined employment requires

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at least 1,000 hours of work per year, but not including: (A) Any employee who is a contributing member of the United States civil service retirement system; (B) any employee who is a contributing member of the federal employees retirement system; (C) any employee who is a leased employee as provided in section 414 of the federal internal revenue code of a participating employer. "Leased employee" means the same as provided in section 414 of the federal internal revenue code; and (D) any employee or class of employees specifically exempted by law. After June 30, 1975, no person who is otherwise eligible for membership in the Kansas public employees retirement system shall be barred from such membership by reason of coverage by, eligibility for or future eligibility for a retirement annuity under the provisions of K.S.A. 74-4925 and amendments thereto, except that no person shall receive service credit under the Kansas public employees retirement system for any period of service for which benefits accrue or are granted under a retirement annuity plan under the provisions of K.S.A. 74-4925 and amendments thereto. After June 30, 1982, no person who is otherwise eligible for membership in the Kansas public employees retirement system shall be barred from such membership by reason of coverage by, eligibility for or future eligibility for any benefit under another retirement plan authorized under any law of this state, except that no such person shall receive service credit under the Kansas public employees retirement system for any period of service for which any benefit accrues or is granted under any such retirement plan. Employee shall include persons who are in training at or employed by, or both, a sheltered workshop for the blind operated by the secretary of social and rehabilitation services. The entry date for such persons shall be the beginning of the first pay period of the fiscal year commencing in calendar year 1986. Such persons shall be granted prior service credit in accordance with K.S.A. 74-4913 and amendments thereto. However, such persons classified as home industry employees shall not be covered by the retirement system. Employees shall include any member of a board of county commissioners of any county and any council member or commissioner of a city whose compensation is equal to or exceeds \$5,000 per year;

(15) "entry date" means the date as of which an eligible employer joins the system. The first entry date pursuant to this act is January 1, 1962;

(16) "executive director" means the managing officer of the system employed by the board under this act;

(17) "final average salary" means in the case of a member who retires prior to January 1, 1977, and in the case of a member who retires after January 1, 1977, and who has less than five years of participating service after January 1, 1967, the average highest annual compensation paid to such member for any five years of the last 10 years of participating service immediately preceding retirement or termination of employment, or in the case of a member who retires on or after January 1, 1977, and who has five or more years of participating service after January 1, 1967, the average highest annual compensation paid to such member on or after January 1, 1967, for any five years of participating service preceding retirement or termination of employment, or, in any case, if participating service is less than five years, then the average annual compensation paid to the member during the full period of participating service, or, in any case, if the member has less than one calendar year of participating service such member's final average salary shall be computed by multiplying such member's highest monthly salary received in that year by 12; in the case of a member who became a member under subsection (3) of K.S.A. 74-4925 and amendments thereto, or who became a member with a participating employer as defined in subsection (3) of K.S.A. 74-4931 and amendments thereto and who elects to have compensation paid in other than 12 equal installments, such compensation shall be annualized as if the member had elected to receive 12 equal installments for any such periods preceding retirement; in the case of a member who retires after July 1, 1987, the average highest annual compensation paid to such member for any four years of participating service preceding retirement or termination of employment; in the case of a member who retires on or after July 1, 1993, who was first hired as an employee, as defined in subsection (14) of K.S.A. 74-4902 and amendments thereto, prior to July 1, 1993 whose date of membership in the system is prior to July 1, 1993, and any member who is in such member's membership waiting period on July 1, 1993, and whose date of membership in the system is on or after July 1, 1993, the average highest annual compensation, as defined in subsection (9), paid to such member for any four years of participating service preceding retirement or termination of employment or the average highest annual salary, as defined in subsection (34), paid to such

member for any three years of participating service preceding retirement or termination of employment, whichever is greater; and in the case of a member who retires on or after July 1, 1993, and who is first hired as an employee, as defined in subsection (14) of K.S.A. 74-4902 and amendments thereto, on or after July 1, 1993 whose date of membership in the system is on or after July 1, 1993, the average highest annual salary, as defined in subsection (34), paid to such member for any three years of participating service preceding retirement or termination of employment. Final average salary shall not include any purchase of participating service credit by a member as provided in subsection (2) of K.S.A. 74-4919h and amendments thereto which is completed within five years of retirement. For any application to purchase or repurchase service credit for a certain period of service as provided by law received by the system after May 17, 1994, for any member who will have contributions deducted from such member's compensation at a percentage rate equal to two or three times the employee's rate of contribution or will begin paying to the system a lump-sum amount for such member's purchase or repurchase and such deductions or lump-sum payment commences after the commencement of the first payroll period in the third quarter, "final average salary" shall not include any amount of compensation or salary which is based on such member's purchase or repurchase. Any application to purchase or repurchase multiple periods of service shall be treated as multiple applications. For purposes of this subsection, the date that such member is first hired as an employee for members who are employees of employers that elected to participate in the system on or after January 1, 1994, shall be the date that such employee's employer elected to participate in the system. In the case of any former member who was eligible for assistance pursuant to K.S.A. 74-4925 and amendments thereto prior to July 1, 1998, for the purpose of calculating final average salary of such member, such member's final average salary shall be based on such member's salary while a member of the system or while eligible for assistance pursuant to K.S.A. 74-4925 and amendments thereto, whichever is greater;

(18) "fiscal year" means, for the Kansas public employees retirement system, the period commencing July 1 of any year and ending June 30 of the next;

(19) "Kansas public employees retirement fund" means the fund created by this act for payment of expenses and benefits under the system and referred to as the fund;

(20) "leave of absence" means a period of absence from employment without pay, authorized and approved by the employer, and which after the effective date does not exceed one year;

(21) "member" means an eligible employee who is in the system and is making the required employee contributions; any former employee who has made the required contributions to the system and has not received a refund if such member is within five years of termination of employment with a participating employer; or any former employee who has made the required contributions to the system, has not yet received a refund and has been granted a vested benefit;

(22) "military service" means service in the uniformed forces of the United States, for which retirement benefit credit must be given under the provisions of USERRA or service in the armed forces of the United States or in the commissioned corps of the United States public health service, which service is immediately preceded by a period of employment as an employee or by the entering into of an employment contract with a participating employer and is followed by return to employment as an employee with the same or another participating employer within 12 months immediately following discharge from such military service, except that if the board determines that such return within 12 months was made impossible by reason of a service-connected disability, the period within which the employee must return to employment with a participating employer shall be extended not more than two years from the date of discharge or separation from military service;

(23) "normal retirement date" means the date on or after which a member may retire with full retirement benefits pursuant to K.S.A. 74-4914 and amendments thereto;

(24) "participating employer" means an eligible employer who has agreed to make contributions to the system on behalf of its employees;

(25) "participating service" means the period of employment after the entry date for which credit is granted a member;

(26) "prior service" means the period of employment of a member prior to the entry date for which credit is granted a member under this act;

(27) "prior service annual salary" means the highest annual salary, not including any amounts received as payment for overtime or as re-

imbursement for travel or moving expense, received for personal services by the member from the current employer in any one of the three calendar years immediately preceding January 1, 1962, or the entry date of the employer, whichever is later, except that if a member entered the employment of the state during the calendar year 1961, the prior service annual salary shall be computed by multiplying such member's highest monthly salary received in that year by 12;

(28) "retirant" means a member who has retired under this system;

(29) "retirement benefit" means a monthly income or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to this act or as otherwise allowed to be paid at the discretion of the board, with benefits accruing from the first day of the month coinciding with or following retirement and ending on the last day of the month in which death occurs. Upon proper identification a surviving spouse may negotiate the warrant issued in the name of the retirant. If there is no surviving spouse, the last warrant shall be payable to the designated beneficiary;

(30) "retirement system" or "system" means the Kansas public employees retirement system as established by this act and as it may be amended;

(31) "social security" means the old age, survivors and disability insurance section of the federal social security act;

(32) "total disability" means a physical or mental disability which prevents the member from engaging, for remuneration or profit, in any occupation for which the member is reasonably suited by education, training or experience;

(33) "trust" means an express trust, created by a trust instrument, including a will, designated by a member to receive payment of the insured death benefit under K.S.A. 74-4927 and amendments thereto and payment of the member's accumulated contributions under subsection (1) of K.S.A. 74-4916 and amendments thereto. A designation of a trust shall be filed with the board. If there is a designated trust at the time of the member's death, the insured death benefit for the member under K.S.A. 74-4927 and amendments thereto and the member's accumulated contributions under subsection (1) of K.S.A. 74-4916 and amendments thereto shall be paid to the trust in lieu of the member's beneficiary. If no will is admitted to probate within six months after the death of the member or no trustee qualifies within such six months or if the designated trust fails, for any reason whatsoever, the insured death benefit under K.S.A. 74-4927 and amendments thereto and the member's accumulated contributions under subsection (1) of K.S.A. 74-4916 and amendments thereto shall be paid in accordance with the provisions of subsection (7) of this section as in other cases where there is no named beneficiary living at the time of the member's death and any payments so made shall be a full discharge and release to the system from any further claims;

(34) "salary" means all salary and wages payable to a member for personal services performed for a participating employer, including maintenance or any allowance in lieu thereof provided a member as part of salary. Salary shall not include reimbursement for travel or moving expenses, payment for accumulated sick leave or vacation or annual leave, severance pay or any other payments to the member determined by the board to not be payments for personal services performed for a participating employer constituting salary or on and after July 1, 1994, payment pursuant to an early retirement incentive program made prior to the retirement of the member. When the salary of a member who remains in substantially the same position during any two consecutive years of participating service used in calculating final average salary is increased by an amount which exceeds 15%, then the amount of such increase which exceeds 15% shall not be included in salary. Any contributions by such member on the amount of such increase which exceeds 15% which is not included in compensation shall be returned to the member. Unless otherwise provided by law, salary shall include any amounts for tax sheltered annuities or deferred compensation plans. Salary shall include amounts under sections 403b, 457 and 125 of the federal internal revenue code of 1986 and, as the board deems appropriate, any other section of the federal internal revenue code of 1986 which defers, defers or excludes amounts from inclusion in income. For purposes of applying limits under the federal internal revenue code "salary" shall have the meaning as provided in K.S.A. 2001 Supp. 74-49,123 and amendments thereto. In any case, if participating service is less than three years, then the average annual salary paid to the member during the full period of participating service, or, in any case, if the member has less than one calendar year of participating service such member's final average salary shall be com-

puted by multiplying such member's highest monthly salary received in that year by 12;

(35) "federal internal revenue code" means the federal internal revenue code of 1954 or 1986, as in effect on July 1, 1998, and as applicable to a governmental plan; and

(36) "USERRA" means the federal uniformed services employment and reemployment rights act of 1994 as in effect on July 1, 1998.

Sec. 3. K.S.A. 2001 Supp. 74-4919m is hereby amended to read as follows: 74-4919m. (1) Except as otherwise provided, any active contributing member of the retirement system who at one time had the state board of regents assist such member in the purchase of retirement annuities as provided in K.S.A. 74-4925 and amendments thereto and who withdrew such member's accumulated contributions upon the termination of such employment as provided in K.S.A. 74-4925 and amendments thereto may purchase such participating service credit for such service, and any active contributing member of the retirement system may purchase participating service credit for any waiting period required pursuant to K.S.A. 74-4925, and amendments thereto, regardless of whether the state board of regents assisted such member in the purchase of retirement annuities as provided in K.S.A. 74-4925, and amendments thereto. Such member may purchase, subject to the provisions of K.S.A. 2001 Supp. 74-49,123 and amendments thereto such service credit by submitting proof of such service acceptable to the board of trustees and electing in writing to have employee contributions deducted as provided in K.S.A. 74-4919 and amendments thereto from such member's compensation at an additional rate of contribution, in addition to the employee's rate of contribution as provided in K.S.A. 74-4919 and amendments thereto, based upon the member's attained age at the time of purchase and using actuarial assumptions and tables in use by the retirement system at such time of purchase for such periods of service. Such additional rate of contribution shall commence at the beginning of the quarter following such election and shall remain in effect until all of the full quarters of such service have been purchased.

(2) Any member of the Kansas public employees retirement system who has not retired may purchase, subject to the provisions of K.S.A. 2001 Supp. 74-49,123 and amendments thereto participating service credit for such service as described in this section with a participating employer by making a single lump-sum payment in lieu of employee contributions as provided in this section. The lump-sum payment shall be in an amount determined by the actuary using (a) the member's then current annual rate of compensation, (b) the actuarial assumptions and tables currently in use by the system and (c) the member's attained age.

Sec. 4. K.S.A. 2001 Supp. 74-4927 is hereby amended to read as follows: 74-4927. (1) The board may establish a plan of death and long-term disability benefits to be paid to the members of the retirement system as provided by this section. The long-term disability benefit shall not be payable until the member has been prevented from carrying out each and every duty pertaining to the member's employment as a result of sickness or injury for a period of 180 days and the annual benefit shall not exceed an amount equal to 66⅔% of the member's annual rate of compensation on the date such disability commenced and shall be payable in equal monthly installments. In the event that a member's compensation is not fixed at an annual rate but on an hourly, weekly, biweekly, monthly or any other basis than annual, the board shall prescribe by rule and regulation a formula for establishing a reasonable rate of annual compensation to be used in determining the amount of the death or long-term disability benefit for such member. Such plan shall provide that:

(A) For deaths occurring prior to January 1, 1987, the right to receive such death benefit shall cease upon the member's attainment of age 70 or date of retirement whichever first occurs. The right to receive such long-term disability benefit shall cease (i) for a member who becomes eligible for such benefit before attaining age 60, upon the date that such member attains age 65 or the date of such member's retirement, whichever first occurs, (ii) for a member who becomes eligible for such benefit at or after attaining age 60, the date that such member has received such benefit for a period of five years, upon the date that such member attains age 70, or upon the date of such member's retirement, whichever first occurs, (iii) for all disabilities incurred on or after January 1, 1987, for a member who becomes eligible for such benefit at or after attaining age 70, the date that such member has received such benefit for a period of 12 months or upon the date of such member's retirement, whichever first occurs, and (iv) for all disabilities incurred on or after January 1, 1987,

(continued)

for a member who becomes eligible for such benefit at or after attaining age 75, the date that such member has received such benefit for a period of six months or upon the date of such member's retirement, whichever first occurs.

(B) Long-term disability benefit payments shall be in lieu of any accidental total disability benefit that a member may be eligible to receive under subsection (3) of K.S.A. 74-4916 and amendments thereto. The member must make an initial application for social security disability benefits and, if denied such benefits, the member must pursue and exhaust all administrative remedies of the social security administration which include, but are not limited to, reconsideration and hearings. Such plan may provide that any amount which a member receives as a social security benefit or a disability benefit or compensation from any source by reason of any employment including, but not limited to, workers compensation benefits may be deducted from the amount of long-term disability benefit payments under such plan. During the period in which such member is pursuing such administrative remedies prior to a final decision of the social security administration, social security disability benefits may be estimated and may be deducted from the amount of long-term disability benefit payments under such plan. Such long-term disability payments shall accrue from the later of the 181st day of total disability or the first day upon which the member ceases to draw compensation from the employer. If the social security benefit, workers compensation benefit, other income or wages or other disability benefit by reason of employment, or any part thereof, is paid in a lump-sum, the amount of the reduction shall be calculated on a monthly basis over the period of time for which the lump-sum is given. In no case shall a member who is entitled to receive long-term disability benefits receive less than \$50 per month. As used in this section, "workers compensation benefits" means the total award of disability benefit payments under the workers compensation act notwithstanding any payment of attorney fees from such benefits as provided in the workers compensation act.

(C) The plan may include other provisions relating to qualifications for benefits; schedules and graduation of benefits; limitations of eligibility for benefits by reason of termination of employment or membership; conversion privileges; limitations of eligibility for benefits by reason of leaves of absence, military service or other interruptions in service; limitations on the condition of long-term disability benefit payment by reason of improved health; requirements for medical examinations or reports; or any other reasonable provisions as established by rule and regulation of uniform application adopted by the board.

(D) On and after April 30, 1981, the board may provide under the plan for the continuation of long-term disability benefit payments to any former member who forfeits the entitlement to continued service credit under the retirement system or continued assistance in the purchase of retirement annuities under K.S.A. 74-4925 and amendments thereto and to continued long-term disability benefit payments and continued death benefit coverage, by reason of the member's withdrawal of contributions from the retirement system or the repurchase of retirement annuities which were purchased with assistance received under K.S.A. 74-4925 and amendments thereto. Such long-term disability benefit payments may be continued until such individual dies, attains age 65 or is no longer disabled, whichever occurs first.

(E) Any visually impaired person who is in training at and employed by a sheltered workshop for the blind operated by the secretary of social and rehabilitation services and who would otherwise be eligible for the long-term disability benefit as described in this section shall not be eligible to receive such benefit due to visual impairment as such impairment shall be determined to be a preexisting condition.

(2) (A) In the event that a member becomes eligible for a long-term disability benefit under the plan authorized by this section such member shall be given participating service credit for the entire period of such disability. Such member's final average salary shall be computed in accordance with subsection (17) of K.S.A. 74-4902 and amendments thereto except that the years of participating service used in such computation shall be the years of salaried participating service.

(B) In the event that a member eligible for a long-term disability benefit under the plan authorized by this section shall be disabled for a period of five years or more immediately preceding retirement, such member's final average salary shall be adjusted upon retirement by the actuarial salary assumption rates in existence during such period of disability. Effective July 1, 1993, such member's final average salary shall be adjusted upon retirement by 5% for each year of disability after July 1, 1993, but before July 1, 1998. Effective July 1, 1998, such member's final

average salary shall be adjusted upon retirement by an amount equal to the lesser of: (i) The percentage increase in the consumer price index for all urban consumers as published by the bureau of labor statistics of the United States department of labor minus 1%; or (ii) four percent per annum, measured from the member's last day on the payroll to the month that is two months prior to the month of retirement, for each year of disability after July 1, 1998.

(C) In the event that a member eligible for a long-term disability benefit under the plan authorized by this section shall be disabled for a period of five years or more immediately preceding death, such member's current annual rate shall be adjusted by the actuarial salary assumption rates in existence during such period of disability. Effective July 1, 1993, such member's current annual rate shall be adjusted upon death by 5% for each year of disability after July 1, 1993, but before July 1, 1998. Effective July 1, 1998, such member's current annual rate shall be adjusted upon death by an amount equal to the lesser of: (i) The percentage increase in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor minus 1%; or (ii) four percent per annum, measured from the member's last day on the payroll to the month that is two months prior to the month of death, for each year of disability after July 1, 1998.

(3) (A) To carry out the legislative intent to provide, within the funds made available therefor, the broadest possible coverage for members who are in active employment or involuntarily absent from such active employment, the plan of death and long-term disability benefits shall be subject to adjustment from time to time by the board within the limitations of this section. The plan may include terms and provisions which are consistent with the terms and provisions of group life and long-term disability policies usually issued to those employers who employ a large number of employees. The board shall have the authority to establish and adjust from time to time the procedures for financing and administering the plan of death and long-term disability benefits authorized by this section. Either the insured death benefit or the insured disability benefit or both such benefits may be financed directly by the system or by one or more insurance companies authorized and licensed to transact group life and group accident and health insurance in this state.

(B) The board may contract with one or more insurance companies, which are authorized and licensed to transact group life and group accident and health insurance in Kansas, to underwrite or to administer or to both underwrite and administer either the insured death benefit or the long-term disability benefit or both such benefits. Each such contract with an insurance company under this subsection shall be entered into on the basis of competitive bids solicited and administered by the board. Such competitive bids shall be based on specifications prepared by the board.

(i) In the event the board purchases one or more policies of group insurance from such company or companies to provide either the insured death benefit or the long-term disability benefit or both such benefits, the board shall have the authority to subsequently cancel one or more of such policies and, notwithstanding any other provision of law, to release each company which issued any such canceled policy from any liability for future benefits under any such policy and to have the reserves established by such company under any such canceled policy returned to the system for deposit in the group insurance reserve of the fund.

(ii) In addition, the board shall have the authority to cancel any policy or policies of group life and long-term disability insurance in existence on the effective date of this act and, notwithstanding any other provision of law, to release each company which issued any such canceled policy from any liability for future benefits under any such policy and to have the reserves established by such company under any such canceled policy returned to the system for deposit in the group insurance reserve of the fund. Notwithstanding any other provision of law, no premium tax shall be due or payable by any such company or companies on any such policy or policies purchased by the board nor shall any brokerage fees or commissions be paid thereon.

(4) (A) There is hereby created in the state treasury the group insurance reserve fund. Investment income of the fund shall be added or credited to the fund as provided by law. The cost of the plan of death and long-term disability benefits shall be paid from the group insurance reserve fund, which shall be administered by the board. Except as otherwise provided by this subsection, each participating employer shall appropriate and pay to the system in such manner as the board shall prescribe in addition to the employee and employer retirement contributions an amount equal to .6% of the amount of compensation on which the members' contributions to the Kansas public employees retirement sys-

tem are based for deposit in the group insurance reserve fund. Notwithstanding the provisions of this subsection, no participating employer shall appropriate and pay to the system any amount provided for by this subsection for deposit in the group insurance reserve fund for the period commencing on April 1, 2000, and ending on December 31, 2001, or for the period commencing July 1, 2002, and ending December 31, 2002.

(B) The director of the budget and the governor shall include in the budget and in the budget request for appropriations for personal services a sum to pay the state's contribution to the group insurance reserve fund as provided by this section and shall present the same to the legislature for allowances and appropriation.

(C) The provisions of subsection (4) of K.S.A. 74-4920 and amendments thereto shall apply for the purpose of providing the funds to make the contributions to be deposited to the group insurance reserve fund.

(D) Any dividend or retrospective rate credit allowed by an insurance company or companies shall be credited to the group insurance reserve fund and the board may take such amounts into consideration in determining the amounts of the benefits under the plan authorized by this section.

(5) The death benefit provided under the plan of death and long-term disability benefits authorized by this section shall be known and referred to as insured death benefit. The long-term disability benefit provided under the plan of death and long-term disability benefits authorized by this section shall be known and referred to as long-term disability benefit.

(6) The board is hereby authorized to establish an optional death benefit plan. Except as provided in subsection (7), such optional death benefit plan shall be made available to all employees who are covered or may hereafter become covered by the plan of death and long-term disability benefits authorized by this section. The cost of the optional death benefit plan shall be paid by the applicant either by means of a system of payroll deductions or direct payment to the board. The board shall have the authority and discretion to establish such terms, conditions, specifications and coverages as it may deem to be in the best interest of the state of Kansas and its employees which should include term death benefits for the person's period of active state employment regardless of age, but in no case, on and after January 1, 1989, shall the maximum allowable coverage be less than \$200,000. The cost of the optional death benefit plan shall not be established on such a basis as to unreasonably discriminate against any particular age group. The board shall have full administrative responsibility, discretion and authority to establish and continue such optional death benefit plan and the director of accounts and reports of the department of administration shall when requested by the board and from funds appropriated or available for such purpose establish a system to make periodic deductions from state payrolls to cover the cost of the optional death benefit plan coverage under the provisions of this subsection (6) and shall remit all deductions together with appropriate accounting reports to the system. There is hereby created in the state treasury the optional death benefit plan reserve fund. Investment income of the fund shall be added or credited to the fund as provided by law. All funds received by the board, whether in the form of direct payments, payroll deductions or otherwise, shall be accounted for separately from all other funds of the retirement system and shall be paid into the optional death benefit plan reserve fund, from which the board is authorized to make the appropriate payments and to pay the ongoing costs of administration of such optional death benefit plan as may be incurred in carrying out the provisions of this subsection (6).

(7) Any employer other than the state of Kansas which is currently a participating employer of the Kansas public employees retirement system or is in the process of affiliating with the Kansas public employees retirement system may also elect to affiliate for the purposes of subsection (6). All such employers shall make application for affiliation with such system, to be effective on January 1 next following application. Such optional death benefit plan shall not be available for employees of employers specified under this subsection until after July 1, 1988.

Sec. 5. K.S.A. 2001 Supp. 74-4927b is hereby amended to read as follows: 74-4927b. (1) For the purposes of providing the "insured death benefit" and "insured disability benefit" as prescribed in K.S.A. 74-4927, and amendments thereto, and for the purposes of providing the "accidental death benefit" as prescribed in subsection (2) of K.S.A. 74-4916, and amendments thereto, to those members of the faculty and other persons employed by educational institutions under the management of the state board of education who are receiving assistance in the purchase of

retirement annuities as provided in K.S.A. 74-4925, and amendments thereto, the term "member" as used in subsection (2) of K.S.A. 74-4916, and amendments thereto, and in K.S.A. 74-4927, and amendments thereto, shall include the aforementioned members of the faculty and other persons employed by educational institutions under the management of the state board of education and who are receiving such assistance.

(2) Each institution under the state board of education furnishing such assistance shall pay to the Kansas public employees retirement system in such manner as the board of trustees shall prescribe each payroll period an amount sufficient to pay the employer's contribution to the group insurance reserve as provided in K.S.A. 74-4927, and amendments thereto, and an amount sufficient to pay the amount of the employer's contribution attributable to the accidental death benefit as prescribed in subsection (2) of K.S.A. 74-4916, and amendments thereto. Subsection (2) of K.S.A. 74-4932, and amendments thereto, shall also apply in determining such contributions and benefits.

(3) Each such institution under the state board of education shall maintain a file of the beneficiaries named by the persons covered under the provisions of this act in the form and manner as prescribed by the board of trustees.

(4) In the event that a member of the faculty or other person as herein defined becomes eligible for the insured disability benefit, the respective educational institutions under the board of education hereinbefore described shall continue to provide the assistance including the payment of employers and employees contributions in the purchase of the retirement annuities provided in K.S.A. 74-4925, and amendments thereto, until the date of retirement.

Sec. 6. K.S.A. 2001 Supp. 74-4927f is hereby amended to read as follows: 74-4927f. (a) For the purposes of providing the "insured death benefit" as prescribed in K.S.A. 74-4927 and amendments thereto, to all persons who are members of the retirement system for judges, the term "member" as used in K.S.A. 74-4927 and amendments thereto, and as used in this section shall include members of the retirement system for judges.

(b) Except as otherwise provided by this subsection, the employer of any member who is a member of the retirement system for judges shall pay to the Kansas public employees retirement system in such manner as the board of trustees shall prescribe, an amount equal to .4% of the amount of compensation on which the member's contributions to the retirement system for judges are based for deposit in the group insurance reserve of the Kansas public employees retirement fund, in lieu of the amount required to be paid under subsection (4) of K.S.A. 74-4927 and amendments thereto. Notwithstanding the provisions of this subsection, no employer shall pay to the system any amount provided for by this subsection for deposit in the group insurance reserve fund for the period commencing on April 1, 2000, and ending on December 31, 2001, or for the period commencing July 1, 2002, and ending on December 31, 2002.

Sec. 7. K.S.A. 74-4927g is hereby amended to read as follows: 74-4927g. (1) For the purposes of providing the "insured death benefit" and "long-term disability benefit" as prescribed in K.S.A. 74-4927, and amendments thereto, and for the purposes of providing the "accidental death benefit" as prescribed in subsection (2) of K.S.A. 74-4916, and amendments thereto, to all employees employed by the state board of regents or by educational institutions under the state board of regents who are fulfilling the two-year service requirement under subsection (a) of K.S.A. 74-4925, and amendments thereto, on and after the first day of the first payroll period of the fiscal year ending June 30, 1985, the term "member" as used in subsection (2) of K.S.A. 74-4916, and amendments thereto, and K.S.A. 74-4927a, and amendments thereto, and as used in this section, shall include the aforementioned employees.

(2) The employer of any member shall pay to the Kansas public employees retirement system in such manner as the board of trustees shall prescribe, beginning with the first day of the first payroll period of the fiscal year ending June 30, 1985, and each payroll period thereafter, an amount sufficient to pay the amount of the employer's contribution attributable to the accidental death benefit as prescribed in subsection (2) of K.S.A. 74-4916, and amendments thereto, and an amount sufficient to pay the employer's contribution to the group insurance reserve as provided in subsection (4) of K.S.A. 74-4927, and amendments thereto.

(continued)

(3) The employer of any member shall maintain a file of the beneficiaries named by the persons covered under this section in the form and manner as prescribed by the board of trustees.

(4) Coverage under the plan of death and long-term disability benefits shall begin with the first day of the first payroll period of the fiscal year ending June 30, 1985, for such member and other persons as defined in this section.

Sec. 8. K.S.A. 2001 Supp. 74-4966 is hereby amended to read as follows: 74-4966. (a) In the case of any member whose employment shall be covered by social security and who is a member of the class certified in the case of *Brazelton v. Kansas public employees retirement system*, 227 K. 443, 607 P.2d 510 (1980), any benefits payable under the provisions of K.S.A. 74-4958, 74-4959 and 74-4960, and amendments thereto, shall be reduced by an amount equal to 1/2 of the original social security benefits accruing from employment with the participating employer at the time the member retired. *The actuarial calculation of such benefit and the social security reduction shall include an assumption that the member first commences receiving such member's benefit payments pursuant to social security at the age such member is first eligible for unreduced social security benefits or such member's actual retirement age, whichever occurs later.* For any member already retired on the effective date of this act, no reduction of the original social security benefits shall be applicable to benefits paid prior to the effective date of this act. The member must make an initial application for social security benefits from employment with the participating employer and, if denied such benefits, the member must pursue and exhaust all administrative remedies of the social security administration which include, but are not limited to, reconsideration and hearings. Until such initial application for benefits has been approved by the social security administration, social security benefits may be estimated and may be deducted from the amount of any benefits payable as provided in this subsection.

(b) For any member other than a member who is a member of the class certified in the case of *Brazelton v. Kansas public employees retirement system*, 227 K. 443, 607 P.2d 510 (1980), no benefits shall be reduced because of social security benefits. Any benefits which first become payable on or after January 1, 1976, by reason of employment with a participating employer participating in the Kansas police and firemen's retirement system, which employment was also covered by social security, shall be reduced by an amount equal to the value of the difference between contributions actually made by the member and contributions which would have been made had there been no reduction for contributions to social security. The amount of reduction shall be made by the board upon the advice of the actuary at the time benefits become payable and shall continue until benefits are no longer payable. Should a member, whose employment prior to January 1, 1976, with a participating employer participating in the Kansas police and firemen's retirement system, such employment also being covered by social security, repay in a lump-sum prior to January 1, 1977, or on date of retirement, whichever is earlier, an amount equal to the difference between contributions actually made by the member and contributions which would have been made had there been no reduction for contributions to social security, there shall be no reduction as heretofore provided. If the payment is made after January 1, 1977, but prior to retirement, the member will pay the actual amount plus interest which shall accrue from January 1, 1976, at a rate specified by the board of trustees.

Sec. 9. K.S.A. 2001 Supp. 74-49,123 is hereby amended to read as follows: 74-49,123. (a) This section applies to the Kansas public employees retirement system and to all other public retirement plans administered by the board of trustees.

(b) As used in this section:

(1) "Federal internal revenue code" means the federal internal revenue code of 1954 or 1986, as amended and as applicable to a governmental plan as in effect on July 1, 1998; and

(2) "retirement plan" includes the Kansas public employees retirement system and all other Kansas public retirement plans and benefit structures, which are administered by the board.

(c) In addition to the federal internal revenue code provisions otherwise noted in each retirement plan's law, and in order to satisfy the applicable requirements under the federal internal revenue code, the retirement plans shall be subject to the following provisions, notwithstanding any other provision of the retirement plan's law:

(1) The board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the

retirement plan's law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, death or for any other reason may not be applied to increase the benefits any member would otherwise receive under the retirement plan's law. However, forfeitures may be used to reduce an employer's contribution.

(3) All benefits paid from the retirement plan shall be distributed in accordance with the requirements of section 401(a)(9) of the federal internal revenue code and the regulations under that section. In order to meet these requirements, the retirement plan shall be administered in accordance with the following provisions: (A) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a participant attains age 70½ or the April 1 of the year following the calendar year in which the member retires;

(B) the life expectancy of a member or the member's spouse may not be recalculated after the benefits commence;

(C) if a member dies before the distribution of the member's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died, except as provided in subsection (6) of K.S.A. 74-4918 and amendments thereto; and

(D) the amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the federal internal revenue code.

(4) Distributions from the retirement plans may be made only upon retirement, separation from service, disability or death.

(5) The board or its designee may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries, in a manner that discriminates in favor of members who are considered officers, supervisors or highly compensated, as prohibited under section 401(a)(4) of the federal internal revenue code.

(6) Subject to the provisions of this subsection, benefits paid from, and employee contributions made to, the retirement plans shall not exceed the maximum benefits and the maximum annual additions, respectively, permissible under section 415 of the federal internal revenue code.

(A) Beginning January 1, 1995, a participant may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the federal internal revenue code, subject to the applicable adjustments in section 415 of the federal internal revenue code, except as provided in clause (C) of this subsection.

(B) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the retirement plans if the amount of the contribution would exceed the limits under section 415(c) or 415(n) of the federal internal revenue code subject to the following:

(i) Where the retirement plan's law requires a lump-sum payment, for the purchase of service credit, the board may establish a periodic payment plan in order to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code.

(ii) An eligible participant in a retirement plan, as defined by section 1526 of the federal taxpayer relief act of 1997, may purchase service credit without regard to the limitations of section 415(c)(1) of the federal internal revenue code as provided by state law in effect on August 5, 1997.

If the board's option under subdivision (i) will not avoid a contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code, the board shall reduce or deny the contribution.

(C) Subject to approval by the internal revenue service, the board shall maintain a qualified governmental excess benefit arrangement under section 415(m) of the federal internal revenue code. The board shall establish the necessary and appropriate procedures for the administration of such benefit arrangement under the federal internal revenue code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be paid from this benefit arrangement. The amount of any contribution that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be credited to this benefit arrangement. The qualified excess benefit arrangement shall be a separate portion of the retirement plan. The qualified excess benefit arrangement is subject to the following requirements:

(i) The benefit arrangement shall be maintained solely for the purpose of providing to participants in the retirement plans that part of the participant's annual benefit otherwise payable under the terms of the act that exceeds the limitations on benefits imposed by section 415 of the federal internal revenue code; and

(ii) participants do not have an election, directly or indirectly, to defer compensation to the excess benefit arrangement.

(D) Prior to January 1, 1998, the definition of compensation, wages, salary or other similar term when used for purposes of determining compliance with section 415 of the federal internal revenue code does not include the amount of any elective deferral, as defined in section 402(g)(3) of the federal internal revenue code, or any contribution which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of section 125 or 457 of the federal internal revenue code.

(7) The board may not engage in a transaction prohibited by section 503(b) of the federal internal revenue code.

(8) To the extent required by section 401(a)(31) of the federal internal revenue code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan. Notwithstanding any law to the contrary, the board may accept a direct or indirect rollover of eligible distributions for the purpose of the purchase of service credit. *In addition, the board may accept a direct trustee to trustee transfer from a deferred compensation plan under section 457(b) of the federal internal revenue code or a tax sheltered annuity under section 403(b) of the federal internal revenue code for: (A) The purchase of permissive service credit, as defined under section 415(n)(3)(A) of the federal internal revenue code; or (B) a repayment to which section 415 of the federal internal revenue code does not apply pursuant to section 415(k)(3) of the federal internal revenue code. Any such transfer shall be allowed as provided in this subsection to the extent permitted by law, subject to any conditions, proofs or acceptance established or required by the board or the board's designee.*

(9) Where required by the act, an employer shall pick up and pay contributions that would otherwise be payable by members of a retirement plan in accordance with section 414(h)(2) of the federal internal revenue code as follows:

(A) The contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee;

(B) the employee must not have been given the option of receiving the amounts directly instead of having them paid to the retirement plan; and

(C) the pickup shall apply to amounts that a member elects to contribute to receive credit for prior or participating service if the election is irrevocable and applies to amounts contributed before retirement.

(10) Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the federal internal revenue code.

(11) Upon the complete or partial termination of a retirement plan, the rights of members to benefits accrued to the date of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

(d) The plan year for the retirement plan begins on July 1.

(e) The limitation year for purposes of section 415 of the federal internal revenue code is the calendar year.

Sec. 10. K.S.A. 75-5524 is hereby amended to read as follows: 75-5524. (a) The director is authorized to enter into a voluntary agreement with any employee whereby the director agrees to defer and deduct each payroll period a portion of the employee's salary or compensation from the state in accordance with the Kansas public employees deferred compensation plan. Such agreement may require each participant to pay a service charge to defray all or part of any significant costs incurred and to be recovered by the state pursuant to subsection (c) of K.S.A. 75-5523, and amendments thereto, as a result of the administration of this act. Pursuant to this act and such agreements the director is authorized to deduct amounts authorized in such agreements from the salary or compensation of such employee each payroll period, as part of the system of regular payroll deduction. *On and after July 1, 2002, pursuant to section 401(a) of the federal internal revenue code, the director may establish a qualified plan under which the state may contribute a specified amount, subject to appropriations, to the deferred compensation plan for state*

*employees who have entered into a voluntary agreement with the director under this section.*

(b) The minimum amount and the maximum amount which may be deferred in any one payroll period shall be established by rules and regulations adopted under K.S.A. 75-5529, and amendments thereto.

(c) The Kansas public employees deferred compensation plan shall exist and be in addition to, and shall not be a part of any retirement or pension system for employees. The state shall not be responsible for any loss incurred by an employee under the Kansas public employees deferred compensation plan established and approved pursuant to this act.

(d) Any amount of the employee's salary or compensation that is deferred under such authorized agreement shall continue to be included as regular compensation for all purposes of computing retirement and pension benefits earned by any such employee, but any sum deferred or deducted shall not be subject to any state or local income taxes for the year in which such sum is earned but shall be subject to applicable state and local income taxes for the year in which such sum is received by the employee.

(e) The director is hereby authorized to establish a deferred compensation clearing fund in the state treasury in which shall be placed temporarily all compensation deferred and deducted or contributed in accordance with this act, as provided for in any agreement between an employee and the director.

Sec. 11. K.S.A. 72-8603, 74-4927g and 75-5524 and K.S.A. 2001 Supp. 74-4902, 74-4919m, 74-4919t, 74-4927, 74-4927b, 74-4927f, 74-4966 and 74-49,123 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 23, 2002.)

#### HOUSE BILL No. 2640

AN ACT relating to insurance; relating to viatical settlements and investments; relating to small employer benefit plans; relating to group policies; relating to risk-based capital requirements; relating to licensure of insurance agents; relating to standard nonforfeiture provisions for annuities; amending K.S.A. 40-428a, 40-2240 and 40-2253 and K.S.A. 2001 Supp. 17-1262, 40-2c01 and 40-4909 and repealing the existing sections; also repealing K.S.A. 40-2,171, 40-2,172, 40-2,173, 40-2,174, 40-2,175, 40-2,176, 40-2,177, 40-2,178, 40-2,179, 40-2,180, 40-2,181, 40-2,182 and 40-2,183.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. Sections 1 through 16 inclusive, and amendments thereto, may be cited as the viatical settlements act of 2002.

New Sec. 2. As used in this act, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.

(b) "Business of viatical settlements" means an activity involved in, but not limited to, offering, soliciting, negotiating, procuring, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging or hypothecating any viatical settlement contract.

(c) "Chronically ill" means:

(1) Being unable to perform at least two activities of daily living including eating, toileting, transferring, bathing, dressing, continence or such other activity as determined by rules and regulations adopted by the commissioner; or

(2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(d) "Commissioner" means the commissioner of insurance.

(e) "Financing entity" means any underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer or any entity that has a direct ownership in a policy or certificate which is the subject of a viatical settlement contract, but:

(continued)

(1) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and

(2) who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

Financing entity shall not include any nonaccredited investor or viatical settlement purchaser.

(f) "Fraudulent viatical settlement act" means and includes:

(1) Any act or omission committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits such person's employees or agents to engage in acts including:

(A) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:

(i) An application for the issuance of a viatical settlement contract or insurance policy;

(ii) the underwriting of a viatical settlement contract or insurance policy;

(iii) a claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;

(iv) premiums paid on an insurance policy;

(v) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;

(vi) the reinstatement or conversion of an insurance policy;

(vii) in the solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy;

(viii) the issuance of written evidence of viatical settlement contract or insurance; or

(ix) a financing transaction.

(B) Employing any device, scheme or artifice to defraud related to viaticated policies;

(2) any act done or committed in the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

(A) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;

(B) misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;

(C) transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlements; or

(D) file with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceals information about a material fact from the commissioner;

(3) embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policy owner or any other person engaged in the business of viatical settlements or insurance; or

(4) recklessly entering into, brokering, otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct;

(5) attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

(g) "NAIC" means the national association of insurance commissioners.

(h) "Person" means a natural person or a legal entity, including, but not limited to, an individual, partnership, limited liability company, association, trust or corporation.

(i) "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

(j) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

(k) "Special purpose entity" means any corporation, partnership, trust, limited liability company or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

(l) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

(m) "Viatical settlement broker" means a person that on behalf of a viator and for a fee, commission or other valuable consideration offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

(n) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.

(o) "Viatical settlement provider" means a person, other than a viator, who enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include:

(1) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

(2) the issuer of a life insurance policy providing accelerated benefits under K.S.A. 40-401, and amendments thereto, and pursuant to the contract;

(3) an authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity or related provider trust;

(4) a natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(5) a financing entity;

(6) a special purpose entity;

(7) a related provider trust;

(8) a viatical settlement purchaser; or

(9) an accredited investor or qualified institutional buyer as such term is defined respectively in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as in effect upon the effective date of this act, and who purchases a viaticated policy from a viatical settlement provider.

(p) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this act, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under



a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. Viator shall not include:

- (1) A licensee under this act;
  - (2) an accredited investor or qualified institutional buyer as such term is defined respectively in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as in effect upon the effective date of this act;
  - (3) a financing entity;
  - (4) a special purpose entity; or
  - (5) a related provider trust.
- (q) "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(r) "Viatical settlement purchaser" means a person who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. Viatical settlement purchaser shall not include:

- (1) A licensee under this act;
- (2) an accredited investor or qualified institutional buyer as such term is defined respectively in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as in effect upon the effective date of this act;
- (3) a financing entity;
- (4) a special purpose entity; or
- (5) a related provider trust.

New Sec. 3. (a) No person shall operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner or the insurance regulatory official of the state of residence of the viator. If there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators.

(b) Application for a viatical settlement provider license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by a nonrefundable fee of \$1,000.

(c) Licenses for viatical settlement providers may be renewed from year to year on the anniversary date upon payment of the annual renewal fee of \$500. Failure to pay the fees by the renewal date results in expiration of the license.

(d) Application for a viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner. Each application shall be accompanied by a nonrefundable application fee of \$100.

(e) Licenses for a viatical settlement broker license may be renewed from year to year on the anniversary date upon payment of the annual renewal fee of \$50. Failure to pay the fees by the renewal date results in expiration of such license.

(f) The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner, in the exercise of the commissioner's discretion, may refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this act.

(g) A license issued to a legal entity authorizes all partners, officers, members and designated employees to act as viatical settlement providers or viatical settlement brokers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

(h) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

- (1) If a viatical settlement provider, has provided a detailed plan of operation;
- (2) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(3) has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;

(4) if a legal entity, provides a certificate of good standing from the state of its domicile; and

(5) if a viatical settlement provider or viatical settlement broker, has provided an anti-fraud plan that meets the requirements of paragraph (g) of section 12, and amendments thereto.

(i) The commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

(j) A viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, 10% or more stockholders, partners, directors, members or designated employees within 30 days of the change.

New Sec. 4. (a) The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider or viatical settlement broker in the event that investigation by the commissioner discloses that:

(1) There was any material misrepresentation in the application for the license;

(2) the licensee or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action in this state or another state or is otherwise shown to be untrustworthy or incompetent;

(3) the viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(4) the licensee or any officer, partner, member or key management personnel has been found guilty of, or has pleaded guilty or *nolo contendere* to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(5) the viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this act;

(6) the viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(7) the licensee no longer meets the requirements for initial licensure;

(8) the viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as in effect on the effective date of this act, financing entity, special purpose entity or related provider trust; or

(9) the licensee or any officer, partner, member or key management personnel has violated any provision of this act.

(b) If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

New Sec. 5. No person shall use a viatical settlement contract or provide to a viator a disclosure statement form in this state unless filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material to the commissioner.

New Sec. 6. (a) Each licensee shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule and regulation.

(b) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure is:

(continued)

(1) Necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(2) provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of paragraph (c) of section 12, and amendments thereto;

(3) a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

(4) necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(5) necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status; or

(6) required to purchase stop loss coverage.

New Sec. 7. (a) (1) The commissioner may conduct an examination under this act of a licensee as often as the commissioner in such commissioner's sole discretion deems appropriate.

(2) For purposes of completing an examination of a licensee under this act, the commissioner may examine or investigate any person, or the business of any person, in so far as the examination or investigation, in the sole discretion of the commissioner, is necessary or material to the examination of the licensee.

(3) In lieu of an examination under this act of any foreign or alien licensee licensed in this state, the commissioner, at the commissioner's discretion, may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

(b) (1) Any person required to be licensed by this act shall for five years retain copies of all:

(A) Proposed, offered or executed contracts, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract, whichever is later;

(B) all checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and

(C) all other records and documents related to the requirements of this act.

(2) This section shall not relieve any person licensed under this act of the obligation to produce these documents and provide copies thereof to the commissioner after the retention period has expired if the person has retained such documents.

(3) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(c) (1) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to the Kansas administrative procedure act.

(3) The commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to

obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(4) When making an examination under this act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(5) Nothing contained in this act shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) Nothing contained in this act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner, in such commissioner's sole discretion, may deem appropriate.

(d) (1) Examination reports shall be comprised of only facts appearing upon the books, records or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) Not later than 60 days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

(e) (1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.

(2) Except as otherwise provided in this act, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this act, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to the provisions of the Kansas open records act, K.S.A. 45-215 *et seq.*, and amendments thereto, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(A) Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this act, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(B) disclosed to the NAIC and its affiliates and subsidiaries under paragraph (4) of subsection (e) by the commissioner.

For the purposes of paragraph (2) of subsection (e), the term "act" includes the law of another state or jurisdiction that is substantially similar to this act.

(4) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any

confidential documents, materials or information subject to paragraph (1) of subsection (e).

(5) In order to assist in the performance of the commissioner's duties, the commissioner may:

(A) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (1) of subsection (e), with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;

(B) receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(C) enter into agreements governing sharing and use of information consistent with this subsection.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (4) of subsection (e).

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(8) Nothing contained in this act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

(9) The provisions of this subsection shall expire July 1, 2007, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2007.

(f) (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this act. This section shall not be construed to automatically preclude an examiner from being:

(A) A viator;

(B) an insured in a viaticated insurance policy; or

(C) a beneficiary in an insurance policy that is proposed to be viaticated.

(2) Notwithstanding the requirements of this clause, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this act.

(g) Unless provided otherwise, all fees and procedures for examinations under this act shall be in accordance with K.S.A. 40-223, and amendments thereto.

(h) (1) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this act.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph (1).

(3) A person identified in paragraph (1) or (2) shall be entitled to an award of attorney fees and costs if such person is the prevailing party in

a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(i) The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

New Sec. 8. (a) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

(1) There are possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.

(2) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

(3) Proceeds of the viatical settlement could be subject to the claims of creditors.

(4) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(5) The viator has the right to rescind a viatical settlement contract for 15 calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in subsection (c) of section 9, and amendments thereto. If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider or purchaser.

(6) Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(7) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.

(8) Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The form for the brochure shall be developed by the commissioner.

(9) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(10) The insured may be contacted by either the viatical settlement provider or viatical settlement broker or such viatical settlement provider's or viatical settlement broker's authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(b) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker, and contain the following information:

(1) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated.

(2) The name, address and telephone number of the viatical settlement provider.

(continued)

(3) A viatical settlement broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation. The term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

(4) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with such viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

(5) State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits.

(6) State the name, business address and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

New Sec. 9. (a) (1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(A) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(B) a document in which the insured consents to the release of such insured's medical records to a viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

(2) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by paragraph (3).

(3) The viatical settlement provider shall deliver a copy of the medical release required under clause (B) of paragraph (1), a copy of the viator's application for the viatical settlement contract, the notice required under paragraph (2) and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The form for verification shall be developed by the commissioner.

(4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(5) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that such viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that such viator is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(6) If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the requirements of this section.

(b) (1) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

(2) The provisions of this subsection shall expire July 1, 2007, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2007.

(c) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the contract for at least 15 calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repay-

ment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans and loan interest that have been paid by the viatical settlement provider or purchaser.

(d) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

(e) Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to clause (6) of subsection (a) of section 8, and amendments thereto, renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

(f) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

New Sec. 10. It shall be a violation of this act for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

(a) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(b) the viator is a charitable organization exempt from taxation under 26 U.S.C. §501 (c)(3);

(c) the viator is not a natural person;

(d) (1) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

(A) The viator or insured is terminally or chronically ill;

(B) the viator's spouse dies;

(C) the viator divorces such viator's spouse;

(D) the viator retires from full-time employment;

(E) the viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;

(F) the viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

(G) a final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets;

(H) the viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or

(I) the viator or insured disposes of such viator's or insured's ownership interests in a closely held corporation.

(2) Copies of the independent evidence described in paragraph (1) of this subsection and documents required by subsection (a) of section 9, and amendments thereto shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(e) If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in subsection (d) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

New Sec. 11. The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by viatical settlement licensees.

(a) This section shall apply to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(b) Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the viatical settlement licensee, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

(c) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract, product or service shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(d) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(1) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements, shall not remedy misleading statements.

(2) No advertisement shall use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(3) No advertisement shall state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(4) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost" or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(5) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract, product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(A) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(B) An advertisement shall not state or imply that a viatical settlement contract, benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(C) When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five years after its use.

(e) No advertisement shall contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(f) No advertisement shall disparage insurers, viatical settlement providers, viatical settlement brokers, insurance producers, policies, services or methods of marketing.

(g) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract, products or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

(h) No advertisement shall use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.

(i) No advertisement shall use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(j) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

(k) No advertisement shall create the impression that the viatical settlement provider, its financial condition or status, the payment of its

(continued)

claims or the merits, desirability or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

(l) The name of the actual licensee shall be stated in all of its advertisements. No advertisement shall use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(m) No advertisement shall, directly or indirectly, create the impression that any division or agency of the state or of the united states government endorses, approves or favors:

(1) Any viatical settlement licensee or its business practices or methods of operation;

(2) the merits, desirability or advisability of any viatical settlement contract;

(3) any viatical settlement contract; or

(4) any life insurance policy or life insurance company.

(n) If the advertiser emphasizes the speed with which the viatication will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(o) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

New Sec. 12. (a) No person shall:

(1) Commit a fraudulent viatical settlement act.

(2) Knowingly or intentionally interfere with the enforcement of any provision of this act or any investigation of suspected or actual violations of this act.

(3) Knowingly or intentionally permit any person, employed by a person in the business of viatical settlements, convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements. No person in the business of viatical settlements shall knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(b) (1) Viatical settlements contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(2) The lack of a statement as required in paragraph (1) shall not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(c) (1) Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(2) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(d) (1) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(A) The commissioner or the commissioner's employees, agents or representatives;

(B) federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;

(C) any person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees or representatives;

(D) the NAIC, national association of securities dealers, the north american securities administrators association, or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud; or

(E) the life insurer that issued the life insurance policy covering the life of the insured.

(2) Paragraph (1) shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.

(3) A person identified in paragraph (1) shall be entitled to an award of attorney fees and costs if such person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (1).

(e) (1) The documents and evidence provided pursuant to subsection (d) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(2) Paragraph (1) of this subsection shall not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(A) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(B) to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC;

(C) at the discretion of the commissioner or pursuant to a court order, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act; or

(D) at the discretion of the commissioner or pursuant to a court order, to a person that is aggrieved by a fraudulent viatical settlement act.

(3) Release of documents and evidence under subparagraphs (A) and (B) of paragraph (2) of this subsection does not abrogate or modify the privilege granted in paragraph (1).

(4) The provisions of this subsection shall expire July 1, 2007, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2007.

(f) This act shall not:

(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

(2) prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

(3) limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(g) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

(1) Fraud investigators, who may be viatical settlement providers or viatical settlement broker employees or independent contractors; and

(2) an antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) a description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;

(C) a description of the plan for antifraud education and training of underwriters and other personnel; and

(D) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and

reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications; and

(3) antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

New Sec. 13. (a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of this act, the Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of this act, the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation;

(2) suspension or revocation of the person's license or certificate if such person knew or reasonably should have known that such person was in violation of this act, the Kansas insurance statutes or any rule and regulation or order thereunder; or

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

(b) If any person fails to file any report or other information with the commissioner as required by statute or fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner.

(c) If the commissioner makes written findings of fact that there is a situation involving an immediate danger to the public health, safety or welfare or the public interest will be irreparably harmed by delay in issuing an order under paragraph (3) of subsection (a), the commissioner may issue an emergency temporary cease and desist order. Such order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order, the commissioner shall promptly notify the person subject to the order that: (1) It has been entered; (2) the reasons therefor; and (3) that upon written request within 15 days after service of the order the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to the person subject to the order, by written findings of fact and conclusions of law, shall vacate, modify or make permanent the order.

(d) (1) Any person who violates the provisions of this act shall be guilty of a:

(A) Severity level 7, nonperson felony if the value of the viatical settlement contract is \$25,000 or more;

(B) severity level 9, nonperson felony if the value of the viatical settlement contract is at least \$500 but less than \$25,000; or

(C) class A nonperson misdemeanor if the value of the viatical settlement contract is less than \$500.

(2) If the value of the insurance premium is less than \$500 and such agent or broker has, within five years immediately preceding commission of the crime, been convicted of violating this section two or more times shall be guilty of a severity level 9, nonperson felony.

(e) Restitution may be ordered in addition to, but not in lieu of, any other penalty imposed under this act.

New Sec. 14. Any violation of this act shall also be considered an unfair or deceptive act or practice under K.S.A. 40-2404, and amendments thereto, and subject to the penalties contained in K.S.A. 40-2401 *et seq.*, and amendments thereto.

New Sec. 15. The commissioner shall have the authority to:

(a) Promulgate rules and regulations necessary to implement the provisions of this act;

(b) establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chron-

ically ill. Such authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy;

(c) establish appropriate licensing requirements, fees and standards for continued licensure for viatical settlement providers or viatical settlement brokers;

(d) require a bond or other mechanism for financial accountability for viatical settlement providers and viatical settlement brokers; and

(e) adopt rules and regulations governing the relationship and responsibilities of both insurers and viatical settlement providers or viatical settlement brokers during the viatication of a life insurance policy or certificate.

New Sec. 16. A viatical settlement provider or viatical settlement broker transacting business in this state may continue to do so pending approval or disapproval of the viatical settlement provider or viatical settlement broker's application for a license as long as the application is filed with the commissioner by July 1, 2002.

Sec. 17. K.S.A. 2001 Supp. 17-1262 is hereby amended to read as follows: 17-1262. Except as expressly provided in this section, the following transactions shall be exempt from the registration requirements of K.S.A. 17-1254, 17-1255, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto:

(a) Any isolated transaction, whether effected through a broker-dealer or not.

(b) Any nonissuer distribution by or through a registered broker-dealer of outstanding securities at a price reasonably related to the current market price of such securities, if any recognized securities manual approved by the commissioner, pursuant to rules and regulations or orders contains:

(1) The names of the issuer's officers and directors; and

(2) audited financial statements, including a balance sheet of the issuer as of a date within 18 months and an income or loss statement for either the full fiscal year preceding that date or the most recent full year of operations. If the commissioner finds that the sale of certain securities in this state under this exemption would work or tend to work a fraud on purchasers thereof, the commissioner may revoke the exemption provided by this subsection with respect to such securities by issuing an order to that effect and providing notice of such order to all registered broker-dealers.

(c) Any nonissuer transaction by a registered broker-dealer pursuant to an unsolicited order or offer to buy. The commissioner may require, by rules and regulations, that: (1) The customer acknowledge upon a specified form that the sale was unsolicited; and (2) a signed copy of each such form be preserved by the broker-dealer for a specified period.

(d) Any transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(e) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator; any transaction executed by a bona fide pledgee without any purpose of evading this act or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests.

(f) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, pension or profit-sharing trust or other financial institution or institutional buyer or to a broker-dealer or underwriter.

(g) Any offer or sale of a preorganization certificate or subscription if: (1) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber and no advertising has been published in connection with any such sale; (2) no payment is made by any subscriber; and (3) such certificate or subscription is expressly voidable by the subscriber until such subscriber has been notified of final acceptance or completion of the organization and until the securities subscribed for have been registered. The commissioner may require, by rules and regulations or by order, reports of sales under this exemption.

(h) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable

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warrants exercisable within 90 days of their issuance, if: (1) No commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or (2) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days.

(i) Any offer (but not a sale) of a security if: (1) Registration statements for such security have been filed under both this act and the securities act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act; or (2) a registration statement for such security has been filed under K.S.A. 17-1258, and amendments thereto, no stop order or emergency order issued pursuant to K.S.A. 17-1260, and amendments thereto, is in effect and the offer is made on behalf of the issuer by a registered broker-dealer.

(j) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(k) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganizations to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(1) The securities to be distributed are registered under the securities act of 1933 before the consummation of the transaction; or

(2) the securities to be distributed are not required to be registered under the securities act of 1933, written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited is given to the commissioner at least 10 days before the consummation of the transaction and the commissioner does not disallow, by order, the exemption within the next 10 days.

(l) The offer or sale of securities by an issuer that is a corporation, limited partnership or limited liability company formed under the laws of the state of Kansas, if: (1) The aggregate number of sales by the issuer in the twelve-month period ending on the date of the sale does not exceed 20 sales; (2) the seller believes that the purchaser is purchasing for investment; (3) no commission nor other remuneration is paid or given, directly or indirectly, for soliciting the purchaser; and (4) neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following: (A) Any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio or (B) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

In calculating the number of sales in a twelve-month period, sales made in violation of K.S.A. 17-1255, and amendments thereto, and sales exempt from registration under subsection (a) or (l) shall be taken into account. For purposes of the exemption in this subsection, a husband and wife shall be considered as one purchaser. A corporation, partnership, association, joint-stock company, trust or other unincorporated organization shall be considered as one purchaser unless it was organized for the purpose of acquiring the purchased securities. In such case each beneficial owner of equity interest or equity securities in the entity shall be considered a separate purchaser. The commissioner may withdraw this exemption or impose conditions upon its use.

(m) Any transaction pursuant to rules and regulations adopted by the commissioner for limited offerings which was adopted for the purpose of furthering the objectives of compatibility with federal exemptions and uniformity among the states.

(n) Any transaction pursuant to rules and regulations adopted by the commissioner concerning the offer or sale of an oil, gas or mining lease, fee or title if the commissioner finds that registration is not necessary or appropriate for the protection of investors.

(o) ~~Any offer or sale by an investment company, as defined by K.S.A. 16-630, and amendments thereto, of its investment certificates.~~

(p) The offer or sale of a security, issued by Kansas Venture Capital, Inc., or its successors.

(q) *Any transaction through a registered broker-dealer or agent involving a viatical investment. By rules, regulation or order, the commissioner may require the filing of a notice and specify conditions for this exemption.*

Sec. 18. K.S.A. 40-2240 is hereby amended to read as follows: 40-2240. (a) Any small employer as defined in subsection (4) of K.S.A. 40-2209d, and amendments thereto, may establish a small employer health benefit plan for the purpose of providing a health benefit plan as described in subsection (u) of K.S.A. 40-2209d, and amendments thereto, covering such employers' eligible employees and such employees' family members. If an association or trust is used for such purposes, the association or trust may not condition eligibility or membership on the health status of members or employees.

(b) Employers desiring to offer a small employer health benefit plan shall notify the commissioner and provide the commissioner with information on the number of employees and family members to be covered by the insurance described in K.S.A. 40-2209d, and amendments thereto. The commissioner shall provide assistance to employers desiring to organize and maintain any such benefit plan and may aid in the acquisition of the health care insurance by the small employer health benefit plan. The commissioner shall issue a certificate to every employer participating in any such small employer health benefit plan entitling such employer to claim the tax credit authorized by K.S.A. 40-2246 and amendments thereto subject to the following limitation: No certificate shall be issued to any employer seeking the same after certificates have already been issued under this act to employers offering health benefits described in K.S.A. 40-2209d, and amendments thereto, to employees and family members entitling such employers to claim the credits for taxable years which commence after December 31, 1999, and before January 1, 2002.

Sec. 19. K.S.A. 40-2258 is hereby amended to read as follows: 40-2258. (a) An accident and sickness insurer which offers coverage through a group policy providing hospital, medical or surgical expense benefits pursuant to K.S.A. 40-2209 and amendments thereto which includes mental health benefits shall be subject to the following requirements:

(1) If the policy does not include an aggregate lifetime limit on substantially all hospital, medical and surgical expense benefits, the policy may not impose any aggregate lifetime limit on mental health benefits;

(2) if the policy includes an aggregate lifetime limit on substantially all hospital, medical and surgical expense benefits the plan shall either: (A) Apply the applicable lifetime limit both to the hospital, medical and surgical expense benefits to which it otherwise would apply and to mental health benefits and not distinguished in the application of such limit between such hospital, medical and surgical expense benefits and mental health benefits; or (B) not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit on hospital, medical and surgical expense benefits;

(3) if the policy does not include an annual limit on substantially all hospital, medical and surgical expense benefits, the plan or coverage may not impose any annual limit on mental health benefits; and

(4) if the policy includes an annual limit on substantially all hospital, medical and surgical expense benefits the policy shall either: (A) Apply the applicable annual limit both to hospital, medical and surgical expense benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such hospital, medical and surgical expense benefits and mental health benefits; or (B) not include any annual limit on mental health benefits that is less than the applicable annual limit.

(b) If the group policy providing hospital, medical or surgical expense benefits is not otherwise covered by subsection (a) and either does not apply a lifetime or annual benefit or applies different lifetime or annual benefits to different categories of hospital, medical and surgical expense benefits, the commissioner may adopt rules and regulations under which subsections (a)(2) and (a)(4) are applied to such policies with respect to mental health benefits by substituting for the applicable lifetime or annual limits an average limit that is computed taking into account the weighted average of the lifetime or annual limits applicable to such categories.

(c) Nothing in this section shall be construed as either:

(1) Requiring an accident and sickness policy to offer mental health benefits except as otherwise required by K.S.A. 40-2,105 and amendments thereto; or

(2) affecting any terms and conditions of a policy which does include mental health benefits including provisions regarding cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requirements relating to the amount, duration or scope of mental health benefits under the plan or coverage, except as specifically provided in subsection (a).



(d) This section shall not apply to any group accident and health insurance policy which is sold to a small employer as defined in K.S.A. 40-2209 and amendments thereto.

(e) This section shall not apply with respect to a group policy providing hospital, medical or surgical expense benefits if the application of this section will result in an increase in the cost under the plan of at least 1%.

(f) In the case of a group policy providing hospital, medical or surgical expense benefits that offers an eligible employee, member or dependent two or more benefit package options under the policy, subsections (a) and (b) shall be applied separately with respect to each such option.

(g) As used in this section:

(1) "Aggregate lifetime limit" means, with respect to benefits under a group policy providing hospital, medical or surgical expense benefits, a dollar limitation on the total amount that may be paid with respect to such benefits under the policy with respect to an eligible employee, member or dependent;

(2) "annual limit" means, with respect to benefits under a group policy providing hospital, medical or surgical expense benefits, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the policy with respect to an eligible employee, member or dependent;

(3) "hospital, medical or surgical expense benefits" means benefits with respect to hospital, medical or surgical services, as defined under the terms of the policy, but does not include mental health benefits;

(4) "mental health benefits" means benefits with respect to mental health services, as defined under the terms of the policy, but does not include benefits with respect to treatment of substance abuse or chemical dependency.

(h) This section shall be effective for group policies providing hospital, medical or surgical expense benefits which are entered into or renewed after January 1, 1998. This section shall not apply to benefits for services furnished on or after ~~September 30, 2001~~ December 31, 2002.

(i) The commissioner is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this section.

Sec. 20. K.S.A. 40-428a is hereby amended to read as follows: 40-428a. (a) This section shall be known as the standard nonforfeiture law for individual deferred annuities.

(b) This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

(c) In the case of contracts issued on or after the operative date of this section as defined in ~~subsection (1) paragraph (1) of this subsection~~, no contract of annuity, except as stated in subsection (b), shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract.

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsection (e), (f), (g), (h), and (j).

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections (e), (f), (h), and (j). The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six ~~(6)~~ months after demand therefor with surrender of the contract.

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the con-

tract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract. Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two ~~(2)~~ full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than ~~twenty dollars (\$20)~~ \$20 monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

(d) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of ~~three percent (3%)~~ 3% per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

(~~+~~) (A) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of ~~three percent (3%)~~ 3% per annum; and

(~~+~~) (B) the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of ~~thirty dollars (\$30)~~ \$30 and less a collection charge of ~~one dollar and twenty five cents (\$1.25)~~ \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be ~~sixty five percent (65%)~~ 65% of the net consideration for the first contract year and ~~eighty seven and one half percent (87 1/2%)~~ 87.5% of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be ~~sixty five percent (65%)~~ 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was ~~sixty five percent (65%)~~ 65%. *Notwithstanding any other provision of this paragraph, for any contract issued on or after July 1, 2002, and before July 1, 2005, the interest rate at which net considerations, prior withdrawals and partial surrenders shall be accumulated, for the purpose of determining nonforfeiture amounts; shall be 1.5% per annum.*

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(~~a~~) (A) The portion of the net consideration for the first contract year to be accumulated shall be the sum of ~~sixty five percent (65%)~~ 65% of the net consideration for the first contract year plus ~~twenty two and one half percent (22 1/2%)~~ 22.5% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(~~b~~) (B) The annual contract charge shall be the lesser of (i) ~~thirty dollars (\$30)~~ \$30 or (ii) ~~ten percent (10%)~~ 10% of the gross annual consideration.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ~~ninety percent (90%)~~ 90% and the net consideration shall be the gross consideration less a contract charge of ~~seventy five dollars (\$75)~~ \$75.

(e) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence

(continued)

is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(f) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than ~~one percent~~ (1%) 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount, at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(g) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(h) For the purpose of determining the benefits calculated under subsections (f) and (g), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(i) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(j) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(k) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (e), (f), (g), (h) and (j), additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, or (3) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(l) After July 1, 1978, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before July 1, 1980. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be July 1, 1980.

Sec. 21. K.S.A. 2001 Supp. 40-4909 is hereby amended to read as follows: 40-4909. (a) The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has:

(1) Provided incorrect, misleading, incomplete or untrue information in the license application.

(2) Violated:

(A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder;

(B) any subpoena or order of the commissioner;

(C) any insurance law or regulation of another state; or

(D) any subpoena or order issued by the regulatory official for insurance in another state.

(3) Obtained or attempted to obtain a license under this act through misrepresentation or fraud.

(4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.

(5) Intentionally misrepresented the provisions, terms and conditions of an actual or proposed insurance contract or application for insurance.

(6) Been convicted of a misdemeanor or felony.

(7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto.

(8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

(9) Had an insurance agent license, or its equivalent, denied, suspended or revoked in any other state, district or territory.

(10) Forged another person's name to an application for insurance or to any document related to an insurance transaction.

(11) Improperly used notes or any other reference material to complete an examination for an insurance license issued under this act.

(12) Knowingly accepted insurance business from an individual who is not licensed.

(13) Failed to comply with any administrative or court order imposing a child support obligation upon the applicant or license holder.

(14) Failed to pay any state income tax or comply with any administrative or court order directing payment of state income tax.

(15) Rebated the whole or any part of any insurance premium or offered in connection with the presentation of any contract of insurance any other inducement not contained in the contract of insurance.

(16) Made any misleading representation or incomplete comparison of policies to any person for the purposes of inducing or tending to induce such person to lapse, forfeit or surrender such person's insurance then in force.

(b) In addition, the commissioner may suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license.

(c) Any action taken under this section which affects any license or imposes any administrative penalty shall be taken only after notice and an opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedures act.

(d) The license of any business entity may be suspended, revoked or refused renewal if the insurance commissioner finds that any violation committed by an individual licensee employed by or acting on behalf of such business entity was known by or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and:

(1) Such violation was not reported to the insurance commissioner by such business entity; or

(2) such business entity failed to take any corrective action.

(e) None of the following actions shall deprive the commissioner of any jurisdiction or right to institute or proceed with any disciplinary pro-

ceeding against such license, to render a decision suspending, revoking or refusing to renew such license, or to establish and make a record of the facts of any violation of law for any lawful purpose:

- (1) The imposition of an administrative penalty under this section;
- (2) the lapse or suspension of any license issued under this act by operation of law;
- (3) the licensee's failure to renew any license issued under this act; or
- (4) the licensee's voluntary surrender of any license issued under this act. No such disciplinary proceeding shall be instituted against any licensee after the expiration of two years from the termination of the license.

(f) Whenever the commissioner imposes any administrative penalty or denies, suspends, revokes or refuses renewal of any license pursuant to subsection (a), any costs incurred as a result of conducting an administrative hearing authorized under the provisions of this section shall be assessed against the person who is the subject of the hearing or any business entity represented by such person who is the party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(g) No person whose license as an agent or broker had been suspended or revoked shall be employed by any insurance company doing business in this state either directly, indirectly, as an independent contractor or otherwise to negotiate or effect contracts of insurance, suretyship or indemnity or perform any act toward the solicitation of or transaction of any business of insurance during the period of such suspension or revocation.

(h) In lieu of taking any action under subsection (a), the commissioner may:

- (1) Censure the person; or
- (2) issue an order imposing an administrative penalty up to a maximum of \$500 for each violation but not to exceed \$2,500 for the same violation occurring within any six consecutive calendar months from the date of the original violation unless such person knew or should have known that the violative act could give rise to disciplinary action under subsection (a). If such person knew or reasonably should have known the violative act could give rise to any disciplinary proceeding authorized by subsection (a), the commissioner may impose a penalty up to a maximum of \$1,000 for each violation but not to exceed \$5,000 for the same violation occurring within any six consecutive calendar months from the date of the imposition of the original administrative penalty.

Sec. 22. K.S.A. 2001 Supp. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with K.S.A. 40-2c04, and amendments thereto.

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required to address a RBC level event.

(c) "Domestic insurer" means any insurance company or risk retention group which is licensed and organized in this state.

(d) "Foreign insurer" means any insurance company or risk retention group not domiciled in this state which is licensed or registered to do business in this state pursuant to article 41 of chapter 40 of the Kansas Statutes Annotated or K.S.A. 40-209, and amendments thereto.

(e) "NAIC" means the national association of insurance commissioners.

(f) "Life and health insurer" means any insurance company licensed under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the Kansas Statutes Annotated, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection (j).

(i) "RBC" means risk-based capital.

(j) "RBC instructions" mean the risk-based capital instructions promulgated by the NAIC, which are in effect on December 31, 2000/2001.

(k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

- (1) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;
- (2) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;
- (3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and
- (4) "mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(l) "RBC plan" means a comprehensive financial plan containing the elements specified in K.S.A. 40-2c06, and amendments thereto. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(m) "RBC report" means the report required by K.S.A. 40-2c02, and amendments thereto.

(n) "Total adjusted capital" means the sum of:

- (1) An insurer's capital and surplus or surplus only if a mutual insurer; and
- (2) such other items, if any, as the RBC instructions may provide.

(o) "Commissioner" means the commissioner of insurance.

Sec. 23. K.S.A. 40-2,171, 40-2,172, 40-2,173, 40-2,174, 40-2,175, 40-2,176, 40-2,177, 40-2,178, 40-2,179, 40-2,180, 40-2,181, 40-2,182, 40-2,183, 40-428a, 40-2240 and 40-2258 and K.S.A. 2001 Supp. 17-1262, 40-2c01 and 40-4909 are hereby repealed.

Sec. 24. This act shall take effect and be in force from and after its publication in the Kansas register.

**INDEX TO ADMINISTRATIVE REGULATIONS**

This index lists in numerical order the new, amended and revoked administrative regulations and the volume and page number of the *Kansas Register* issue in which more information can be found. Temporary regulations are designated with a (T) in the Action column. This cumulative index supplements the 2000 Volumes and 2001 Supplement to the *Kansas Administrative Regulations*.

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AGENCY 9: ANIMAL HEALTH DEPARTMENT

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AGENCY 10: KANSAS BUREAU OF INVESTIGATION

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92-24-22	Amended	V. 21, p. 316
92-24-23	Amended	V. 20, p. 1895
92-24-24	Amended	V. 21, p. 316
92-25-1	Amended	V. 20, p. 1130
92-51-33	Revoked	V. 20, p. 1130
92-51-40	Revoked (T)	V. 20, p. 1580
92-51-40	Revoked	V. 20, p. 1895
92-51-50	Revoked	V. 20, p. 1130
92-51-51	Revoked	V. 20, p. 1130
92-51-52	Revoked	V. 20, p. 1130
92-51-54	Revoked	V. 20, p. 1130
92-51-55	Revoked	V. 20, p. 1131
92-52-9	Amended	V. 20, p. 1603
92-52-9a	Amended	V. 20, p. 1604

92-53-1		
through		
92-53-7	Revoked	V. 20, p. 1131
92-54-1		
through		
92-54-5	Revoked	V. 20, p. 1131

**AGENCY 93: DEPARTMENT OF REVENUE—DIVISION OF PROPERTY VALUATION**

Reg. No.	Action	Register
93-1-1		
through		
93-1-4	Revoked	V. 20, p. 452
93-4-6	Amended	V. 20, p. 452
93-6-1		
through		
93-6-4	Amended	V. 20, p. 452, 453

**AGENCY 94: BOARD OF TAX APPEALS**

Reg. No.	Action	Register
94-2-1		
through		
94-2-18	Amended	V. 21, p. 703-708
94-2-19	New	V. 21, p. 708
94-2-20	New	V. 21, p. 708
94-3-1	Amended	V. 21, p. 709
94-3-2	Amended	V. 21, p. 709
94-4-1	New	V. 21, p. 710
94-4-2	New	V. 21, p. 710

**AGENCY 99: DEPARTMENT OF AGRICULTURE—DIVISION OF WEIGHTS AND MEASURES**

Reg. No.	Action	Register
99-8-8	Revoked	V. 21, p. 12
99-8-9	Revoked	V. 21, p. 12
99-9-1	Revoked	V. 21, p. 12
99-10-1	Revoked	V. 21, p. 12
99-25-1	Amended	V. 21, p. 12
99-25-3	Amended	V. 21, p. 13
99-25-4	Amended	V. 21, p. 13
99-25-6	Amended	V. 21, p. 13
99-25-7	Amended	V. 21, p. 13
99-25-9	Amended	V. 21, p. 14
99-26-1	Amended	V. 21, p. 14
99-27-2		
through		
99-27-5	Amended	V. 21, p. 14, 15
99-30-2		
through		
99-30-6	Amended	V. 21, p. 15, 16
99-31-2		
through		
99-31-6	Amended	V. 21, p. 16
99-40-1	Revoked	V. 21, p. 16
99-40-3	Amended	V. 21, p. 17
99-40-21		
through		
99-40-47	Revoked	V. 21, p. 17
99-40-100	Revoked	V. 21, p. 17
99-40-101	Revoked	V. 21, p. 18
99-40-104	Revoked	V. 21, p. 18
99-40-105	Revoked	V. 21, p. 18

**AGENCY 100: BOARD OF HEALING ARTS**

Reg. No.	Action	Register
100-15-1	Amended	V. 20, p. 1093
100-27-1	Amended	V. 21, p. 307
100-28a-1		
through		
100-28a-16	New	V. 20, p. 774-778
100-60-1	Revoked	V. 20, p. 778
100-60-2	Revoked	V. 20, p. 778
100-60-4	Revoked (T)	V. 20, p. 251
100-60-4	Revoked	V. 20, p. 778
100-60-5	Revoked	V. 20, p. 778
100-60-6	Revoked	V. 20, p. 779
100-60-8		
through		
100-60-15	Revoked	V. 20, p. 779

**AGENCY 102: BEHAVIORAL SCIENCES REGULATORY BOARD**

Reg. No.	Action	Register
102-1-1	Amended	V. 20, p. 1897
102-1-10	Revoked	V. 20, p. 1898
102-1-10a	New	V. 20, p. 1898
102-1-19	New	V. 20, p. 572
102-1-20	New	V. 20, p. 1900
102-2-3	Amended	V. 21, p. 237
102-2-4b	Amended	V. 21, p. 238
102-2-15	New	V. 20, p. 572
102-3-16	New	V. 20, p. 572
102-4-16	New	V. 20, p. 572
102-5-15	New	V. 20, p. 572

**AGENCY 109: BOARD OF EMERGENCY MEDICAL SERVICES**

Reg. No.	Action	Register
109-9-1	Amended	V. 20, p. 1675
109-9-4	Amended	V. 20, p. 1677

109-10-1 Amended V. 20, p. 1677  
 109-11-10 New V. 20, p. 1679

**AGENCY 110: DEPARTMENT OF COMMERCE AND HOUSING**

Reg. No.	Action	Register
110-4-1	Amended	V. 20, p. 1392
110-6-1	Amended	V. 20, p. 177
110-6-1a	Amended	V. 20, p. 178
110-6-2	Amended	V. 20, p. 178
110-6-3	Amended	V. 20, p. 178
110-6-4	Amended	V. 20, p. 179
110-6-5	Amended	V. 20, p. 180
110-7-1		
through		
110-7-4	Revoked	V. 20, p. 1426
110-7-5	New	V. 20, p. 1426
110-7-6	New	V. 20, p. 1426
110-7-8	New	V. 20, p. 1426
110-7-9	New	V. 20, p. 1426
110-7-10	New	V. 20, p. 1426

**AGENCY 111: KANSAS LOTTERY**

A complete index listing all regulations filed by the Kansas Lottery from 1988 through 2000 can be found in the Vol. 19, No. 52, December 28, 2000 Kansas Register. The regulations listed below were published after December 31, 2000.

Reg. No.	Action	Register
111-2-4	Amended	V. 20, p. 1094
111-2-119		
through		
111-2-124	New	V. 20, p. 416-419
111-2-120	Amended	V. 20, p. 1094
111-2-124	Amended	V. 21, p. 590
111-2-125	New	V. 20, p. 573
111-2-126	New	V. 20, p. 573
111-2-127	Amended	V. 20, p. 937
111-2-128	New	V. 20, p. 1188
111-2-129	New	V. 20, p. 1343
111-2-130	New	V. 20, p. 1394
111-2-131	New	V. 20, p. 1778
111-2-132	New	V. 20, p. 1901
111-2-133	New	V. 20, p. 1901
111-2-134	New	V. 20, p. 1901
111-2-135	New	V. 21, p. 590
111-2-136	New	V. 21, p. 590
111-2-137	New	V. 21, p. 649
111-2-138	New	V. 21, p. 692
111-2-139	New	V. 21, p. 747
111-3-12	Amended	V. 20, p. 40
111-3-35	Amended	V. 20, p. 1189
111-4-1795		
through		
111-4-1813	New	V. 20, p. 40-47
111-4-1801	Amended	V. 20, p. 1095
111-4-1803	Amended	V. 20, p. 1095
111-4-1805a	New	V. 20, p. 1095
111-4-1814		
through		
111-4-1823	New	V. 20, p. 419-427
111-4-1818	Amended	V. 20, p. 575
111-4-1824	New	V. 20, p. 575
111-4-1825		
through		
111-4-1839	New	V. 20, p. 937-942
111-4-1828	Amended	V. 20, p. 1096
111-4-1832	Amended	V. 20, p. 1344
111-4-1840		
through		
111-4-1844	New	V. 20, p. 1096-1100
111-4-1845		
through		
111-4-1850	New	V. 20, p. 1189-1193
111-4-1849	Amended	V. 20, p. 1344
111-4-1851	New	V. 20, p. 1345
111-4-1852	New	V. 20, p. 1346
111-4-1853	New	V. 20, p. 1347

111-4-1854		
through		
111-4-1870	New	V. 20, p. 1395-1405
111-4-1864	Amended	V. 20, p. 1569
111-4-1866	Amended	V. 20, p. 1570
111-4-1867	Amended	V. 20, p. 1601
111-4-1869	Amended	V. 20, p. 1601
111-4-1871	New	V. 20, p. 1571
111-4-1872	New	V. 20, p. 1572
111-4-1873	New	V. 20, p. 1572
111-4-1874		
through		
111-4-1877	New	V. 20, p. 1779-1781
111-4-1877	Amended	V. 20, p. 1902
111-4-1878		
through		
111-4-1885	New	V. 20, p. 1902-1906
111-4-1886		
through		
111-4-1889	New	V. 21, p. 183-185
111-4-1890		
through		
111-4-1893	New	V. 21, p. 591-593
111-4-1894		
through		
111-4-1900	New	V. 21, p. 649-655
111-4-1901		
through		
111-4-1921	New	V. 21, p. 692-702
111-4-1910	Amended	V. 21, p. 747
111-4-1911	Amended	V. 21, p. 747
111-4-1913	Amended	V. 21, p. 748
111-4-1922	New	V. 21, p. 748
111-4-1923	New	V. 21, p. 749
111-5-23	Amended	V. 20, p. 428
111-5-24	Amended	V. 20, p. 428
111-5-27	Amended	V. 20, p. 429
111-5-78	Amended	V. 21, p. 751
111-7-119		
through		
111-7-127	Amended	V. 21, p. 594-597
111-7-134	Amended	V. 20, p. 429
111-7-152	Amended	V. 20, p. 49
111-7-158		
through		
111-7-162	New	V. 20, p. 577
111-7-159	Amended	V. 20, p. 1101
111-7-162	Amended	V. 20, p. 944
111-7-163		
through		
111-7-170	New	V. 20, p. 1101-1103
111-7-165	Amended	V. 20, p. 1194
111-7-171		
through		
111-7-175	New	V. 20, p. 1782, 1783
111-7-176		
through		
111-7-180	New	V. 21, p. 656, 657
111-8-101		
through		
111-8-126	New	V. 20, p. 1573-1579
111-9-111	New	V. 20, p. 1406
111-9-112	Amended	V. 20, p. 1579
111-9-113	Amended	V. 21, p. 186
111-9-114	New	V. 21, p. 657
111-9-115	New	V. 21, p. 702
111-9-116	New	V. 21, p. 703

**AGENCY 112: KANSAS RACING AND GAMING COMMISSION**

Reg. No.	Action	Register
112-4-1	Amended	V. 20, p. 765
112-7-19	Amended	V. 20, p. 547
112-10-3	Amended	V. 20, p. 1728
112-10-6	Amended	V. 20, p. 1728
112-11-20	Amended	V. 20, p. 945
112-17-4	Amended	V. 20, p. 1729
112-18-11	Amended	V. 20, p. 1922

**AGENCY 115: DEPARTMENT OF WILDLIFE AND PARKS**

Reg. No.	Action	Register
115-2-1	Amended	V. 20, p. 1499
115-2-4	Amended	V. 20, p. 1499
115-2-6	Amended	V. 21, p. 451
115-3-1	Amended	V. 20, p. 766
115-3-2	Amended	V. 20, p. 767
115-4-1	Revoked	V. 20, p. 767
115-4-2	New	V. 20, p. 767
115-4-3	Revoked	V. 20, p. 768
115-4-4	Amended	V. 21, p. 452
115-4-5	Revoked	V. 20, p. 769
115-4-7		
through		
115-4-10	Revoked	V. 20, p. 769
115-4-11	Amended	V. 20, p. 769
115-4-12	Revoked	V. 20, p. 770
115-4-13	Amended	V. 20, p. 770
115-8-1	Amended	V. 20, p. 1061
115-8-4	Amended	V. 20, p. 1500
115-8-5	Revoked	V. 20, p. 1061
115-8-8	Amended	V. 20, p. 1061
115-8-12	Amended	V. 20, p. 1062
115-8-16	Revoked	V. 20, p. 1062
115-8-18	Revoked	V. 20, p. 1062
115-8-20	Amended	V. 20, p. 1062
115-8-21	Amended	V. 20, p. 1062
115-9-4	Amended	V. 21, p. 177
115-11-1	Amended	V. 21, p. 177
115-11-2	Amended	V. 21, p. 177
115-13-1	Amended	V. 20, p. 1500
115-13-2	Amended	V. 20, p. 1500
115-13-5	Amended	V. 20, p. 1501
115-14-2	Amended	V. 20, p. 1501
115-14-3	Amended	V. 20, p. 1502
115-14-5	Amended	V. 20, p. 1502
115-14-6	Amended	V. 20, p. 1502
115-14-7	Revoked	V. 20, p. 1502
115-14-9	Amended	V. 20, p. 1502
115-14-10	Amended	V. 20, p. 1503
115-18-5	Revoked	V. 20, p. 1504
115-18-7	Amended	V. 21, p. 453
115-18-8	Amended	V. 20, p. 1504
115-18-9	Amended	V. 20, p. 1504
115-18-14	Amended	V. 20, p. 1504
115-18-17	New	V. 20, p. 1062
115-20-1	Amended	V. 20, p. 1063
115-20-2	Amended	V. 20, p. 1063
115-21-1	Amended	V. 20, p. 1803
115-21-2	Amended	V. 20, p. 1804
115-21-3	Revoked	V. 20, p. 1804
115-21-4	New	V. 20, p. 1804
115-22-1	New	V. 20, p. 1804

**AGENCY 117: REAL ESTATE APPRAISAL BOARD**

Reg. No.	Action	Register
117-6-1	Amended	V. 21, p. 658
117-6-3	Amended	V. 20, p. 862
117-6-4	New	V. 20, p. 863
117-7-1	Amended	V. 20, p. 863
117-8-1	Amended	V. 21, p. 659

**AGENCY 118: STATE HISTORICAL SOCIETY**

Reg. No.	Action	Register
118-5-1		
through		
118-5-10	New (T)	V. 20, p. 1492-1495

**AGENCY 125: AGRICULTURAL REMEDIATION BOARD**

Reg. No.	Action	Register
125-1-1		
through		
125-1-9	New (T)	V. 20, p. 1496-1498
125-1-1		
through		
125-1-9	New	V. 20, p. 1891-1893

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