



# Kansas Register

Kris W. Kobach, Secretary of State

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State of Kansas  
Board of Regents Universities

Notice to Bidders

The universities of the Kansas Board of Regents encourage interested vendors to visit the various universities' purchasing offices' Web sites for a listing of all transactions, including construction projects, for which the universities' purchasing offices, or one of the consortia commonly utilized by the universities, are seeking information, competitive bids or proposals. The referenced construction projects may include project delivery construction procurement act projects pursuant to K.S.A. 76-7,125 et seq.

**Emporia State University** – Bid postings: [www.emporia.edu/busaff/purchasing/vendor-procedures.htm](http://www.emporia.edu/busaff/purchasing/vendor-procedures.htm). Additional contact info: phone: 620-341-5145, fax: 620-341-5073, e-mail: [thouse@emporia.edu](mailto:thouse@emporia.edu). Mailing address: Emporia State University, Controller's Office/Purchasing, Campus Box 4021, 1200 Commercial, Emporia, KS 66801.

**Fort Hays State University** – Bid postings: [www.fhsu.edu/bids](http://www.fhsu.edu/bids). Additional contact info: phone: 785-628-4251, fax: 785-628-4046, e-mail: [purchasing@fhsu.edu](mailto:purchasing@fhsu.edu). Mailing address: Fort Hays State Purchasing Office, 601 Park St., 318 Sheridan Hall, Hays, KS 67601.

**Kansas State University** – Bid postings: [www.k-state.edu/purchasing/rfq](http://www.k-state.edu/purchasing/rfq). Additional contact info: phone: 785-532-6214, fax: 785-532-5577, e-mail: [ksurch@k-state.edu](mailto:ksurch@k-state.edu). Mailing address:

Controller's Office/Purchasing, 21 Anderson Hall, Kansas State University, Manhattan, KS 66506.

**Pittsburg State University** – Bid postings: [www.pittstate.edu/office/purchasing](http://www.pittstate.edu/office/purchasing). Additional contact info: phone: 620-235-4169, fax: 620-235-4166, e-mail: [jensch@pittstate.edu](mailto:jensch@pittstate.edu). Mailing address: Pittsburg State University, Purchasing Office, 1701 S. Broadway, Pittsburg, KS 66762-7549.

**University of Kansas** – Electronic bid postings: <http://www.purchasing.ku.edu/>. Paper bid postings and mailing address: KU Purchasing Services, 1246 W. Campus Road, Room 30, Lawrence, KS 66045. Additional contact info: phone: 785-864-5800, fax: 785-864-3454, e-mail: [purchasing@ku.edu](mailto:purchasing@ku.edu).

**University of Kansas Medical Center** – Bid postings: <http://www2.kumc.edu/finance/purchasing/bids.html>. Additional contact info: phone: 913-588-1100, fax: 913-588-1102. Mailing address: University of Kansas Medical Center, Purchasing Department, Mail Stop 2034, 3901 Rainbow Blvd., Kansas City, KS 66160.

**Wichita State University** – Bid postings: [www.wichita.edu/purchasing](http://www.wichita.edu/purchasing). Additional contact info: phone: 316-978-3080, fax: 316-978-3528. Mailing address: Wichita State University, Office of Purchasing, 1845 Fairmount Ave., Campus Box 12, Wichita, KS 67260-0012.

Barry Swanson  
Chair of Regents Purchasing Group  
Chief Procurement Officer  
University of Kansas

Doc. No. 038494

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**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. 2010 Supp. 12-1675(b)(c)(d) and K.S.A. 2010 Supp. 12-1675a(g).

**Effective 5-23-11 through 5-29-11**

Term	Rate
1-89 days	0.10%
3 months	0.03%
6 months	0.11%
1 year	0.23%
18 months	0.37%
2 years	0.55%

Scott Miller  
Interim Director of Investments

Doc. No. 039431

**State of Kansas  
State Conservation Commission**

**Notice to Contractors**

Sealed bids for the rehabilitation of the detention dam Site 162 will be received by the Mill Creek Watershed District No. 85 in the office of Ethel Ann King, 24400 M Road, Holton, 66436, until 5 p.m. June 20, or by Duane Hund, 32409B E. Springcreek Road, Paxico, 66526, until 6:30 p.m. June 20. Bid opening will be at 7:30 p.m. June 20 at the USDA Service Center in Alma.

The project is to repair and improve the eroded outlet channel of the auxiliary spillway of a floodwater detention dam. The work includes salvaging approximately 300 cubic yards of rip rap, placing 374 cubic yards of bedding gravel, installing approximately 1,100 cubic yards of geotextile filter fabric, installing an underdrain, placing 650 cubic yards of rock rip rap and grouting the rip rap in place. For technical advice, contact King Engineering at (785) 364-4312 or (785) 364-4436.

Greg A. Foley  
Executive Director

Doc. No. 039439

**State of Kansas  
Department of Health  
and Environment**

**Request for Comments**

The Kansas Department of Health and Environment and the Unified Government of Wyandotte County/Kansas City, Kansas' Department of Air Quality are soliciting comments regarding a proposed air quality permit. Stericycle, Inc. has applied for a Class I operating permit renewal in accordance with the provisions of K.A.R. 28-19-510 et seq. The purpose of a Class I permit is to identify sources and types of regulated air pollutants emitted from the facility; the emission limitations, standards and requirements applicable to each source; and the monitoring, record keeping and reporting requirements applica-

ble to each source as of the effective date of permit issuance. Notice also is given that certain requirements were found to no longer be appropriate in the construction permit dated July 30, 1987. These requirements are being modified by a Modification of Permit/Approval Conditions.

Stericycle, Inc., 3140 N. 7th St. Trafficway, Kansas City, owns and operates a hospital, medical and infectious waste incinerator (HMIWI) in Kansas City, Kansas.

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 a 30-day public review during normal business hours at the KDHE, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka; and a copy of the proposed permit can be reviewed at the Department of Air Quality, 619 Ann Ave., Kansas City. To obtain or review the proposed permits and supporting documentation, contact Rollin Sachs, (913) 573-6700, at the Department of Air Quality. The standard departmental cost will be assessed for any copies requested.

Direct written comments or questions regarding the proposed permit to Rollin Sachs, Department of Air Quality, 619 Ann Ave., Kansas City, KS 66101. In order to be considered in formulating a final permit decision, written comments must be received before the close of business June 27.

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 Sharon Burrell, KDHE, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka, 66612-1366, not later than the close of business June 27 in order for the Secretary of Health and Environment to consider the request.

The U.S. Environmental Protection Agency has a 45-day review period, which will start concurrently with the 30-day public comment period, within which to object to the proposed permit. If the EPA has not objected in writing to the issuance of the permit within the 45-day review period, any person may petition the administrator of the EPA to review the permit. The 60-day public petition period will directly follow the EPA's 45-day review period. If the EPA waives its 45-day review period, the 60-day public petition period will start directly after the 30-day public comment period. Interested parties may contact KDHE to determine if the EPA's 45-day review period has been waived.

Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in this notice, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. Contact Pat Scott, U.S. EPA, Region VII, Air Permitting and Compliance Branch, 901 N. 5th St., Kansas City, KS 66101, (913) 551-7097, to determine when the 45-day EPA review period ends and the 60-day petition period commences.

Robert Moser, M.D.  
Secretary of Health  
and Environment

Doc. No. 039434

State of Kansas

Department of Health and Environment

Notice Concerning Kansas/Federal Water Pollution Control Permits and Applications

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, various draft water pollution control documents (permits, notices to revoke and reissue, notices to terminate) have been prepared and/or permit applications have been received for discharges to waters of the United States and the state of Kansas for the class of discharges described below.

The proposed actions concerning the draft documents are based on staff review, applying the appropriate standards, regulations and effluent limitations of the state of Kansas and the Environmental Protection Agency. The final action will result in a Federal National Pollutant Discharge Elimination System Authorization and/or a Kansas Water Pollution Control permit being issued, subject to certain conditions, revocation and reissuance of the designated permit or termination of the designated permit.

Public Notice No. KS-AG-11-084

Application(s) for New or Expansion of Existing Swine Facilities

Table with 3 columns: Name and Address of Applicant, Owner of Property Where Facility Will Be Located, Receiving Water. Includes details for Seaboard Farms, L.P. in Guymon, OK.

This is a notice to advise the public that the department has received a permit application and it is available for review. The applicant is proposing to modify the facility by constructing an evaporation pond to receive liquid process wastes from each anaerobic treatment and storage basin at each of the five farm units.

Public Notice No. KS-AG-11-085/086

Pending Permits for Confined Feeding Facilities

Table with 3 columns: Name and Address of Applicant, Legal Description, Receiving Water. Includes details for Five M Farms in Linwood, KS.

100 head (10 animal units) of swine 55 pounds or less, 16 head (16 animal units) of beef cattle more than 700 pounds and 20 head (10 animal units) of beef cattle 700 pounds or less, for a total of 266 head (88 animal units) of beef cattle and swine.

Table with 3 columns: Name and Address of Applicant, Legal Description, Receiving Water. Includes details for Hurtig Farm in Cloud County, KS.

This permit is being reissued for an existing facility with a maximum capacity of 400 head (400 animal units) of cattle more than 700 pounds. There is no change in the permitted animal units from the previous permit.

Public Notice No. KS-Q-11-031/037

The requirements of the draft permits public noticed below are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria:

Table with 3 columns: Name and Address of Applicant, Receiving Stream, Type of Discharge. Includes details for Larosse, City of in LaCrosse, KS.

Facility Description: The proposed action is to issue a new permit for the operation of a new wastewater treatment facility. The proposed facility is a three-cell lagoon that discharges at the same outfall as the current mechanical plant.

Table with 3 columns: Name and Address of Applicant, Receiving Stream, Type of Discharge. Includes details for Neodesha, City of in Neodesha, KS.

Facility Description: The proposed action is to reissue the existing permit for the operation of the existing wastewater treatment facility. The proposed permit contains limits for biochemical oxygen demand and total suspended solids, as well as monitoring of ammonia, E. coli and pH.

Table with 3 columns: Name and Address of Applicant, Receiving Stream, Type of Discharge. Includes details for N.R. Hamm Quarry, Inc. in Perry, KS.

Facility Name: #53 Harrell Quarry
Facility Description: The proposed action consists of reissuing an existing permit for discharge of wastewater during quarry operations. This is a limestone quarrying and crushing operation with no washing. Outfall 001 consists of pit drainage and stormwater that drains naturally from the quarry pit into a wetland before discharge.

<b>Name and Address of Applicant</b>	<b>Receiving Stream</b>	<b>Type of Discharge</b>
N.R. Hamm Quarry, Inc. P.O. Box 17 Perry, KS 66073	Vermillion River via Indian Creek via Unnamed Tributary	Pit Dewatering & Stormwater Runoff

Kansas Permit No. I-KS79-PO02      Federal Permit No. KS0080977  
 Legal Description: SE¼, S3, and NE¼, S10, T7S, R10E, Pottawatomie County

Facility Name: Kufahl (Onaga) Quarry #79

Facility Description: The proposed action consists of reissuing an existing permit for discharge of wastewater during quarry operations. This is a limestone quarrying and crushing operation that will occasionally wash rock on demand. Outfall 001A1 consists of pit drainage and stormwater runoff. Outfall 002A1 consists of treated washwater from a settling pond. The proposed permit contains limits for total suspended solids and includes generic water-quality language to protect waters of the state.

<b>Name and Address of Applicant</b>	<b>Receiving Stream</b>	<b>Type of Discharge</b>
Nelson Quarries P.O. Box 100 Gas, KS 66742	Verdigris River via Toronto Lake via Unnamed Tributary	Pit Dewatering & Stormwater Runoff

Kansas Permit No. I-VE36-PO01      Federal Permit No. KS0100234  
 Legal Description: SW¼, S26, T25S, R13E, Woodson County

Facility Name: Toronto Quarry

Facility Description: The proposed action consists of reissuing a new permit for discharge of wastewater during quarry operations from an existing quarry. This facility is a limestone quarrying and crushing operation with no washing. Outfall 001 and Outfall 002 consist of pit drainage and stormwater runoff. The proposed permit includes generic water-quality language to protect waters of the state.

<b>Name and Address of Applicant</b>	<b>Receiving Stream</b>	<b>Type of Discharge</b>
Harshman Construction LLC 1648 F P Road Cedar Point, KS 66843	John Redmond Reservoir via Otter Creek via Unnamed Tributary	Pit Dewatering & Stormwater Runoff

Kansas Permit No. I-NE32-PO01      Federal Permit No. KS0094439  
 Legal Description: NW¼, S33, T21S, R14E, Coffey County

Facility Name: Paxson Quarry

Facility Description: The proposed action consists of reissuing an existing permit for discharge of wastewater during quarry operations. This facility is engaged in a limestone quarry operation with some washing. Outfall 001X1 consists of pit dewatering and stormwater runoff. Outfall 001A1 consists of treated wash water from a settling pond. The proposed permit contains limits for total suspended solids. The proposed permit also includes generic water-quality language to protect waters of the state. The facility will be creating a new discharge. An antidegradation review has been conducted and accepted by KDHE.

<b>Name and Address of Applicant</b>	<b>Receiving Stream</b>	<b>Type of Discharge</b>
MRP Properties Company, LLC 1400 S. M St. Arkansas City, KS 67005	Walnut River	Process Wastewater

Kansas Permit No. I-WA18-PO02      Federal Permit No. KS0000434  
 Legal Description: SE¼, S32, T34S, R4E, Cowley County

Facility Name: MRP Properties - Arkansas City Facility

Facility Description: The proposed action consists of reissuance of an existing Kansas Water Pollution Control/ NPDES Permit for an existing facility. This facility treats contaminated groundwater and stormwater runoff from an inactive oil refinery and active asphalt terminal. The wastewater treatment system consists of extended aeration bio-reactor tanks and facultative lagoons. Remediation activities are ongoing under EPA Resource Conservation and Recovery Act (RCRA) oversight. The wastewater treatment system consists of one extended aeration bio-reactor tank with one backup bio-reactor tank and a series of four facultative lagoons. Domestic waste is dis-

charged to the city sanitary sewer system. The proposed permit contains limits for benzene, oil and grease, whole effluent toxicity and pH, as well as monitoring for total petroleum hydrocarbons (DRO and GRO), sulfate, total recoverable metals and effluent flow.

**Notice of Intent to Terminate**

<b>Name and Address</b>	<b>Facility Address</b>	<b>Document No.</b>
Mineral Springs Park c/o Larry Thomas 5945 King, Suite 5 Shawnee, KS 66203	181 E. 125th St. Carbondale, KS 66414	C-KS07-0002

The Kansas Department of Health and Environment issued Kansas Water Pollution Control Permit C-KS07-0002 to Larry Thomas, dba Mineral Springs Park, with an effective date of June 1, 2007, and expiring on December 31, 2011, to operate a three-cell wastewater stabilization lagoon system. On May 17, 2011, KDHE issued Administrative Order 11-E-0038 to the permittee for numerous violations of the permit requirements. Because of a long and continuing history of permit violations, KDHE also indicated its intent to terminate the permit. Therefore, pursuant to K.A.R. 28-16-60 and K.A.R. 28-16-62, KDHE is hereby providing a Notice of Intent to Terminate the permit to operate the lagoon system for failure to comply with the current permit requirements. The permittee may appeal this Notice of Intent to Terminate pursuant to the requirements for public comment shown at the end of this public notice.

Persons wishing to comment on the draft documents 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 considered in the decision-making process. Comments should be submitted to the attention of the Livestock Waste Management Section for agricultural-related draft documents or applications, or to the Technical Services Section 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 documents or application notices received on or before June 25 will be considered in the formulation of the final determinations regarding this public notice. Please refer to the appropriate Kansas document number (KS-AG-11-084/086, KS-Q-11-031/037) and name of the applicant/permittee when preparing comments.

After review of any comments received during the public notice period, the Secretary of Health and Environment will issue a determination regarding final agency action on each draft document/application. If response to any draft document/application indicates significant public interest, a public hearing may be held in conformance with K.A.R. 28-16-61 (28-46-21 for UIC).

All draft documents/applications and the supporting information including any comments received are on file and may be inspected at the offices of the Kansas Department of Health and Environment, Bureau of Water. These documents are available upon request at the copying cost assessed by KDHE. Application information and components of plans and specifications for all new and expanding swine facilities are available on the Internet at <http://www.kdheks.gov/feedlots>. Division of Environment offices are open from 8 a.m. to 5 p.m. Monday through Friday, excluding holidays.

Robert Moser, M.D.  
 Secretary of Health  
 and Environment

Doc. No. 039438

State of Kansas

Department of Health and Environment

Request for Proposals

The Kansas Department of Health and Environment, Bureau of Health Promotion, is posting a request for application notice for a Safe Routes To School (SRTS) mini-grant project. The funds must be used for community-based coordination through (1) formation of a SRTS coalition or creation of a SRTS committee within an existing community health coalition; (2) implementation of a walk ability and bike ability checklist; and (3) preparation of a draft proposal to the Kansas Department of Transportation for funding to implement a Safe Routes To School program in the applicant's community. Private or public nonprofit community-based organizations or units of local and state government are eligible to apply for these funds. Only one applicant per community will be considered; applicants will be notified of multiple community applications following receipt of mini-grant applications so that consolidation may be considered. The submission deadline is by the close of the business day (5 p.m. C.S.T.) Friday, June 17. For additional information, contact Heidi Johnson, Bureau of Health Promotion, at (785) 827-9639 or hjohnson@kdheks.gov.

Robert Moser, M.D. Secretary of Health and Environment

Doc. No. 039435

State of Kansas

Department of Administration Division of Purchases

Notice to Bidders

Sealed bids for items listed will be received by the Director of Purchases until 2 p.m. on the date indicated. For more information, call (785) 296-2376:

- 06/07/2011 EVT0000670 Environmental Cabinets
06/07/2001 EVT0000675 Street Sweeping Service - Wichita
06/07/2011 EVT0000685 Avon Protection C420 Respirator
06/08/2011 EVT0000680 Aggregate - AS-1 - NW Kansas
06/10/2011 EVT0000666 Consultation Services
06/13/2011 EVT0000684 Sex Offender Treatment and Consultation Services
06/22/2011 EVT0000674 Problem Gambling FTEs and Technical Assistance

The above-referenced bid documents can be downloaded at the following Web site:

http://www.da.ks.gov/purch/

Additional files may be located at the following Web site (please monitor this Web site on a regular basis for any changes/addenda):

http://da.state.ks.us/purch/adds/default.htm

Chris Howe Director of Purchases

Doc. No. 039444

State of Kansas

Kansas State University

Notice of Requested Architectural Services

Notice is hereby given for the commencement of the selection process for architectural services for renovations to the East Memorial Stadium at Kansas State University. The renovation of the stadium is to upgrade and enhance the use of the building/area as the KSU Welcome Center and Academic Support/Career Services. This \$11 million phase will serve K-State students from enrollment to career.

A preview/walk-through of the area is scheduled for 10 a.m. June 28 at the main level, East Memorial Stadium, Anderson Avenue, Manhattan. Attendance is mandatory.

Responses are due at 2 p.m. July 11 at the K-State Purchasing Office, 21 Anderson Hall, Manhattan, 66506.

For additional project program information, please visit K-State Purchasing's Web site, www.k-state.edu/purchasing/rfq, and refer to RFP #40259. Project questions may be addressed to Dave Debusman at (785) 532-1728.

Carla Bishop Director of Purchasing

Doc. No. 039442

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 Eisenhower State Office Building, fourth floor west wing, 700 S.W. Harrison, Topeka, until 1 p.m. June 22 and then publicly opened:

District One - Northeast

- Lyon-99-56 KA 0012-01 - Grading (State Funds)
Douglas-59-23 KA 1591-01 - Bridge Repair and Silica Fume Overlay (State Funds)
Douglas-40-23 KA 1593-01 - Bridge Repair and Silica Fume Overlay (State Funds)
Lyon-99-56 KA 1606-01 - Bridge Repair and Polymer Overlay (State Funds)
Shawnee-75-89 KA 2361-01 - Pavement Marking, 5.63 miles (Federal Funds)
Wabaunsee-70-99 KA 2376-01 - Pavement Marking, 18.521 miles (Federal Funds)
Shawnee-70-89 KA 2377-01 - Pavement Marking, 5 miles (Federal Funds)
Atchison-3 U 2294-01 - Grading and Surfacing, 0.017 mile (State Funds)
Osage-Leavenworth-Shawnee-Wabaunsee-Atchison-Jackson-Johnson-Douglas-Lyon-Wyandotte-106 KA 2199-01 - Mudjacking (State Funds)

District Two - Northcentral

- Mitchell-24-62 KA 1611-01 - Bridge Repair and Silica Fume Overlay (State Funds)
Republic-148-79 KA 1617-01 - Bridge Repair (State Funds)

**Republic**—148-79 KA 2148-01 — Bridge Repair (State Funds)

**District Three — Northwest**

**Decatur**—20 C 4361-01 — Grading and Bridge, 0.114 mile (Federal Funds)

**District Four — Southeast**

**Bourbon**—69-6 KA 2355-01 — Bridge Repair (State Funds)

**Miami-Franklin**—68-106 KA 2354-01 — Crack Repair (Asphalt), 12.1 miles (State Funds)

**Franklin-Douglas**—33-106 KA 2358-01 — Crack Repair and Asphalt Seal, 10.43 miles (State Funds)

**District Five — Southcentral**

**Reno**—50-78 K 7409-02 — Grading, Surfacing and Bridge, 2.869 miles (Federal Funds)

Volume 1 — 50-78 K 7409-02 — Roadway Drainage

Volume 2 — 50-78 K 7409-02 — Bridges, Fencing, Erosion Control, Lighting, Signing and Pavement Marking

Volume 3 — 50-78 K 7409-02 — Sequence of Construction and Traffic Control

Volume 4 — 50-78 K 7409-02 — X-Sections

**Sumner**—55-96 KA 1630-01 — Bridge Repair and Silica Fume Overlay (State Funds)

**Sumner**—15-96 KA 1631-01 — Bridge Repair and Polymer Overlay (State Funds)

**Sedgwick**—54-87 KA 1856-01 — Lighting (Federal Funds)

**Reno**—96-78 KA 2113-01 — Bridge Repair (State Funds)

**Sedgwick**—235-87 KA 2272-01 — Bridge Repair and Polymer Overlay (State Funds)

**Cowley**—77-18 KA 2273-01 — Bridge Repair (State Funds)

**Sedgwick**—235-87 KA 2345-01 — Concrete Pavement Patching, 15.576 miles (State Funds)

**District Six — Southwest**

**Ford**—29 C 4330-01 — Grading and Surfacing, 0.932 mile (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.

Deb Miller  
Secretary of Transportation

Doc. No. 039440

**State of Kansas**

**Governmental Ethics Commission**

**Opinion No. 2011-4**

Written May 18, 2011, to Bruce Berkley, City Attorney, Downs.

This opinion is in response to your letter dated April 19, 2011, wherein you request an opinion from the Kansas Governmental Ethics Commission concerning the application of the local conflict of interest laws, K.S.A. 75-4301 et seq. We note at the outset that the Commission's jurisdiction concerning your questions is limited to K.S.A. 75-4301 et seq., and the Commission's opinion does not address whether some other statutory system, common law theory, or agency rule or regulation applies to your inquiry.

**Factual Statement:**

You request this opinion in your capacity as City Attorney for Downs, Kansas. Your concerns deal with the issuance of building permits. By city ordinance, the mayor is the building and zoning inspector, but the mayor has delegated those duties to the city superintendent. Two city council members, the mayor, and the city superintendent serve as officers and have a substantial interest in a local industrial development corporation (IDC) that has filed a building permit application. The elected officials have filed disclosure statements, but not the city superintendent. The city council is also considering whether to contract with the city clerk's spouse to perform masonry work on a city building.

In a conversation with staff, you explained the procedure for processing a request for a building permit. An applicant receives the application for a building permit from the city clerk and returns the completed application and fee to the city clerk. The clerk forwards the application to the city superintendent who inspects the property to determine whether the proposed building would comply with the applicable zoning ordinances and makes a recommendation to the city council on whether to grant or deny the application. At its meeting, the city council considers, discusses, and votes on either granting or denying a building permit.

You present possible conflict of interest issues for the two city council members, mayor, superintendent, and clerk.

**Questions:**

1. Is the issuance of a building permit a contract between the city and the applicant that requires abstention of all interested parties?

*(continued)*

2. If the issuance of a building permit is not a contract matter, (a) can the city superintendent take any action on the building permit application of the IDC without first filing a disclosure statement and (b) can the mayor and council members participate, discuss, and vote on the IDC's application?

3. If a disclosure statement is not filed, what duties performed by city employees require abstention under K.S.A. 75-4305?

4. Is the city clerk performing an "act" under K.S.A. 75-4301a(h) by: (a) providing and receiving an application for a building permit filed by the clerk's spouse; (b) recording the meeting where council members consider, discuss, and vote on the contract with the clerk's spouse; (c) attesting to the contract between the city council and the clerk's spouse; (d) answering questions on the contract between the city council and clerk's spouse; and (e) signing the checks for payment pursuant to the contract between the city council and clerk's spouse?

### Opinion:

You first ask whether the issuance of a building permit is a contract between the city and the applicant that requires abstention of all interested parties.

K.S.A. 75-4304 provides:

(a) No local governmental officer or employee shall, in the capacity of such an officer or employee, make or participate in the making of a contract with any person or business by which the officer or employee is employed or in whose business the officer or employee has a substantial interest.

(b) No person or business shall enter into any contract where any local governmental officer or employee, acting in that capacity, is a signatory to or a participant in the making of the contract and is employed by or has a substantial interest in the person or business.

(c) A local governmental officer or employee does not make or participate in the making of a contract if the officer or employee abstains from any action in regard to the contract.

"Contracts" are defined in K.S.A. 75-4301a(g) as "agreements including but not limited to sales and conveyances of real and personal property and agreements for the performance of services."

By contrast, the city council's adoption of a general city zoning ordinance is a legislative function and the city council's decision to grant or deny a permit for a specific tract of land is a quasi-judicial function. *Golden v. City of Overland Park*, 224 Kan. 591, 597 (1978). The Commission has consistently held that K.S.A. 75-4304 does not generally cover these matters. (See Commission Opinion Nos. 2010-06, 2008-11, 2003-24, 1999-51 and 1999-05.) Because the decision to grant or deny a building permit application is not the "making of a contract," K.S.A. 75-4304 does not require the city employees or city commissioners to abstain from acting upon the application.

You next ask, if the issuance of a building permit is not a contract, can the city superintendent take any action on the building permit application submitted by the IDC without first filing a disclosure statement and can the mayor and council members participate, discuss, and vote on the IDC's application. K.S.A. 75-4305 governs lo-

cal government officials and employees in non-contract matters. It states:

(a) Any local governmental officer or employee who has not filed a disclosure of substantial interests shall, before acting upon any matter which will affect any business in which the officer or employee has a substantial interest, file a written report of the nature of the interest with the county election officer of the county in which is located all or the largest geographical part of the officer's or employee's governmental subdivision.

(b) A local governmental officer or employee does not pass or act upon any matter if the officer or employee abstains from any action in regard to the matter.

Under K.S.A. 75-4305, the city superintendent cannot take action, such as inspecting the property for zoning compliance and making a recommendation to the city council, on IDC's building permit application because he has not disclosed his substantial interest in IDC by filing a Statement of Substantial Interests. Once he has done so, the city superintendent may then act upon the building permit application of IDC. However, the two city council members and the mayor may participate in the discussions and vote on IDC's application for a building permit because they have disclosed their substantial interest in IDC by filing a Statement of Substantial Interests.

Your third question is, if a city employee has a substantial interest in a business and does not file a disclosure statement, what duties performed by city employees require abstention under K.S.A. 75-4305. In a conversation with the Commission's staff, you indicated that your concern is whether K.S.A. 75-4305 covers ministerial acts of employees, such as a duty that involves no discretion or judgment in its performance.

K.S.A. 75-4301a(h) defines "[a]cts" as "the exercise of power or authority or performance of any duty incident to public office or employment." This broad definition includes any duty related to the employee's public employment even though such duty may be perfunctory or ceremonial. Thus, there is no differentiation between the types of duties that a public employee performs.

Lastly, you inquire if certain duties of the city clerk qualify as "acts" under K.S.A. 75-4301a(h). Your concern is, if these duties qualify as "acts," the clerk will be prohibited from performing ministerial or perfunctory duties. As noted above, the statute does not differentiate between the duties performed by a public employee. Thus, if the acts are a part of the city clerk's duties, they fall within the definition of K.S.A. 75-4301a(h).

K.S.A. 74-4304(b)-(c) requires abstention only if the employee acting in the capacity of an employee, makes or participates "in the making of a contract with any person or business . . . in whose business the . . . employee has a substantial interest." K.S.A. 74-4304(b) prohibits an employee, acting in the capacity of an employee, to be a signatory to a contract if that employee has a substantial interest in the person or business.

It does not appear that the acts you describe constitute participating in or the making of a contract. The first duty listed (providing and receiving an application for a building permit filed by the clerk's spouse) is not a contract function as discussed in the first question. The second and



third duties listed (recording the meeting where council members discuss, and vote on the contract with the clerk's spouse and attesting to the contract between the city council and the clerk's spouse) are administrative acts that serve as evidence of the contract, but the acts are not participating in or the making of a contract. The last acts listed (answering questions on the contract between the city council and clerk's spouse and signing the checks for payment pursuant to the contract between the city council and clerk's spouse) occur after the contract has become final; thus, the clerk is not negotiating in or making the contract.

Additionally, the clerk's attestation to the contract does not make the clerk "a signatory to or a participant in the making of the contract" under K.S.A. 75-4304(b). The word "attest" means "to certify to the verity of a copy of a public document formally by signature; . . . to signify by subscription of his name that the signer has witnessed the execution of the particular instrument." Black's Law Dictionary 117 (5th ed. 1979). By contrast, the word "signatory" means "a person who signs a document personally or through his agent and who becomes a party thereto." *Id.* at 1239. The clerk's attestation does not make the clerk a party to the contract.

Nevertheless, because the above duties are "acts" under K.S.A. 75-4305, the clerk should file a disclosure of substantial interests before performing the duties of city clerk in matters involving the contract with her spouse.

Sabrina K. Standifer, Chairwoman  
By Direction of the Commission

Doc. No. 039443

## State of Kansas

### Board of Pharmacy

#### Temporary Administrative Regulations

#### Article 20.—CONTROLLED SUBSTANCES

**68-20-28. N-Methyl-3,4-methylenedioxy cathinone included in schedule I.** N-Methyl-3,4-methylenedioxy cathinone, including its salts, isomers, and salts of isomers, shall be classified as a schedule I controlled substance. (Authorized by and implementing K.S.A. 2010 Supp. 65-4102; effective, T-68-5-17-11, May 17, 2011.)

**68-20-29. 4-methylmethcathinone included in schedule I.** 4-methylmethcathinone, including its salts, isomers, and salts of isomers, shall be classified as a schedule I controlled substance. (Authorized by and implementing K.S.A. 2010 Supp. 65-4102; effective, T-68-5-17-11, May 17, 2011.)

Debra L. Billingsley  
Executive Secretary

Doc. No. 039432

## State of Kansas

### Department of Agriculture

#### Permanent Administrative Regulations

#### Article 1.—AGRICULTURAL CHEMICALS

**4-1-2. Definitions.** In addition to the terms defined in K.S.A. 2-2202 and amendments thereto, the following terms shall have the meanings specified in this regulation: (a) "Abstracted," as used in K.S.A. 2-2202(x)(3) and amendments thereto, means omitted.

(b) "The act," and "the agricultural chemical act" mean K.S.A. 2-2201 et seq., and amendments thereto.

(c) "Authorized representative" and "designee" mean any person authorized by the secretary to enforce the act.

(d) "Pesticide" shall include insecticides, fungicides, rodenticides, herbicides, nematocides, defoliant, desiccants, and antimicrobials.

(e) "Plant-incorporated protectant" means any pesticidal substance produced by any plant and the genetic material necessary for the plant to produce the substance.

(f) "Plant regulator" shall not include any substance labeled or otherwise represented solely for use as a plant nutrient, fertilizer, or soil amendment.

(g) "Product" means one or more pesticides formulated, packaged, and labeled for distribution or sale.

(h) "Valuable constituent" means any active ingredient or inert ingredient. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

**4-1-5. Label.** The label of each product shall show clearly and prominently the following items: (a) The complete name of the product under which the product is registered under the act;

(b) the name and address of the manufacturer, registrant, or person for whom the product was manufactured. Unless otherwise stated, any name and address on the label shall be considered as the name and address of the manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer or if the name of the person for whom the product was manufactured appears on the label, the name that appears on the label shall be qualified by appropriate wording that may include "packed for," "distributed by," or "sold by," to indicate that the name is not that of the manufacturer. If the product is manufactured in more than one location or at a location separate from the manufacturer's principal office, then the product label shall state either one of the addresses where the product is manufactured or the address of the manufacturer's principal office;

(c) the EPA registration number, if required under the provisions of FIFRA;

(d) the net contents;

(e) an ingredient statement, which shall meet the following requirements:

(1) The ingredient statement shall appear on the front panel of the label unless the secretary or designee determines that, due to the size or form of the container, a

(continued)

statement on that portion of the label is impractical and permits this statement to appear on another side or panel of the label. If so permitted, the ingredient statement shall be in larger type and more prominent than the surrounding text. The ingredient statement shall run parallel with other printed matter on the panel of the label on which the ingredient statement appears and shall be on a clear, contrasting background and not obscured or crowded;

(2) the acceptable common name of each active ingredient as specified in FIFRA shall appear on the ingredient statement or, if the active ingredient has no common name, the correct chemical name shall be stated. A trademark or trade name shall not be used as the name of an active ingredient unless the trademark or trade name has become a common name;

(3) active ingredients and inert ingredients shall be so designated. The term "inert ingredient" shall appear in the same size type and be as prominent as the term "active ingredient"; and

(4) the percentages of all ingredients shall be determined by weight, and the sum of the percentages of all ingredients shall be 100. Sliding-scale forms of ingredient statements shall not be used;

(f) a first aid statement; and

(g) a warning or caution statement. The warning or caution statement shall appear on the label in a place sufficiently prominent to warn the user and shall state clearly and in nontechnical language the particular hazards involved in the use of the product and the precautions to be taken to avoid accident, injury, or damage to humans and other nontarget organisms. (Authorized by K.S.A. 2010 Supp. 2-2205; implementing K.S.A. 2010 Supp. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

**4-1-6.** (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2203; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

**4-1-8.** (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2203; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

**4-1-9. Registration.** (a) Pursuant to K.S.A. 2-2204 and amendments thereto, a product may be registered by one of the following: any manufacturer, authorized agent of the manufacturer, packer, seller, distributor, or shipper of that product.

(b) The registrant shall be responsible for the accuracy and completeness of all information submitted in connection with the application for registration of a product.

(c) Each registrant shall submit the product labeling to the secretary or designee when initially registering the product and whenever changing or modifying the labeling. When a registrant submits a product's labeling due to a change or modification in the labeling, the labeling shall be accompanied with a written statement that clearly and specifically describes the changes from the previous labeling and the proposed date of implementation of the new labeling. After the effective date of a change in labeling, the product shall be marketed only under the new labeling. Any registrant may request from the secretary or designee that a reasonable time be per-

mitted to relabel or dispose of any products with the old labeling. After the initial registration of a product, any registrant may register that product no more than four consecutive years without the submission of the product label if there is no change to the product label.

(d) Claims or representations made for a product by the registrant or registrant's agent shall not differ from claims or representations made in connection with registration. These claims or representations shall include the following:

(1) Publications or advertising literature that accompanies the product or is distributed separately from the product;

(2) advertising by radio, television, internet sites, or other electronic media; and

(3) verbal and written communication.

(e) If the secretary requires additional information in support of the registration and the registrant believes that the requirement for additional data is unreasonable, the registrant may request a conference with the secretary or designee to discuss the requirement and consider alternatives. Each request for a conference shall be made no later than 20 days after the date on which the request for additional data is sent to the registrant.

(f) Each registration shall be valid through the last day of the calendar year in which the product was registered, unless the registration has been canceled or suspended before that day. (Authorized by K.S.A. 2010 Supp. 2-2205; implementing K.S.A. 2010 Supp. 2-2204; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

**4-1-9a. Registration for special local need.** (a) Each person registering a product for additional uses and methods of application not stated on the product's labeling under section three of FIFRA, but not inconsistent with federal law, for the purpose of meeting a special local need shall submit an application for the special local need to the secretary or designee. Each application shall include the following:

(1) A statement explaining why a special local need registration is necessary;

(2) efficacy and residue data;

(3) a letter from a subject matter expert, as recognized by the secretary or designee, detailing support for the special local need registration;

(4) EPA form 8570-25, "application for/notification of state registration of a pesticide to meet a special local need"; and

(5) a proposed label for the product.

(b) A product shall not be eligible for special local need registration if at least one of the following conditions is met:

(1) There is insufficient evidence to support a special local need for the additional use or method of application within the state.

(2) The registrant and product do not meet all requirements under the act and the Kansas pesticide law.

(3) For a food or feed use, the additional use or method of application does not have an established residue tolerance, or an exemption from tolerance, under FIFRA.

(4) The same use or method of application has previously been denied, disapproved, suspended, or cancelled by EPA.

(5) The same use or method of application has been voluntarily cancelled by the registrant.

(c) A special local need registration shall be issued to the applicant upon referral of the application to EPA by the secretary.

(d) A special local need registration shall be immediately cancelled by the secretary or designee if the application is disapproved by EPA.

(e) Each special local need registration of a product shall be renewed annually, but may be renewed no more than four times without resubmission of a special local need request pursuant to K.A.R. 4-1-9a. (Authorized by K.S.A. 2009 Supp. 2-2205 and K.S.A. 2009 Supp. 2-2214; implementing K.S.A. 2009 Supp. 2-2207; effective June 10, 2011.)

**4-1-9b. Emergency situation exemptions.** (a) Any person may submit a request for a registration exemption under section 18 of FIFRA to the secretary or designee if an emergency situation exists.

(b) "Emergency situation" shall include the following: a specific emergency, a public health emergency, a quarantine emergency, and a crisis emergency that is urgent and nonroutine.

(c) Each request for registration exemption under section 18 of FIFRA shall include documentation of each of the following:

(1) No effective registered products are available.

(2) No feasible alternative control practices are available.

(3) The emergency situation involves the introduction of a new pest, will present significant risks to human health or the environment, or will cause significant economic loss.

(d) Each person seeking an emergency situation exemption shall compile and present to the secretary or designee any additional information required by EPA to support the request.

(e) Each person distributing a product under the emergency situation exemption shall provide the end user with the product labeling that was approved for the emergency situation exemption.

(f) Each person distributing or using products under an emergency situation exemption shall meet the following requirements:

(1) Comply with all reporting requirements contained within the emergency situation exemption; and

(2) notify the secretary or designee of any adverse effects resulting from the use of the product. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2207; effective June 10, 2011.)

**4-1-11.** (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

**4-1-13. Enforcement; product sampling.** Collection of samples of products for analysis shall be performed by the secretary or designee. A sample may be taken as either an unopened original package or a portion from the unopened original package. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2206, as amended by L. 2010, ch. 17, §10; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

**4-1-14. Experimental use.** (a) A product, including a plant or seed modified genetically to include a plant-incorporated protectant, may be distributed for experimental use without registration under K.S.A. 2-2204, and amendments thereto, if either of the following conditions is met:

(1) A permit for the product has been obtained from the secretary or designee.

(2) The experimental use of the product is limited to one of the following:

(A) Laboratory or greenhouse tests; or

(B) a small-scale test conducted on a cumulative total of no more than one acre of land per pest.

(b) An experimental use permit may be issued if the secretary or designee determines that the applicant needs the permit to accumulate information necessary to register a pesticide under K.S.A. 2-2204, and amendments thereto. Issuance of an experimental use permit may be denied by the secretary or designee if it is determined that the proposed use of the pesticide could cause unreasonable adverse effects on the environment. Terms, conditions, and a limited time period of the experimental use permit may be prescribed by the secretary or designee.

(c) Each application for experimental use shall include the following:

(1) The name and address of the applicant;

(2) the purpose or objectives of the experimental use and the experimental protocols to be followed;

(3) the name, address, and telephone number of all participants in the experimental use in Kansas;

(4) the amount of the product, including a plant or seed modified genetically to include a plant-incorporated protectant, to be shipped into or used in Kansas;

(5) the applicant's signature;

(6) documentation of EPA approval;

(7) a copy of the experimental use product labeling approved by EPA; and

(8) any other relevant information requested by the secretary or designee. If the secretary requires additional information in support of the application and the applicant believes that the requirement for additional data is unreasonable, the applicant may request a conference with the secretary or designee to discuss the requirement and consider alternatives. Each request for a conference shall be made no later than 20 days after the date the request for additional data is sent to the applicant.

(d) After the permit is issued, the permittee shall meet the following requirements:

(1) Coordinate the dates and locations of the proposed use of the product with the secretary or designee; and

(2) notify the secretary or designee of any adverse effects resulting from the experimental use within 24 hours of discovery.

(e) An experimental use permit may be modified, revoked, suspended, or modified by the secretary or designee at any time if either of the following conditions is met:

(1) The secretary or designee finds that the terms or conditions of the permit are being violated.

(2) The secretary or designee, after taking into account the economic, social, and environmental costs and bene-

*(continued)*

fits of the use of the product under the existing permit, determines the risk to the environment to be unacceptable.

(f) At the conclusion of the experimental use, the permittee shall submit a final report to the secretary or designee summarizing the results. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2207; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

**4-1-17. Registration fee.** The annual registration fee for each registered product shall be \$150.00. (Authorized by K.S.A. 2009 Supp. 2-2204 and K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2204; effective, T-83-35, Nov. 10, 1982; effective May 1, 1983; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-22-89, June 22, 1989; amended Aug. 14, 1989; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended June 10, 2011.)

Dale A. Rodman  
Secretary of Agriculture

Doc. No. 039433

State of Kansas

Secretary of State

Certification of New State Laws

I, Kris W. Kobach, 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.

Kris W. Kobach  
Secretary of State

(Published in the Kansas Register May 26, 2011.)

SENATE BILL No. 10

AN ACT concerning taxation; relating to sales taxation, countywide retailers' sales tax, periods of limitation for certain refunds and credits; property taxation, delinquent or underpaid taxes and overpayment of taxes, clerical errors, rate of interest; amending K.S.A. 79-2968 and K.S.A. 2010 Supp. 12-187, 12-189, 12-192, 79-1701a and 79-3609 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 12-187 is hereby amended to read as follows: 12-187. (a) No city shall impose a retailers' sales tax under the provisions of this act without the governing body of such city having first submitted such proposition to and having received the approval of a majority of the electors of the city voting thereon at an election called and held therefor. The governing body of any city may submit the question of imposing a retailers' sales tax and the governing body shall be required to submit the question upon submission of a petition signed by electors of such city equal in number to not less than 10% of the electors of such city.

(b) (1) The board of county commissioners of any county may submit the question of imposing a countywide retailers' sales tax to the electors at an election called and held thereon, and any such board shall be required to submit the question upon submission of a petition signed by electors of such county equal in number to not less than 10% of the electors of such county who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than 2/3 of the membership of the governing body of each of one or more cities within such county which contains a popu-

lation of not less than 25% of the entire population of the county, or upon receiving resolutions requesting such an election passed by 2/3 of the membership of the governing body of each of one or more taxing subdivisions within such county which levy not less than 25% of the property taxes levied by all taxing subdivisions within the county.

(2) The board of county commissioners of Anderson, Atchison, Barton, Brown, Butler, Chase, Cowley, Cherokee, Crawford, Ford, Franklin, Jefferson, Linn, Lyon, Marion, Miami, Montgomery, Neosho, Osage, Ottawa, Reno, Riley, Saline, Seward, Sumner, Wabaunsee, Wilson and Wyandotte counties may submit the question of imposing a countywide retailers' sales tax and pledging the revenue received therefrom for the purpose of financing the construction or remodeling of a courthouse, jail, law enforcement center facility or other county administrative facility, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire when sales tax sufficient to pay all of the costs incurred in the financing of such facility has been collected by retailers as determined by the secretary of revenue. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Butler, Chase, Cowley, Lyon, Montgomery, Neosho, Riley, Sumner or Wilson county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189, and amendments thereto.

(3) (A) Except as otherwise provided in this paragraph, the result of the election held on November 8, 1988, on the question submitted by the board of county commissioners of Jackson county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the Banner Creek reservoir project. The tax imposed pursuant to this paragraph shall take effect on the effective date of this act and shall expire not later than five years after such date.

(B) The result of the election held on November 8, 1994, on the question submitted by the board of county commissioners of Ottawa county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the erection, construction and furnishing of a law enforcement center and jail facility.

(C) Except as otherwise provided in this paragraph, the result of the election held on November 2, 2004, on the question submitted by the board of county commissioners of Sedgwick county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be used only to pay the costs of: (i) Acquisition of a site and constructing and equipping thereon a new regional events center, associated parking and infrastructure improvements and related appurtenances thereto, to be located in the downtown area of the city of Wichita, Kansas, (the "downtown arena"); (ii) design for the Kansas coliseum complex and construction of improvements to the pavilions; and (iii) establishing an operating and maintenance reserve for the downtown arena and the Kansas coliseum complex. The tax imposed pursuant to this paragraph shall commence on July 1, 2005, and shall terminate not later than 30 months after the commencement thereof.

(D) Except as otherwise provided in this paragraph, the result of the election held on August 5, 2008, on the question submitted by the board of county commissioners of Lyon county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended for the purposes of *ad valorem* tax reduction and capital outlay. The tax imposed pursuant to this paragraph shall terminate not later than five years after the commencement thereof.

(E) Except as otherwise provided in this paragraph, the result of the election held on August 5, 2008, on the question submitted by the board of county commissioners of Rawlins county for the purpose of increasing its countywide retailers' sales tax by .75% is hereby declared valid, and the revenue received therefrom by the county shall be expended for the purposes of financing the costs of a swimming pool. The tax imposed pursuant to this paragraph shall terminate not later than 15 years after the commencement thereof or upon payment of all costs authorized pursuant to this paragraph in the financing of such project.

(F) The result of the election held on December 1, 2009, on the question submitted by the board of county commissioners of Chautauqua county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received from such tax by the county shall be expended for the purposes of financing the costs of constructing, furnishing and equipping a county jail and law enforcement center and necessary improvements appurtenant to such jail and law enforcement center. Any tax imposed pursuant to authority granted in this paragraph shall terminate upon payment of all costs authorized pursuant to this paragraph incurred in the financing of the project described in this paragraph.

(4) The board of county commissioners of Finney and Ford counties may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing all or any portion of the cost to be paid by Finney or Ford county for construction of highway projects identified as system enhancements under the provisions of paragraph (5) of subsection (b) of K.S.A. 68-2314, and amendments thereto, to the electors at an election called and held thereon. Such election shall be called and held in the manner provided by the general bond law. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Finney or Ford county pursuant to this paragraph to exceed the maximum rate prescribed in K.S.A. 12-189, and amendments thereto. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in Finney county, the state treasurer shall remit such funds to the treasurer of Finney county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in Ford county, the state treasurer shall remit such funds to the treasurer of Ford county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund.

(5) The board of county commissioners of any county may submit the question of imposing a retailers' sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the provision of health care services, as enumerated in the question, to the electors at an election called and held thereon. Whenever any county imposes a tax pursuant to this paragraph, any tax imposed pursuant to paragraph (2) of subsection (a) by any city located in such county shall expire upon the effective date of the imposition of the countywide tax, and thereafter the state treasurer shall remit to each such city that portion of the countywide tax revenue collected by retailers within such city as certified by the director of taxation. The tax imposed pursuant to this paragraph shall be deemed to be in addition to the rate limitations prescribed in K.S.A. 12-189, and amendments thereto. As used in this paragraph, health care services shall include but not be limited to the following: Local health departments, city or county hospitals, city or county nursing homes, preventive health care services including immunizations, prenatal care and the postponement of entry into nursing homes by home care services, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, rural health clinics, integration of health care services, home health services and rural health networks.

(6) The board of county commissioners of Allen county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% and pledging the revenue received therefrom for the purpose of financing the costs of operation and construction of a solid waste disposal area or the modification of an existing landfill to comply with federal regulations to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs incurred in the financing of the project undertaken. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Allen county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189 and amendments thereto.

(7) The board of county commissioners of Clay, Dickinson and Miami county may submit the question of imposing a countywide

retailers' sales tax at the rate of .50% in the case of Clay and Dickinson county and at a rate of up to 1% in the case of Miami county, and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvement to the electors at an election called and held thereon. Except as otherwise provided, the tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected. The result of the election held on November 2, 2004, on the question submitted by the board of county commissioners of Miami county for the purpose of extending for an additional five-year period the countywide retailers' sales tax imposed pursuant to this subsection in Miami county is hereby declared valid. The countywide retailers' sales tax imposed pursuant to this subsection in Clay and Miami county may be extended or reenacted for additional five-year periods upon the board of county commissioners of Clay and Miami county submitting such question to the electors at an election called and held thereon for each additional five-year period as provided by law.

(8) The board of county commissioners of Sherman county may submit the question of imposing a countywide retailers' sales tax at the rate of 1% and pledging the revenue received therefrom for the purpose of financing the costs of street and roadway improvements to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized pursuant to this paragraph in the financing of such project.

(9) The board of county commissioners of Cowley, Crawford, Russell and Woodson county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% in the case of Crawford, Russell and Woodson county and at a rate of up to .25%, in the case of Cowley county and pledging the revenue received therefrom for the purpose of financing economic development initiatives or public infrastructure projects. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(10) The board of county commissioners of Franklin county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing recreational facilities. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such facilities.

(11) The board of county commissioners of Douglas county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purposes of ~~preservation conservation, access and management of open space, and for industrial and business park related economic development~~; *preservation of cultural heritage; and economic development projects and activities.*

(12) The board of county commissioners of Shawnee county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom to the city of Topeka for the purpose of financing the costs of rebuilding the Topeka boulevard bridge and other public infrastructure improvements associated with such project to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such project.

(13) The board of county commissioners of Jackson county may submit the question of imposing a countywide retailers' sales tax at a rate of .4% and pledging the revenue received therefrom as follows: 50% of such revenues for the purpose of financing for economic development initiatives; and 50% of such revenues for the purpose of financing public infrastructure projects to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after seven years from the date such tax is first collected. *The board of county commissioners of Jackson county may submit the question of imposing a countywide retailers' sales tax at a rate of .4% which such tax shall take effect after the expiration of the tax imposed pursuant to this paragraph prior to the effective date of this act, and pledging the revenue received therefrom for the purpose of financing public infrastructure projects to the electors at an election called and held thereon. Such tax shall expire after seven years from the date such tax is first collected.*

(14) The board of county commissioners of Neosho county may submit the question of imposing a countywide retailers' sales tax  
(continued)

at the rate of .5% and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized pursuant to this paragraph in the financing of such project.

(15) The board of county commissioners of Saline county may submit the question of imposing a countywide retailers' sales tax at the rate of up to .5% and pledging the revenue received therefrom for the purpose of financing the costs of construction and operation of an expo center to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(16) The board of county commissioners of Harvey county may submit the question of imposing a countywide retailers' sales tax at the rate of 1.0% and pledging the revenue received therefrom for the purpose of financing the costs of property tax relief, economic development initiatives and public infrastructure improvements to the electors at an election called and held thereon.

(17) The board of county commissioners of Atchison county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing the costs of construction and maintenance of sports and recreational facilities to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such facilities.

(18) The board of county commissioners of Wabaunsee county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% and pledging the revenue received therefrom for the purpose of financing the costs of bridge and roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after 15 years from the date such tax is first collected.

(19) The board of county commissioners of Jefferson county may submit the question of imposing a countywide retailers' sales tax at the rate of 1% and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after six years from the date such tax is first collected. The countywide retailers' sales tax imposed pursuant to this paragraph may be extended or reenacted for additional six-year periods upon the board of county commissioners of Jefferson county submitting such question to the electors at an election called and held thereon for each additional six-year period as provided by law.

(20) The board of county commissioners of Riley county may submit the question of imposing a countywide retailers' sales tax at the rate of up to 1% and pledging the revenue received therefrom for the purpose of financing the costs of bridge and roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(21) The board of county commissioners of Johnson county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing the construction and operation costs of public safety projects, including, but not limited to, a jail, detention center, sheriff's resource center, crime lab or other county administrative or operational facility dedicated to public safety, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after 10 years from the date such tax is first collected. The countywide retailers' sales tax imposed pursuant to this subsection may be extended or reenacted for additional periods not exceeding 10 years upon the board of county commissioners of Johnson county submitting such question to the electors at an election called and held thereon for each additional ten-year period as provided by law.

(22) The board of county commissioners of Wilson county may submit the question of imposing a countywide retailers' sales tax at the rate of up to 1% and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvements to federal highways, the development of a new industrial park and other public infrastructure improvements to the electors at an election called and held thereon. The tax imposed

pursuant to this paragraph shall expire upon payment of all costs authorized pursuant to this paragraph in the financing of such project or projects.

(23) The board of county commissioners of Butler county may submit the question of imposing a countywide retailers' sales tax at the rate of either .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the costs of public safety capital projects or bridge and roadway construction projects, or both, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such projects.

(24) The board of county commissioners of Barton county may submit the question of imposing a countywide retailers' sales tax at the rate of up to .5% and pledging the revenue received therefrom for the purpose of financing the costs of roadway and bridge construction and improvement and infrastructure development and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after 10 years from the date such tax is first collected.

(25) The board of county commissioners of Jefferson county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing the costs of the county's obligation as participating employer to make employer contributions and other required contributions to the Kansas public employees retirement system for eligible employees of the county who are members of the Kansas police and firemen's retirement system, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such purpose.

(26) The board of county commissioners of Pottawatomie county may submit the question of imposing a countywide retailers' sales tax at the rate of up to .5% and pledging the revenue received therefrom for the purpose of financing the costs of construction or remodeling of a courthouse, jail, law enforcement center facility or other county administrative facility, or public infrastructure improvements, or both, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such project or projects.

(27) The board of county commissioners of Kingman county may submit the question of imposing a countywide retailers' sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the costs of constructing and furnishing a law enforcement center and jail facility and the costs of roadway and bridge improvements to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire not later than 20 years from the date such tax is first collected.

(28) *The board of county commissioners of Edwards county may submit the question of imposing a countywide retailers' sales tax at the rate of .375% and pledging the revenue therefrom for the purpose of financing the costs of economic development initiatives to the electors at an election called and held thereon.*

(c) The boards of county commissioners of any two or more contiguous counties, upon adoption of a joint resolution by such boards, may submit the question of imposing a retailers' sales tax within such counties to the electors of such counties at an election called and held thereon and such boards of any two or more contiguous counties shall be required to submit such question upon submission of a petition in each of such counties, signed by a number of electors of each of such counties where submitted equal in number to not less than 10% of the electors of each of such counties who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than  $\frac{2}{3}$  of the membership of the governing body of each of one or more cities within each of such counties which contains a population of not less than 25% of the entire population of each of such counties, or upon receiving resolutions requesting such an election passed by  $\frac{2}{3}$  of the membership of the governing body of each of one or more taxing subdivisions within each of such counties which levy not less than 25% of the property taxes levied by all taxing subdivisions within each of such counties.

(d) Any city retailers' sales tax being levied by a city prior to July 1, 2006, shall continue in effect until repealed in the manner

provided herein for the adoption and approval of such tax or until repealed by the adoption of an ordinance for such repeal. Any countywide retailers' sales tax in the amount of .5% or 1% in effect on July 1, 1990, shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax.

(e) Any city or county proposing to adopt a retailers' sales tax shall give notice of its intention to submit such proposition for approval by the electors in the manner required by K.S.A. 10-120, and amendments thereto. The notices shall state the time of the election and the rate and effective date of the proposed tax. If a majority of the electors voting thereon at such election fail to approve the proposition, such proposition may be resubmitted under the conditions and in the manner provided in this act for submission of the proposition. If a majority of the electors voting thereon at such election shall approve the levying of such tax, the governing body of any such city or county shall provide by ordinance or resolution, as the case may be, for the levy of the tax. Any repeal of such tax or any reduction or increase in the rate thereof, within the limits prescribed by K.S.A. 12-189, and amendments thereto, shall be accomplished in the manner provided herein for the adoption and approval of such tax except that the repeal of any such city retailers' sales tax may be accomplished by the adoption of an ordinance so providing.

(f) The sufficiency of the number of signers of any petition filed under this section shall be determined by the county election officer. Every election held under this act shall be conducted by the county election officer.

(g) The governing body of the city or county proposing to levy any retailers' sales tax shall specify the purpose or purposes for which the revenue would be used, and a statement generally describing such purpose or purposes shall be included as a part of the ballot proposition.

Sec. 2. K.S.A. 2010 Supp. 12-189 is hereby amended to read as follows: 12-189. The rate of any city retailers' sales tax shall be fixed in increments of .05% and in an amount not to exceed 2% for general purposes and not to exceed 1% for special purposes which shall be determined by the governing body of the city. For any retailers' sales tax imposed by a city for special purposes, such city shall specify the purposes for which such tax is imposed. All such special purpose retailers' sales taxes imposed by a city shall expire after 10 years from the date such tax is first collected. The rate of any countywide retailers' sales tax shall be fixed in an amount not to exceed 1% and shall be fixed in increments of .25%, and which amount shall be determined by the board of county commissioners, except that:

(a) The board of county commissioners of Wabaunsee county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%; the board of county commissioners of Osage or Reno county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25% or 1.5%; the board of county commissioners of Cherokee, Crawford, Ford, Saline, Seward or Wyandotte county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, the board of county commissioners of Atchison county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5% or 1.75%; the board of county commissioners of Anderson, Barton, Jefferson or Ottawa county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%; the board of county commissioners of Marion county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.5%; the board of county commissioners of Franklin, Linn and Miami counties, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by the respective board of county commissioners on July 1, 2007, plus up to 1.0%; and the board of county commissioners of Brown county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 2%;

(b) the board of county commissioners of Jackson county, for the purposes of paragraph (3) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%;

(c) the boards of county commissioners of Finney and Ford counties, for the purposes of paragraph (4) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at .25%;

(d) the board of county commissioners of any county for the purposes of paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by a board of county commissioners on the effective date of this act plus .25%, .5%, .75% or 1%, as the case requires;

(e) the board of county commissioners of Dickinson county, for the purposes of paragraph (7) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, and the board of county commissioners of Miami county, for the purposes of paragraph (7) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%, 1.5%, 1.75% or 2%;

(f) the board of county commissioners of Sherman county, for the purposes of paragraph (8) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.25%;

(g) the board of county commissioners of Crawford or Russell county for the purposes of paragraph (9) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%;

(h) the board of county commissioners of Franklin county, for the purposes of paragraph (10) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.75%;

(i) the board of county commissioners of Douglas county, for the purposes of paragraph (11) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%;

(j) the board of county commissioners of Jackson county, for the purposes of subsection (b)(13) of K.S.A. 12-187 and amendments thereto, may fix such rate at 1.4%;

(k) the board of county commissioners of Sedgwick county, for the purposes of paragraph (3)(C) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%;

(l) the board of county commissioners of Neosho county, for the purposes of paragraph (14) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.0% or 1.5%;

(m) the board of county commissioners of Saline county, for the purposes of ~~subsection paragraph~~ (15) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 1.5%;

(n) the board of county commissioners of Harvey county, for the purposes of paragraph (16) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.0%;

(o) the board of county commissioners of Atchison county, for the purpose of paragraph (17) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by the board of county commissioners of Atchison county on the effective date of this act plus .25%;

(p) the board of county commissioners of Wabaunsee county, for the purpose of paragraph (18) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by the board of county commissioners of Wabaunsee county on July 1, 2007, plus .5%;

(q) the board of county commissioners of Jefferson county, for the purpose of paragraphs (19) and (25) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.25%;

(r) the board of county commissioners of Riley county, for the purpose of paragraph (20) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by the board of county commissioners of Riley county on July 1, 2007, plus up to 1%;

(s) the board of county commissioners of Johnson county for the purposes of paragraph (21) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by the board of county commissioners of Johnson county on July 1, 2007, plus .25%;

(t) the board of county commissioners of Wilson county for the purposes of paragraph (22) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 2%;

(u) the board of county commissioners of Butler county for the purposes of paragraph (23) of subsection (b) of K.S.A. 12-187, and

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amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate otherwise allowed pursuant to this section, plus .25%, .5%, .75% or 1%;

(v) the board of county commissioners of Barton county, for the purposes of paragraph (24) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 1.5%;

(w) the board of county commissioners of Lyon county, for the purposes of paragraph (3)(D) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%;

(x) the board of county commissioners of Rawlins county, for the purposes of paragraph (3)(E) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.75%;

(y) the board of county commissioners of Chautauqua county, for the purposes of paragraph (3)(F) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2.0%;

(z) the board of county commissioners of Pottawatomie county, for the purposes of ~~subsection~~ paragraph (26) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at up to 1.5%; ~~and~~

(aa) the board of county commissioners of Kingman county, for the purposes of paragraph (27) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate otherwise allowed pursuant to this section, plus .25%, .5%, .75%, or 1%; *and*

(bb) *the board of county commissioners of Edwards county, for the purposes of paragraph (28) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.375%.*

Any county or city levying a retailers' sales tax is hereby prohibited from administering or collecting such tax locally, but shall utilize the services of the state department of revenue to administer, enforce and collect such tax. Except as otherwise specifically provided in K.S.A. 12-189a, and amendments thereto, such tax shall be identical in its application, and exemptions therefrom, to the Kansas retailers' sales tax act and all laws and administrative rules and regulations of the state department of revenue relating to the Kansas retailers' sales tax shall apply to such local sales tax insofar as such laws and rules and regulations may be made applicable. The state director of taxation is hereby authorized to administer, enforce and collect such local sales taxes and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement thereof.

Upon receipt of a certified copy of an ordinance or resolution authorizing the levy of a local retailers' sales tax, the director of taxation shall cause such taxes to be collected within or without the boundaries of such taxing subdivision at the same time and in the same manner provided for the collection of the state retailers' sales tax. Such copy shall be submitted to the director of taxation within 30 days after adoption of any such ordinance or resolution. All moneys collected by the director of taxation under the provisions of this section shall be credited to a county and city retailers' sales tax fund which fund is hereby established in the state treasury, except that all moneys collected by the director of taxation pursuant to the authority granted in paragraph (22) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be credited to the Wilson county capital improvements fund. Any refund due on any county or city retailers' sales tax collected pursuant to this act shall be paid out of the sales tax refund fund and reimbursed by the director of taxation from collections of local retailers' sales tax revenue. Except for local retailers' sales tax revenue required to be deposited in the redevelopment bond fund established under K.S.A. 74-8927, and amendments thereto, all local retailers' sales tax revenue collected within any county or city pursuant to this act shall be apportioned and remitted at least quarterly by the state treasurer, on instruction from the director of taxation, to the treasurer of such county or city.

Revenue that is received from the imposition of a local retailers' sales tax which exceeds the amount of revenue required to pay the costs of a special project for which such revenue was pledged shall be credited to the city or county general fund, as the case requires.

The director of taxation shall provide, upon request by a city or county clerk or treasurer or finance officer of any city or county levying a local retailers' sales tax, monthly reports identifying each retailer doing business in such city or county or making taxable sales sourced to such city or county, setting forth the tax liability and the amount of such tax remitted by each retailer during the

preceding month and identifying each business location maintained by the retailer and such retailer's sales or use tax registration or account number. Such report shall be made available to the clerk or treasurer or finance officer of such city or county within a reasonable time after it has been requested from the director of taxation. The director of taxation shall be allowed to assess a reasonable fee for the issuance of such report. Information received by any city or county pursuant to this section shall be confidential, and it shall be unlawful for any officer or employee of such city or county to divulge any such information in any manner. Any violation of this paragraph by a city or county officer or employee is a class A misdemeanor, and such officer or employee shall be dismissed from office. Reports of violations of this paragraph shall be investigated by the attorney general. The district attorney or county attorney and the attorney general shall have authority to prosecute violations of this paragraph.

Sec. 3. K.S.A. 2010 Supp. 12-192 is hereby amended to read as follows: 12-192. (a) Except as otherwise provided by subsection (b), (d) or (h), all revenue received by the director of taxation from a countywide retailers' sales tax shall be apportioned among the county and each city located in such county in the following manner: (1) One-half of all revenue received by the director of taxation shall be apportioned among the county and each city located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit bear to the total of all such levies made in the preceding year, and (2)  $\frac{1}{2}$  of all revenue received by the director of taxation from such countywide retailers' sales tax shall be apportioned among the county and each city located in such county, first to the county that portion of the revenue equal to the proportion that the population of the county residing in the unincorporated area of the county bears to the total population of the county, and second to the cities in the proportion that the population of each city bears to the total population of the county, except that no persons residing within the Fort Riley military reservation shall be included in the determination of the population of any city located within Riley county. All revenue apportioned to a county shall be paid to its county treasurer and shall be credited to the general fund of the county.

(b) (1) In lieu of the apportionment formula provided in subsection (a), all revenue received by the director of taxation from a countywide retailers' sales tax imposed within Johnson county at the rate of .75%, 1% or 1.25% after July 1, 2007, shall be apportioned among the county and each city located in such county in the following manner: (A) The revenue received from the first .5% rate of tax shall be apportioned in the manner prescribed by subsection (a) and (B) the revenue received from the rate of tax exceeding .5% shall be apportioned as follows: (i) One-fourth shall be apportioned among the county and each city located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit bear to the total of all such levies made in the preceding year and (ii) one-fourth shall be apportioned among the county and each city located in such county, first to the county that portion of the revenue equal to the proportion that the population of the county residing in the unincorporated area of the county bears to the total population of the county, and second to the cities in the proportion that the population of each city bears to the total population of the county and (iii) one-half shall be retained by the county for its sole use and benefit.

(2) In lieu of the apportionment formula provided in subsection (a), all money received by the director of taxation from a countywide sales tax imposed within Montgomery county pursuant to the election held on November 8, 1994, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged. All revenue apportioned and paid from the imposition of such tax to the treasurer of any city prior to the effective date of this act shall be remitted to the county treasurer and expended only for the purpose for which the revenue received from the tax was pledged.

(3) In lieu of the apportionment formula provided in subsection (a), on and after the effective date of this act, all moneys received by the director of taxation from a countywide retailers' sales tax imposed within Phillips county pursuant to the election held on September 20, 2005, shall be remitted to and shall be retained



by the county and expended only for the purpose for which the revenue received from the tax was pledged.

(c) (1) Except as otherwise provided by paragraph (2) of this subsection, for purposes of subsections (a) and (b), the term "total tangible property tax levies" means the aggregate dollar amount of tax revenue derived from ad valorem tax levies applicable to all tangible property located within each such city or county. The ad valorem property tax levy of any county or city district entity or subdivision shall be included within this term if the levy of any such district entity or subdivision is applicable to all tangible property located within each such city or county.

(2) For the purposes of subsections (a) and (b), any ad valorem property tax levied on property located in a city in Johnson county for the purpose of providing fire protection service in such city shall be included within the term "total tangible property tax levies" for such city regardless of its applicability to all tangible property located within each such city. If the tax is levied by a district which extends across city boundaries, for purposes of this computation, the amount of such levy shall be apportioned among each city in which such district extends in the proportion that such tax levied within each city bears to the total tax levied by the district.

(d) (1) All revenue received from a countywide retailers' sales tax imposed pursuant to paragraphs (2), (3)(C), (3)(F), (6), (7), (8), (9), (12), (14), (15), (16), (17), (18), (19), (20), (22), (23), (25) and (27) and (28) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged.

(2) Except as otherwise provided in paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, all revenues received from a countywide retailers' sales tax imposed pursuant to paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged.

(3) All revenue received from a countywide retailers' sales tax imposed pursuant to paragraph (26) of subsection (b) of K.S.A. 12-187, and amendments thereto, shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged unless the question of imposing a countywide retailers' sales tax authorized by paragraph (26) of subsection (b) of K.S.A. 12-187, and amendments thereto, includes the apportionment of revenue prescribed in subsection (a).

(e) All revenue apportioned to the several cities of the county shall be paid to the respective treasurers thereof and deposited in the general fund of the city. Whenever the territory of any city is located in two or more counties and any one or more of such counties do not levy a countywide retailers' sales tax, or whenever such counties do not levy countywide retailers' sales taxes at a uniform rate, the revenue received by such city from the proceeds of the countywide retailers' sales tax, as an alternative to depositing the same in the general fund, may be used for the purpose of reducing the tax levies of such city upon the taxable tangible property located within the county levying such countywide retailers' sales tax.

(f) Prior to March 1 of each year, the secretary of revenue shall advise each county treasurer of the revenue collected in such county from the state retailers' sales tax for the preceding calendar year.

(g) Prior to December 31 of each year, the clerk of every county imposing a countywide retailers' sales tax shall provide such information deemed necessary by the secretary of revenue to apportion and remit revenue to the counties and cities pursuant to this section.

(h) The provisions of subsections (a) and (b) for the apportionment of countywide retailers' sales tax shall not apply to any revenues received pursuant to a county or countywide retailers' sales tax levied or collected under K.S.A. 74-8929, and amendments thereto. All such revenue collected under K.S.A. 74-8929, and amendments thereto, shall be deposited into the redevelopment bond fund established by K.S.A. 74-8927, and amendments thereto, for the period of time set forth in K.S.A. 74-8927, and amendments thereto.

Sec. 4. On and after July 1, 2011, K.S.A. 2010 Supp. 79-1701a is hereby amended to read as follows: 79-1701a. Any taxpayer, the county appraiser or the county clerk shall, on their own motion, request the board of county commissioners to order the correction of the clerical errors in the appraisal, assessment or tax rolls as described in K.S.A. 79-1701, and amendments thereto. The board of county commissioners of the several counties are hereby authorized to order the correction of clerical errors, specified in K.S.A. 79-1701, and amendments thereto, in the appraisal, assessment or tax rolls for the current year and the immediately preceding two years during the period on and after November 1 of each year. If a county treasurer has collected and distributed the property taxes of a taxpayer and it shall thereafter be determined that the tax computed and paid was based on an erroneous assessment due to a clerical error which resulted in an overpayment of taxes by the taxpayer, and such error is corrected under the provisions hereof then the county commissioners may direct a refund in the amount of the overpayment plus interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, *plus two percentage points, per annum*, from the date of payment from tax moneys collected during the current year and approve a claim therefor. If all or any portion of the taxes on such property remain unpaid, the board of county commissioners shall cancel that portion of such unpaid taxes which were assessed on the basis of the error which is being corrected. In lieu of taking such a refund the taxpayer may, at the taxpayer's option, be allowed a credit on the current year's taxes in the amount of the overpayment plus interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, from the date of payment for the previous year. In the event the error results in an understatement of value or taxes as a result of a mathematical miscalculation on the part of the county, the board of county commissioners of the several counties are hereby authorized to correct such error and order an additional assessment or tax bill, or both, to be issued, except that, in no such case shall the taxpayer be assessed interest or penalties on any tax which may be assessed. If such error applies to property which has been sold or otherwise transferred subsequent to the time the error was made, no such additional assessment or tax bill shall be issued.

Sec. 5. On and after July 1, 2011, K.S.A. 79-2968 is hereby amended to read as follows: 79-2968. Except as otherwise specifically provided by law, whenever interest is charged under any law of this state upon any delinquent or unpaid taxes levied or imposed by the state of Kansas or any taxing subdivision thereof, or whenever interest is allowed under any law of this state upon any overpayment of taxes levied or imposed by the state of Kansas or any taxing subdivision thereof, the rate thereof shall be: ~~(a) One and one-half percent per month for any period prior to January 1, 1995, 1% per month for the period commencing on January 1, 1995, and ending on December 31, 1997, and 1/2 of the annual rate prescribed in subsection (b) thereafter, if computed monthly; and (b) eighteen percent per annum for any period prior to January 1, 1995, 12% per annum for the period commencing on January 1, 1995, and ending on December 31, 1997, and for any period thereafter, the underpayment rate per annum prescribed and determined under paragraph (2) of subsection (a) of section 6621, without regard to subsection (c) thereof, of the federal internal revenue code, as in effect on September 1, 1996, and which rate is in effect thereunder on July 1 of the year immediately preceding the calendar year for which the rate is being annually fixed hereunder, plus one percentage point, if computed annually. Beginning on January 1, 2012, the rate for property tax delinquencies or underpayments of \$10,000 or more shall be as provided for under this section or 10% per annum, whichever is greater.~~

In the event the interest rate prescribed under this section cannot be determined by reference to section 6621 of the federal internal revenue code, as in effect on September 1, 1996, the rate at which interest shall be collected on underpayments shall be the rate prescribed by K.S.A. 16-204, and amendments thereto, for interest on judgments for the applicable period.

Sec. 6. On and after July 1, 2011, K.S.A. 2010 Supp. 79-3609 is hereby amended to read as follows: 79-3609. (a) Every person engaged in the business of selling tangible personal property at retail or furnishing services taxable in this state, shall keep records and books of all such sales, together with invoices, bills of lading, sales

(continued)

records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal. Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption, except as follows: (1) A retailer is relieved of liability for tax otherwise applicable if the retailer obtains a fully completed exemption certificate or captures the relevant data elements required by the director within 90 days subsequent to the date of the sale; or (2) if the retailer has not obtained an exemption certificate or all relevant data elements, the retailer, within 120 days subsequent to a request for substantiation by the director, either may obtain a fully completed exemption certificate from the purchaser, taken in good faith which meets the requirements specified in this subsection, or obtain other information establishing that the transaction was not subject to tax. Otherwise, the sales shall be deemed to be taxable sales under this act. The seller shall obtain an exemption certificate that claims an exemption that was authorized pursuant to Kansas law on the date of the transaction in the jurisdiction where the transaction is sourced pursuant to law, could be applicable to the item being purchased and is reasonable for the purchaser's type of business. If the seller obtains an exemption certificate or other information as described in this subsection, the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction, and it must be established that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

(b) The amount of tax imposed by this act is to be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall ~~be begun~~ *begin* after the expiration of such period. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may ~~be begun~~ *begin* at any time; within two years from the discovery of such fraud. No assessment shall be made for any period preceding the date of registration of the retailer by more than three years except in cases of fraud. For any refund or credit claim filed after ~~June 15, 2009~~ *July 1, 2011*, no refund or credit shall be allowed by the director after ~~one year~~ *three years* from the due date of the return for the reporting period as provided by K.S.A. 79-3607, and amendments thereto, unless before the expiration of such period a claim therefor is filed by the taxpayer, and, except as otherwise provided in K.S.A. 2010 Supp. 79-3694, and amendments thereto, no suit or action to recover on any claim for refund shall be commenced, until after the expiration of six months from the date of filing such claim satisfying the requirements specified by K.S.A. 2010 Supp. 79-3693, and amendments thereto, therefor with the director. A refund claim shall not be deemed filed unless such claim is complete as required by K.S.A. 2010 Supp. 79-3693, and amendments thereto. For all mailed returns, including refund claims, each return or refund claim shall be presumed to have been filed with the department on the postmark date of such return or refund claim or if such date is illegible, the date three days prior to the date such return or refund claim is received.

(c) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the period of limitations. The period so agreed upon may be extended by

subsequent agreements in writing made before the expiration of the period previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

(d) Interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, shall be allowed on any overpayment of tax computed from the filing date of the return claiming the refund, except that no interest shall be allowed on any such refund if the same is paid within 120 days after the filing date of the return claiming the refund or the date of payment, whichever is later, provided that such return or refund claim satisfies the requirements specified by K.S.A. 2010 Supp. 79-3693, and amendments thereto, at the time the return or refund claim is received.

(e) Notwithstanding any other provision of this section or the provisions of the Kansas compensating tax act:

(1) (A) Any claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act which is without dispute shall be allowed, but, with respect to any claim exceeding \$10,000, the refund associated therewith shall not be paid until after 510 days from the date such claim was filed and shall not include interest from such date. As used in this subparagraph, a claim for refund without dispute shall not include any claim the basis for which is a judicial or quasi-judicial interpretation of such subsection occurring after the effective date of this act.

(B) Any refund of tax resulting from a final determination or adjudication with regard to any claim submitted or to be submitted for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act not described by subparagraph (A) shall, with respect to any refund exceeding \$50,000, be paid in equal annual installments over 10 years commencing with the year of such final determination or adjudication. Interest shall not accrue during the time period of such payment.

(2) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of subsection (n) of K.S.A. 79-3606, *and amendments thereto*, pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on August 13, 1999, in the case entitled *In re appeal of Water District No. 1 of Johnson County* shall be allowed for tax paid prior to the effective date of this act. The provisions of this subsection shall not be applicable to water district no. 1 of Johnson county.

Sec. 7. K.S.A. 2010 Supp. 12-187, 12-189 and 12-192 are hereby repealed.

Sec. 8. On and after July 1, 2011, K.S.A. 79-2968 and K.S.A. 2010 Supp. 79-1701a and 79-3609 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 26, 2011.)

#### SENATE SUBSTITUTE for HOUSE BILL No. 2049

AN ACT concerning controlled substances; amending K.S.A. 65-4107, 65-4109 and 65-4111 and K.S.A. 2010 Supp. 21-36a05, 21-36a06, 65-4105 and 65-4113 and repealing the existing sections; also repealing K.S.A. 65-4107, as amended by section 2 of 2011 House Bill No. 2023, 65-4109, as amended by section 3 of 2011 House Bill No. 2023, 65-4111, as amended by section 4 of 2011 House Bill No. 2023 and K.S.A. 2010 Supp. 65-4105, as amended by section 1 of 2011 House Bill No. 2023 and 65-4113, as amended by section 5 of 2011 House Bill No. 2023.

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

Section 1. K.S.A. 2010 Supp. 21-36a05 is hereby amended to read as follows: 21-36a05. (a) It shall be unlawful for any person to cultivate, distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

(1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;

(2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(3) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(5) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; ~~or~~

(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto; ~~or~~

(7) *any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.*

(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 3 felony, except that:

(A) Violation of subsection (a) is a drug severity level 2 felony if the trier of fact makes a finding that the offender is 18 or more years of age and the substance was distributed to or possessed with intent to distribute to a minor or the violation occurs on or within 1,000 feet of any school property;

(B) violation of subsection (a)(1) is a drug severity level 2 felony if that person has one prior conviction under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction; and

(C) violation of subsection (a)(1) is a drug severity level 1 felony if that person has two prior convictions under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction.

(2) Violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if the substance was distributed to or possessed with the intent to distribute to a child under 18 years of age.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

Sec. 2. K.S.A. 2010 Supp. 21-36a06 is hereby amended to read as follows: 21-36a06. (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a controlled substance analog thereof.

(b) It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto;

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto; ~~or~~

(6) any substance designated in K.S.A. 65-4113, and amendments thereto; ~~or~~

(7) *any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.*

(c) (1) Violation of subsection (a) is a drug severity level 4 felony;

(2) violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug severity level 4 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162 prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxyamphetamine (MDMA), marijuana ~~or tetrahydrocannabinol~~ as designated in subsection (d) of K.S.A. 65-4105, and amendments thereto, *or any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.*

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

Sec. 3. K.S.A. 2010 Supp. 65-4105 is hereby amended to read as follows: 65-4105. (a) The controlled substances listed in this section are included in schedule I and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide) .....	9815
(2) Acetylmethadol .....	9601
(3) Allylprodine .....	9602
(4) Alphacetylmethadol .....	9603
(except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM)	
(5) Alphameprodine .....	9604
(6) Alphamethadol .....	9605
(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenylethyl)-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine) .....	9814
(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide) ...	9832
(9) Benzethidine .....	9606
(10) Betacetylmethadol .....	9607
(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide) .....	9830
(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide) .....	9831
(13) Betameprodine .....	9608
(14) Betamethadol .....	9609
(15) Betaprodine .....	9611
(16) Clonitazene .....	9612
(17) Dextromoramide .....	9613
(18) Diampromide .....	9615
(19) Diethylthiambutene .....	9616
(20) Difenoxin .....	9168
(21) Dimenoxadol .....	9617
(22) Dimepheptanol .....	9618
(23) Dimethylthiambutene .....	9619
(24) Dioxaphetyl butyrate .....	9621
(25) Dipipanone .....	9622
(26) Ethylmethylthiambutene .....	9623
(27) Etonitazene .....	9624
(28) Etoxeridine .....	9625
(29) Furethidine .....	9626
(30) Hydroxypethidine .....	9627
(31) Ketobemidone .....	9628
(32) Levomoramide .....	9629
(33) Levophenacymorphan .....	9631
(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide) .....	9813
(35) 3-Methylthiofentanyl (N-[1-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide) .....	9833
(36) Morpheridine .....	9632
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine) ....	9661
(38) Noracymethadol .....	9633
(39) Norlevorphanol .....	9634

(continued)

(40) Normethadone .....	9635
(41) Norpipanone .....	9636
(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide .....	9812
(43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine) .....	9663
(44) Phenadoxone .....	9637
(45) Phenampromide .....	9638
(46) Phenomorphan .....	9647
(47) Phenoperidine .....	9641
(48) Piritramide .....	9642
(49) Proheptazine .....	9643
(50) Properidine .....	9644
(51) Propiram .....	9649
(52) Racemoramide .....	9645
(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide .....	9835
(54) Tilidine .....	9750
(55) Trimeperidine .....	9646

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine .....	9319
(2) Acetyldihydrocodeine .....	9051
(3) Benzylmorphine .....	9052
(4) Codeine methylbromide .....	9070
(5) Codeine-N-Oxide .....	9053
(6) Cyrenorphine .....	9054
(7) Desomorphine .....	9055
(8) Dihydromorphine .....	9145
(9) Drotebanol .....	9335
(10) Etorphine (except hydrochloride salt) .....	9056
(11) Heroin .....	9200
(12) Hydromorphanol .....	9301
(13) Methyldesorphine .....	9302
(14) Methyldihydromorphine .....	9304
(15) Morphine methylbromide .....	9305
(16) Morphine methylsulfonate .....	9306
(17) Morphine-N-Oxide .....	9307
(18) Myrophine .....	9308
(19) Nicocodeine .....	9309
(20) Nicomorphine .....	9312
(21) Normorphine .....	9313
(22) Pholcodine .....	9314
(23) Thebacon .....	9315

(d) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) 4-bromo-2,5-dimethoxy-amphetamine .....	7391
Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.	
(2) 2,5-dimethoxyamphetamine .....	7396
Some trade or other names: 2,5-dimethoxy-alpha-methyl-phenethylamine; 2,5-DMA.	
(3) 4-methoxyamphetamine .....	7411
Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA.	
(4) 5-methoxy-3,4-methylenedioxy-amphetamine .....	7401
(5) 4-methyl-2,5-dimethoxy-amphetamine .....	7395
Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP".	
(6) 3,4-methylenedioxy amphetamine .....	7400
(7) 3,4-methylenedioxymethamphetamine (MDMA) ..	7405
(8) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, and MDEA) .....	7404

(9) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hydroxy MDA) .....	7402
(10) 3,4,5-trimethoxy amphetamine .....	7390
(11) Bufotenine .....	7433
Some trade or other names: 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethyl-aminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine.	
(12) Diethyltryptamine .....	7434
Some trade or other names: N,N-Diethyltryptamine; DET.	
(13) Dimethyltryptamine .....	7435
Some trade or other names: DMT.	
(14) Ibogaine .....	7260
Some trade or other names: 7-Ethyl-6,6 Beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b]indole; Tabernanthe iboga.	
(15) Lysergic acid diethylamide .....	7315
(16) Marihuana .....	7360
(17) Mescaline .....	7381
(18) Parahexyl .....	7374
Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.	
(19) Peyote .....	7415
Meaning all parts of the plant presently classified botanically as <i>Lophophora williamsii</i> Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts.	
(20) N-ethyl-3-piperidyl benzilate .....	7482
(21) N-methyl-3-piperidyl benzilate .....	7484
(22) Psilocybin .....	7437
(23) Psilocyn .....	7438
(24) Tetrahydrocannabinols .....	7370
Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of <i>Cannabis</i> , sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)	
(25) (24) Ethylamine analog of phencyclidine .....	7455
Some trade or other names: N-ethyl-1-phenyl-cyclo-hexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE.	
(26) (25) Pyrrolidine analog of phencyclidine .....	7458
Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; PHP.	
(27) (26) Thiophene analog of phencyclidine .....	7470
Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienylanalog of phencyclidine; TCP; TCP.	
(28) (27) 1-[1-(2-thienyl)-cyclohexyl] pyrrolidine .....	7473
Some other names: TCPy.	
(29) (28) 2,5-dimethoxy-4-ethylamphetamine .....	7399
Some trade or other names: DOET.	
(30) (29) <i>Salvia divinorum</i> or <i>salvinorum</i> A; all parts of the plant presently classified botanically as <i>salvia divinorum</i> , whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts.	

(31) (30) Datura stramonium, commonly known as gypsum weed or jimson weed; all parts of the plant presently classified botanically as datura stramonium, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts. .... 7370

(32) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzocchromen-1-ol ..... 7370  
Some trade or other names: HU-210.

(33) 1-Pentyl-3-(1-naphthoyl)indole  
Some trade or other names: JW11-018.

(34) 1-Butyl-3-(1-naphthoyl)indole  
Some trade or other names: JW11-073.

(35) (31) N-benzylpiperazine ..... 7493  
Some trade or other names: BZP.

(36) (32) 1-(3-[trifluoromethylphenyl])piperazine  
Some trade or other names: TFMPP.

(33) 4-Bromo-2,5-dimethoxyphenethylamine ..... 7392

(34) 2,5-dimethoxy-4-(n)-propylthiopentethylamine (2C-7), its optical isomers, salts and salts of optical isomers ... 7348

(35) Alpha-methyltryptamine (other name: AMT) ..... 7432

(36) 5-methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts and salts of isomers 7439

(e) Any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone ..... 2572

(2) Methaqualone ..... 2565

(3) Gamma hydroxybutyric acid

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Fenethylamine ..... 1503

(2) N-ethylamphetamine ..... 1475

(3) (+)cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine) ..... 1590

(4) N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzenethanamine; N,N-alpha-trimethylphenethylamine) ..... 1480

(5) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-amino propiophenone, 2-amino propiophenone and norphedrone) ..... 1235

(6) Substituted cathinones

Any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

- (A) By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
- (B) by substitution at the 3-position with an acyclic alkyl substituent;
- (C) by substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or
- (D) by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(g) Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers ..... 9818

(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl), its optical isomers, salts and salts of isomers ..... 9834

(3) Methcathinone (some other names: 2-methylamino-1-phenylpropan-1-one: Ephedrone; Monomethylpropion: UR1431, its salts, optical isomers and salts of optical isomers) ..... 1237

(4) (3) Aminorex (some other names: Aminoxaphen 2-amino-5-phenyl-2-oxazoline or 4,5-dihydro-5-phenyl-2-oxazolamine, its salts, optical isomers and salts of optical isomers) ..... 1585

(5) (4) Alpha-ethyltryptamine, its optical isomers, salts and salts of isomers ..... 7249  
Some other names: etryptamine, alpha-methyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole.

(h) Any of the following cannabinoids, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Tetrahydrocannabinols ..... 7370  
Meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- (2) Naphthoylindoles  
Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.
- (3) Naphthylmethylindoles  
Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.
- (4) Naphthoalpyrroles  
Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
- (5) Naphthylmethylindenes  
Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.
- (6) Phenylacetylindoles  
Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.
- (7) Cyclohexylphenols

(continued)

Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent.

(8) Benzoylindoles

Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

(9) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone. Some trade or other names: WIN 55,212-2.

(10) 9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol. Some trade or other names: HU-210, HU-211.

Sec. 4. K.S.A. 65-4107 is hereby amended to read as follows: 65-4107. (a) The controlled substances listed in this section are included in schedule II and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone and their respective salts, but including the following:

(A) Raw opium ..... 9600
(B) Opium extracts ..... 9610
(C) Opium fluid ..... 9620
(D) Powdered opium ..... 9639
(E) Granulated opium ..... 9640
(F) Tincture of opium ..... 9630
(G) Codeine ..... 9050
(H) Ethylmorphine ..... 9190
(I) Etorphine hydrochloride ..... 9059
(J) Hydrocodone ..... 9193
(K) Hydromorphone ..... 9150
(L) Metopon ..... 9260
(M) Morphine ..... 9300
(N) Oxycodone ..... 9143
(O) Oxymorphone ..... 9652
(P) Thebaine ..... 9333
(Q) Dihydroetorphine ..... 9334
(R) Oripavine ..... 9330

(2) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine (9041) or ecgonine (9180).

(5) Cocaine, its salts, isomers and salts of isomers (9041).

(6) Ecgonine, its salts, isomers and salts of isomers (9180).

(7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy) (9670).

(c) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation dextrorphan and levopropoxyphene excepted:

(1) Alfentanil ..... 9737
(2) Alphaprodine ..... 9010
(3) Anileridine ..... 9020

(4) Bezitramide ..... 9800
(5) Bulk dextropropoxyphene (nondosage forms) ..... 9273
(6) Carfentanil ..... 9743
(7) Dihydrocodeine ..... 9120
(8) Diphenoxylate ..... 9170
(9) Fentanyl ..... 9801
(10) Isomethadone ..... 9226
(11) Levomethorphan ..... 9210
(12) Levorphanol ..... 9220
(13) Metazocine ..... 9240
(14) Methadone ..... 9250
(15) Methadone-intermediate, 4-cyano-2-dimethyl amino-4,4-diphenyl butane ..... 9254
(16) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid ..... 9802
(17) Pethidine (meperidine) ..... 9230
(18) Pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine ..... 9232
(19) Pethidine-intermediate-B, ethyl-4-phenyl-piperidine-4-carboxylate ..... 9233
(20) Pethidine-intermediate-C, 1-methyl-4-phenyl-piperidine-4-carboxylic acid ..... 9234
(21) Phenazocine ..... 9715
(22) Piminodine ..... 9730
(23) Racemethorphan ..... 9732
(24) Racemorphan ..... 9733
(25) Sufentanil ..... 9740
(26) Levo-alpha-acetyl methadol ..... 9648
Some other names: levo-alpha-acetyl methadol, levomethadyl acetate or LAAM.
(27) Remifentanil ..... 9739
(28) Tapentadol ..... 9780

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers and salts of its optical isomers ..... 1100
(2) Phenmetrazine and its salts ..... 1631
(3) Methamphetamine, including its salts, isomers and salts of isomers ..... 1105
(4) Methylphenidate ..... 1724
(5) Lisdexamfetamine, its salts, isomers, and salts of its isomers ..... 1205

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital ..... 2125
(2) Glutethimide ..... 2550
(3) Secobarbital ..... 2315
(4) Pentobarbital ..... 2270
(5) Phencyclidine ..... 7471

(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:
(A) Phenylacetone ..... 8501
Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.
(2) Immediate precursors to phencyclidine (PCP):
(A) 1-phenylcyclohexylamine ..... 7460
(B) 1-piperidinocyclohexanecarbonitrile (PCC) ..... 8603

(g) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substance, its salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

Nabilone ..... 7379  
 [Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one]

Sec. 5. K.S.A. 65-4109 is hereby amended to read as follows: 65-4109. (a) The controlled substances listed in this section are included in schedule III and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Any compound, mixture or preparation containing:
  - (A) Amobarbital ..... 2126
  - (B) Secobarbital ..... 2316
  - (C) Pentobarbital ..... 2271
 or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
- (2) Any suppository dosage form containing:
  - (A) Amobarbital ..... 2126
  - (B) Secobarbital ..... 2316
  - (C) Pentobarbital ..... 2271
 or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.
- (3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules ..... 2100
- (4) Chlorhexadol ..... 2510
- (5) Lysergic acid ..... 7300
- (6) Lysergic acid amide ..... 7310
- (7) Methyprylon ..... 2575
- (8) Sulfondiethylmethane ..... 2600
- (9) Sulfonethylmethane ..... 2605
- (10) Sulfonmethane ..... 2610
- (11) Tiletamine and zolazepam or any salt thereof ..... 7295  
 Some trade or other names for a tiletamine-zolazepam combination product: Telazol  
 Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone  
 Some trade or other names for zolazepam: 4-(2-fluoro-phenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon
- (12) Ketamine, its salts, isomers, and salts of isomers ..... 7285  
 Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone
- (13) Gamma hydroxybutyric acid, any salt, hydroxybutyric compound, derivative or preparation of gamma hydroxybutyric acid contained in a drug product for which an application has been approved under section 505 of the federal food, drug and cosmetic act
- (14) *Embutramide* ..... 2020
  - (c) Nalorphine ..... 9400
  - (d) Any material, compound, mixture or preparation containing any of the following narcotic drugs or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
    - (1) Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium ..... 9803
    - (2) not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9804
    - (3) not more than 300 milligrams of dihydrocodeinone (hydrocodone) or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with a fourfold or greater quantity of an isoquinoline alkaloid of opium ..... 9805

- (4) not more than 300 milligrams of dihydrocodeinone (hydrocodone) or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9806
- (5) not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9807
- (6) not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9808
- (7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9809
- (8) not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ..... 9810
- (9) *any material, compound, mixture or preparation containing any of the following narcotic drugs or their salts, as set forth below:*
  - (A) *Buprenorphine* ..... 9064
- (e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
  - (1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substance listed in schedule II, which compounds, mixtures or preparations were listed on August 25, 1971, as excepted compounds under section 308.32 of title 21 of the code of federal regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same, except that it contains a lesser quantity of controlled substances ..... 1405
  - (2) Benzphetamine ..... 1228
  - (3) Chlorphentermine ..... 1645
  - (4) Chlorfermine ..... 1647
  - (5) Phendimetrazine ..... 1615
  - (f) Anabolic steroids ..... 4000  
 "Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:
    - (1) boldenone
    - (2) chlorotestosterone (4-chlortestosterone)
    - (3) clostebol
    - (4) dehydrochlormethyltestosterone
    - (5) dihydrotestosterone (4-dihydrotestosterone)
    - (6) drostanolone
    - (7) ethylestrenol
    - (8) fluoxymesterone
    - (9) formebolone (formebolone)
    - (10) mesterolone
    - (11) methandienone
    - (12) methandranone
    - (13) methandriol
    - (14) methandrostenolone
    - (15) methenolone
    - (16) methyltestosterone
    - (17) mibolerone
    - (18) nandrolone
    - (19) norethandrolone
    - (20) oxandrolone
    - (21) oxymesterone
    - (22) oxymetholone
    - (23) stanolone

(continued)

- (24) stanozolol
- (25) testolactone
- (26) testosterone
- (27) trenbolone
- (28) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

(A) Except as provided in (B), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States' secretary of health and human services for such administration.

(B) If any person prescribes, dispenses or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this subsection (f).

(g) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substance, its salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product ..... 7369  
Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6-6-9-trimethyl-3-pentyl-6H-dibenzo(b,d)pyran-1-0l, or (-)-delta-9-(trans)-tetrahydrocannabinol.

(h) The board may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subsection (b) from the application of all or any part of this act if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

Sec. 6. K.S.A. 65-4111 is hereby amended to read as follows: 65-4111. (a) The controlled substances listed in this section are included in schedule IV and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Any material, compound, mixture or preparation which contains any quantity of the following substances including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation and having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Alprazolam ..... 2882
- (2) Barbitol ..... 2145
- (3) Bromazepam ..... 2748
- (4) Camazepam ..... 2749
- (5) Chloral betaine ..... 2460
- (6) Chloral hydrate ..... 2465
- (7) Chlordiazepoxide ..... 2744
- (8) Clobazam ..... 2751
- (9) Clonazepam ..... 2737
- (10) Clorazepate ..... 2768
- (11) Clotiazepam ..... 2752
- (12) Cloxazolam ..... 2753
- (13) Delorazepam ..... 2754
- (14) Diazepam ..... 2765
- (15) Dichloralphenazone ..... 2467
- ~~(15)~~ (16) Estazolam ..... 2756
- ~~(16)~~ (17) Ethchlorvynol ..... 2540
- ~~(17)~~ (18) Ethinamate ..... 2545
- ~~(18)~~ (19) Ethyl loflazepate ..... 2758
- ~~(19)~~ (20) Fludiazepam ..... 2759
- ~~(20)~~ (21) Flunitrazepam ..... 2763
- ~~(21)~~ (22) Flurazepam ..... 2767
- (23) Fospropofol ..... 2138
- ~~(22)~~ (24) Halazepam ..... 2762
- ~~(23)~~ (25) Haloxazolam ..... 2771

- ~~(24)~~ (26) Ketazolam ..... 2772
- ~~(25)~~ (27) Loprazolam ..... 2773
- ~~(26)~~ (28) Lorazepam ..... 2885
- ~~(27)~~ (29) Lormetazepam ..... 2774
- ~~(28)~~ (30) Mebutamate ..... 2800
- ~~(29)~~ (31) Medazepam ..... 2836
- ~~(30)~~ (32) Meprobamate ..... 2820
- ~~(31)~~ (33) Methohexital ..... 2264
- ~~(32)~~ (34) Methylphenobarbital (mephobarbital) ..... 2250
- ~~(33)~~ (35) Midazolam ..... 2884
- ~~(34)~~ (36) Nimetazepam ..... 2837
- ~~(35)~~ (37) Nitrazepam ..... 2834
- ~~(36)~~ (38) Nordiazepam ..... 2838
- ~~(37)~~ (39) Oxazepam ..... 2835
- ~~(38)~~ (40) Oxazolam ..... 2839
- ~~(39)~~ (41) Paraldehyde ..... 2585
- ~~(40)~~ (42) Petrichloral ..... 2591
- ~~(41)~~ (43) Phenobarbital ..... 2285
- ~~(42)~~ (44) Pinazepam ..... 2883
- ~~(43)~~ (45) Prazepam ..... 2764
- ~~(44)~~ (46) Quazepam ..... 2881
- ~~(45)~~ (47) Temazepam ..... 2925
- ~~(46)~~ (48) Tetrazepam ..... 2886
- ~~(47)~~ (49) Triazolam ..... 2887
- ~~(48)~~ (50) Zolpidem ..... 2783
- ~~(49)~~ (51) Zaleplon ..... 2781
- (52) Zopiclone ..... 2784

(c) Any material, compound, mixture, or preparation which contains any quantity of fenfluramine (1670), including its salts, isomers (whether optical, position or geometric) and salts of such isomers, whenever the existence of such salts, isomers and salts of isomers is possible. The provisions of this subsection (c) shall expire on the date fenfluramine and its salts and isomers are removed from schedule IV of the federal controlled substances act (21 United States code 812 21 U.S.C. § 812; 21 code of federal regulations 1308.14).

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+)-norpseudoephedrine) ..... 1230
  - (2) Diethylpropion ..... 1610
  - (3) Fencamfamin ..... 1760
  - (4) Fenproporex ..... 1575
  - (5) Mazindol ..... 1605
  - (6) Mefenorex ..... 1580
  - (7) Pemoline (including organometallic complexes and chelates thereof) ..... 1530
  - (8) Phentermine ..... 1640
- The provisions of this subsection (d)(8) shall expire on the date phentermine and its salts and isomers are removed from schedule IV of the federal controlled substances act (21 United States code 812 21 U.S.C. § 812; 21 code of federal regulations 1308.14).
- (9) Pipradrol ..... 1750
  - (10) SPA((-)-1-dimethylamino-1,2-diphenylethane) .... 1635
  - (11) Sibutramine ..... 1675
  - (12) Mondafinil ..... 1680

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following, including salts thereof:

- (1) Pentazocine ..... 9709
- (2) Butorphanol (including its optical isomers) ..... 9720

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:



- (1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit ..... 9167
- (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane) ..... 9278

(g) Butyl nitrite and its salts, isomers, esters, ethers or their salts.

(h) The board may except by rule and regulation any compound, mixture or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this act if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Sec. 7. K.S.A. 2010 Supp. 65-4113 is hereby amended to read as follows: 65-4113. (a) The controlled substances or drugs, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section are included in schedule V.

~~(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing the following narcotic drug or its salts:~~

~~Buprenorphine ..... 9064~~

~~(c) (b) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:~~

- ~~(1) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.~~
- ~~(2) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.~~
- ~~(3) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.~~
- ~~(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.~~
- ~~(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.~~
- ~~(6) Not more than .5 milligram of difenoxin (9168) and not less than 25 micrograms of atropine sulfate per dosage unit.~~

~~(d) (c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:~~

- ~~(1) Propylhexedrine (except when part of a compound used for nasal decongestion which is authorized to be sold lawfully over the counter without a prescription under the federal food, drug and cosmetic act, so long as it is used only for such purpose) ..... 8161~~
- ~~(2) Pyrovalerone ..... 1485~~

~~(e) (d) Any compound, mixture or preparation containing any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers.~~

~~(f) (e) Any compound, mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.~~

~~(f) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:~~

- ~~(1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxypropionamide] ..... 2746~~
- ~~(2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid] ... 2782~~

Sec. 8. K.S.A. 65-4107, 65-4109, 65-4111 and K.S.A. 2010 Supp. 21-36a05, 21-36a06, 65-4105 and 65-4113 are hereby repealed.

Sec. 9. On and after July 1, 2011, K.S.A. 65-4107, as amended by section 2 of 2011 House Bill No. 2023, 65-4109, as amended by section 3 of 2011 House Bill No. 2023, and 65-4111, as amended by section 4 of 2011 House Bill No. 2023 and K.S.A. 2010 Supp. 65-4105, as amended by section 1 of 2011 House Bill No. 2023 and 65-4113, as amended by section 5 of 2011 House Bill No. 2023 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 26, 2011.)

SUBSTITUTE FOR SENATE BILL No. 50

AN ACT concerning emergency communications service; relating to fees, charges, collection and distribution; amending K.S.A. 2010 Supp. 12-5327, 12-5338, 12-5361, 45-221, as amended by section 192 of 2011 House Bill No. 2339 and 75-5133, as amended by section 276 of 2011 House Bill No. 2339 and repealing the existing sections; also repealing K.S.A. 12-5303, 12-5305, 12-5306, 12-5307, 12-5308 and 12-5309 and K.S.A. 2010 Supp. 12-5301, 12-5302, 12-5304, 12-5310, 12-5321, 12-5322, 12-5323, 12-5324, 12-5325, 12-5326, 12-5327, 12-5328, 12-5329, 12-5330, 12-5331, 12-5332, 12-5333, 12-5334, 12-5335, 12-5336, 12-5337, 12-5351, 12-5352, 12-5353, 12-5354, 12-5355, 12-5356, 12-5357, 12-5358, 12-5359 and 12-5360.

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

New Section 1. Sections 1 through 19 and 25, and amendments thereto, shall be known and may be cited as the Kansas 911 act.

New Sec. 2. As used in the Kansas 911 act:

- (a) "Consumer" means a person who purchases prepaid wireless service in a retail transaction.
- (b) "Department" means the Kansas department of revenue.
- (c) "Enhanced 911 service" or "E-911 service" means an emergency telephone service that generally may provide, but is not limited to, selective routing, automatic number identification and automatic location identification features.
- (d) "Exchange telecommunications service" means the service that provides local telecommunications exchange access to a service user.
- (e) "Governing body" means the board of county commissioners of a county or the governing body of a city.
- (f) "Local collection point administrator" or "LCPA" means, on the effective date of this act, the statewide association of cities established by K.S.A. 12-1610e, and amendments thereto, and the statewide association of counties established by K.S.A. 19-2690, and amendments thereto. After January 1, 2012, "local collection point administrator" means the person designated by the 911 coordinating council to serve as the local collection point administrator to collect and distribute 911 fees and 911 state grant fund moneys.

(g) "Next generation 911" means 911 service that enables PSAPs to receive Enhanced 911 service calls and emergency calls from Internet Protocol (IP) based technologies and applications that may include text messaging, image, video and data information from callers.

(h) "Person" means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy or any other legal entity.

(i) "Prepaid wireless service" means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

(j) "Place of primary use" has the meaning provided in the mobile telecommunications act as defined by 4 U.S.C. § 116 et seq., as in effect on the effective date of this act.

(continued)

(k) "Provider" means any person providing exchange telecommunications service, wireless telecommunications service, VoIP service or other service capable of contacting a PSAP.

(l) "PSAP" means a public safety answering point operated by a city or county.

(m) "Retail transaction" means the purchase of prepaid wireless service from a seller for any purpose other than resale, not including the use, storage or consumption of such services.

(n) "Seller" means a person who sells prepaid wireless service to another person.

(o) "Service user" means any person who is provided exchange telecommunications service, wireless telecommunications service, VoIP service, prepaid wireless service or any other service capable of contacting a PSAP.

(p) "Subscriber account" means the 10-digit access number assigned to a service user regardless of whether more than one such number is aggregated for the purpose of billing a service user.

(q) "Subscriber radio equipment" means mobile and portable radio equipment installed in vehicles or carried by persons for voice communication with a radio system.

(r) "VoIP service" means voice over internet protocol.

(s) "Wireless telecommunications service" means commercial mobile radio service as defined by 47 C.F.R. 20.3 as in effect on the effective date of this act.

New Sec. 3. (a) (1) There is hereby created the 911 coordinating council which shall monitor the delivery of 911 services, develop strategies for future enhancements to the 911 system and distribute available grant funds to PSAPs. In as much as possible, the council shall include individuals with technical expertise regarding 911 systems, internet technology and GIS technology.

(2) The 911 coordinating council shall consist of 12 voting members to be appointed by the governor: Two members representing information technology personnel from government units; one member representing a law enforcement officer; one member representing a fire chief; one member recommended by the adjutant general; one member recommended by the Kansas emergency medical services board; one member recommended by the Kansas commission for the deaf and hard of hearing; two members representing PSAPs located in counties with less than 75,000 in population; two members representing PSAPs located in counties with greater than 75,000 in population; and one member representing PSAPs without regard to size. At least two of the members representing PSAPs shall be administrators of a PSAP or have extensive prior 911 experience in Kansas.

(3) Other voting members of the 911 coordinating council shall include: One member of the Kansas house of representatives as appointed by the speaker of the house; one member of the Kansas house of representatives as appointed by the minority leader of the house; one member of the Kansas senate as appointed by the senate president; and one member of the Kansas senate as appointed by the senate minority leader.

(4) The 911 coordinating council shall also include non-voting members to be appointed by the governor: One member representing rural telecommunications companies recommended by the Kansas rural independent telephone companies; one member representing incumbent local exchange carriers with over 50,000 access lines; one member representing large wireless providers; one member representing VoIP providers; one member recommended by the league of Kansas municipalities; one member recommended by the Kansas association of counties; one member recommended by the Kansas geographic information systems policy board; one member recommended by KAN-ED; one member recommended by the Kansas division of information systems and communications; and one member, a Kansas resident, recommended by the Mid-America regional council.

(b) The terms of office for voting members of the 911 coordinating council shall commence on the effective date of this act and shall be subject to reappointment every three years. No voting member shall serve longer than two three-year terms. A voting member appointed as a replacement for another voting member may finish the term of the predecessor and may serve two additional three-year terms.

(c) (1) The governor shall select the chair of the 911 coordinating council, who shall serve at the pleasure of the governor and have extensive prior 911 experience in Kansas.

(2) The chair shall serve as the coordinator of E-911 services and next generation 911 services in the state, implement statewide 911 planning, have the authority to sign all certifications required under 47 C.F.R. part 400 and administer the 911 federal grant fund and 911 state maintenance fund. The chair shall serve subject to the direction of the council and ensure that policies adopted by the council are carried out. The chair shall serve as the liaison between the council and the LCPA. The chair shall preside over all meetings of the council and assist the council in effectuating the provisions of this act.

(d) Upon the advice and consent of the legislative coordinating council, the 911 coordinating council shall select the local collection point administrator, pursuant to section 6, and amendments thereto, to collect 911 fees and to distribute such fees to PSAPs and to distribute 911 state grant fund moneys as directed by the council. The council shall adopt rules and regulations for the terms of the contract with the LCPA. All contract terms and conditions shall satisfy all contract requirements as established by the secretary of administration. The council may, pursuant to rules and regulations, increase the duration of the contract with the LCPA to a maximum of three years. The council shall determine the compensation of the LCPA who, after January 1, 2012, shall provide the council with any staffing necessary in carrying out the business of the council or effectuating the provisions of this act. Prior to January 1, 2012, the department of administration shall provide the council with any staffing necessary in carrying out the business of the council or effectuating the provisions of this act. The moneys used to reimburse these expenses shall be paid from the 911 state grant fund, pursuant to subsection (i).

(e) The 911 coordinating council is hereby authorized to adopt rules and regulations necessary to effectuate the provisions of this act, including, but not limited to, creating a uniform reporting form designating how moneys, including 911 fees, have been spent by the PSAPs, requiring service providers to notify the council pursuant to subsection (j), setting standards for coordinating and purchasing equipment, recommending standards for training of PSAP personnel and assessing civil penalties. The chair of the council shall work with the council to develop rules and regulations necessary for the distribution of moneys in the 911 federal grant fund. The council shall work with the chair to carry out the provisions of this act. Rules and regulations necessary to begin administration of this act shall be adopted by December 31, 2011.

(f) The council may, pursuant to rules and regulations, raise or lower the 911 fee upon a finding based on information submitted on the uniform reporting forms, that moneys generated by such fee are in excess of or below the costs required to operate PSAPs in the state. The council shall not set the 911 fee above \$.60.

(g) The council may appoint subcommittees as necessary to administer grants, oversee collection and distribution of moneys by the LCPA, develop technology standards, develop training recommendations and other issues as deemed necessary by the council. Subcommittees, if appointed, shall include members of the council and other persons as needed.

(h) The council may reimburse independent contractors or state agencies for expenses incurred in carrying out the business of the council, including salaries, that are directly attributable to effectuating the provisions of this act. The moneys used to reimburse these expenses shall be paid from the 911 state grant fund, pursuant to subsection (i).

(i) All expenses related to the council shall be paid from the 911 state grant fund. No more than 1.5% of the total receipts from providers and the department received by the LCPA shall be used to pay for such expenses. Members of the council may receive reimbursement for meals and travel expenses, but shall serve without other compensation with the exception of legislative members.

(j) Every provider shall submit contact information for the provider to the council prior to January 1, 2012. Any provider that has not previously provided wireless telecommunications service in this state shall submit contact information for the provider to the council within three months of first offering wireless telecommunications services in this state.

(k) Each PSAP shall file with the council, by March 1, 2012, and every March 1 thereafter, a report demonstrating how such PSAP has spent the moneys earned from the 911 fee during the preceding

calendar year. The council shall designate the content and form of such report.

(l) The council, upon a finding that a provider has violated any provision of this act, may impose a civil penalty. No civil penalty shall be imposed pursuant to this section except upon the written order of the council. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to a hearing before the council. Any such person may, within 15 days after service of the order, make a written request to the council for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(m) Any action of the council pursuant to subsection (l) is subject to review in accordance with the Kansas judicial review act.

(n) Any civil penalty recovered pursuant to this section shall be transferred to the LCPA for deposit in the 911 state grant fund.

(o) As long as the provider is working in good faith to comply with the provisions of this act, no civil penalty shall be imposed prior to January 1, 2013.

(p) The 911 coordinating council shall make an annual report, to include a detailed description of all expenditures made from 911 fees received by the PSAPs, to the house committee on energy and utilities and the senate committee on utilities.

New Sec. 4. (a) There is hereby established in the state treasury the 911 federal grant fund.

(b) The chair of the 911 coordinating council shall serve as the administrator of the 911 federal grant fund and shall distribute grants in accordance with the recommendations of the 911 coordinating council. Subject to the conditions and in accordance with the requirements of this act and 47 C.F.R. part 400, the chair is authorized to perform such acts necessary for the effectuation of this act.

(c) Moneys received by the state from the federal government for the purposes of the fund shall be credited to the fund.

(d) Subject to the conditions and in accordance with the requirements of this act and 47 C.F.R. part 400, moneys credited to the fund shall be used only:

(1) To pay all expenses incurred in the administration of the fund; and

(2) to provide grants to eligible municipalities only for necessary and reasonable costs incurred or to be incurred by PSAPs for: (A) Implementation of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; (B) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; and (C) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay or equipment not expressly authorized by this act.

(e) All payments and disbursements from the 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 chair or by a person or persons designated by the chair.

(f) This section shall take effect on and after January 1, 2012.

New Sec. 5. (a) There is hereby established in the state treasury the 911 state maintenance fund.

(b) The chair of the 911 coordinating council shall serve as the administrator of the 911 state maintenance fund and shall distribute grants in accordance with the recommendations of the 911 coordinating council. Subject to the conditions and in accordance with the requirements of this act and 47 C.F.R. part 400, the chair is authorized to perform such acts necessary for the effectuation of this act.

(c) Moneys from the following sources shall be credited to the fund:

(1) Amounts appropriated or otherwise made available by the legislature for the purposes of the fund;

(2) interest attributable to investment of moneys in the fund; and

(3) amounts received from any public or private entity for the purposes of the fund.

(d) Moneys credited to the fund shall be used only:

(1) To pay all expenses incurred in the administration of the fund; and

(2) to provide grants to eligible municipalities only for necessary and reasonable costs incurred or to be incurred by PSAPs for: (A) Implementation of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; (B) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; and (C) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay or equipment not expressly authorized by this act.

(e) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the 911 state maintenance fund interest earnings based on:

(1) The average daily balance of moneys in the 911 state maintenance fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(f) All payments and disbursements from the 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 chair or by a person or persons designated by the chair.

(g) This section shall take effect on and after January 1, 2012.

New Sec. 6. Upon the advice and consent of the legislative coordinating council, the 911 coordinating council shall select the local collection point administrator. In selecting the LCPA, the council shall contract with the LCPA for services for no longer than two years. The 911 coordinating council and the legislative coordinating council shall annually review the designation of the LCPA and the contract with the LCPA for services. The LCPA shall be subject to the requirements of the Kansas open meetings act, the Kansas open records act and shall treat all moneys received as public funds pursuant to article 14 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto. Notwithstanding any other provision of law to the contrary, the LCPA shall not be considered a state agency.

New Sec. 7. (a) Upon the advice and consent of the 911 coordinating council, the LCPA shall establish the 911 state fund and the 911 state grant fund which shall not be part of the state treasury. On or after the effective date of this section, the secretary of administration shall certify all unobligated funds remaining in the wireless enhanced 911 grant fund as having originated as either federal grant moneys or 911 fee moneys. All such moneys originating from 911 fees, and any interest accrued on such fees, shall be paid to the LCPA for deposit in the 911 state grant fund. All unobligated federal moneys, and any interest accrued on such moneys, shall be transferred to the 911 federal grant fund.

(b) The council shall be responsible for ensuring that the 911 state grant fund and any interest earned on money credited to the fund is only expended for the following purposes: (1) Projects involving the development and implementation of next generation 911 services; (2) costs associated with PSAP consolidation or cost-sharing projects; (3) expenses related to the 911 coordinating council; (4) costs of audits conducted pursuant to section 16, and amendments thereto; and (5) other costs pursuant to section 14, and amendments thereto.

(c) The council shall develop criteria for eligible purchases and for grant applicants and make the final determination as to the distribution of grant funds. Such criteria shall promote the procurement of equipment that meets open architecture and national technical standards. Distribution of grant funds shall not include

(continued)

expenditures to procure, maintain or upgrade subscriber radio equipment.

(d) The LCPA shall be authorized to maintain an action to collect any funds owed by any providers in the district court in the county of the registered office of such provider or, if such provider does not have a registered office in the state, such an action may be maintained in the county where such provider's principal office is located. If such provider has no principal office in the state, such an action may be maintained in the district court of any county in which such provider provides service.

(e) This section shall take effect on and after January 1, 2012.

New Sec. 8. (a) There is hereby imposed a 911 fee in the amount of \$.53 per month per subscriber account of any exchange telecommunications service, wireless telecommunications service, VoIP service, or other service capable of contacting a PSAP. Such fee shall not be imposed on prepaid wireless service. It shall be the duty of each exchange telecommunications service provider, wireless telecommunications service provider, VoIP service provider or other service provider to remit such fees to the LCPA as provided in section 9, and amendments thereto.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 9. (a) Every billed service user shall be liable for the 911 fee until such fees have been paid to the exchange telecommunications service provider, wireless telecommunications service provider, VoIP service provider or other service provider.

(b) The duty to collect the fees imposed pursuant to this act shall commence January 1, 2012. Such fees shall be added to and may be stated separately in billings for the subscriber account. If stated separately in billings, the fees shall be labeled "911 fees."

(c) The provider shall have no obligation to take any legal action to enforce the collection of the fees imposed by this act. The provider shall provide annually to the LCPA a list of the amount of uncollected 911 fees along with the names and addresses of those service users which carry a balance that can be determined by the provider to be nonpayment of such fees.

(d) The fees imposed by this act shall be collected insofar as practicable at the same time as, and along with, the charges for local exchange, wireless, VoIP, or other service in accordance with regular billing practice of the provider.

(e) The 911 fees and the amounts required to be collected therefor are due monthly. The amount of such fees collected in one month by the provider shall be remitted to the LCPA not more than 15 days after the close of the calendar month. On or before the 15th day of each calendar month following, a return for the preceding month shall be filed with the LCPA. Such return shall be in such form and shall contain such information as required by the LCPA. The provider required to file the return shall deliver the return together with a remittance of the amount of fees payable to the LCPA. The provider shall maintain records of the amount of any such fees collected in accordance with this act for a period of three years from the time the fees are collected.

(f) The provisions of this section shall not be construed to apply to prepaid wireless service.

(g) This section shall take effect on and after January 1, 2012.

New Sec. 10. (a) There is hereby imposed a prepaid wireless 911 fee of 1.06% per retail transaction or, on and after the effective date of an adjusted amount per retail transaction that is established under subsection (f), such adjusted amount.

(b) The prepaid wireless 911 fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless 911 fee shall be either separately stated on an invoice, receipt or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

(c) For purposes of subsection (b), a retail transaction that is effected in person by a consumer in a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for the purposes of subsection (c)(3) of K.S.A. 79-3673, and amendments thereto.

(d) The prepaid wireless 911 fee is the liability of the consumer and not of the seller nor of any provider, except that the seller shall be liable to remit all prepaid wireless 911 fees that the seller collects from consumers pursuant to this section, and amendments thereto,

including all such fees that the seller is deemed to collect where the amount of the charge has not been separately stated in an invoice, receipt or other similar document provided to the consumer by the seller.

(e) The amount of the prepaid wireless 911 fee that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

(f) The prepaid wireless 911 fee shall be proportionately increased or reduced, as applicable, upon any change to the fee imposed by subsection (a) of section 8, and amendments thereto. The adjusted amount shall be determined by dividing the amount of the fee imposed by subsection (a) of section 8, and amendments thereto, by \$50. Such increase or reduction shall be effective on the effective date of the change to the fee imposed by subsection (a) of section 8, and amendments thereto, or, if later, the first day of the calendar quarter to occur at least 60 days after the enactment to the change to the fee imposed by subsection (a) of section 8, and amendments thereto. The department shall provide not less than 60 days' notice of such increase or decrease on the department's website.

(g) When prepaid wireless service is sold with one or more other products or services for a single, non-itemized price, then the percentage specified in subsection (a) shall apply to the entire non-itemized price unless the seller elects to apply such percentage to: (1) If the amount of the prepaid wireless service is disclosed to the consumer as a dollar amount, such dollar amount; or (2) if the seller can identify the portion of the price that is attributable to the prepaid wireless service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes, such portion.

(h) This section shall take effect on and after January 1, 2012.

New Sec. 11. (a) Prepaid wireless 911 fees collected by sellers shall be remitted to the department by electronic filing that is consistent with the provisions of article 36 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The department shall establish registration and payment procedures for the collection of the prepaid wireless 911 fee.

(b) To minimize additional costs to the department, the department may conduct audits of sellers in conjunction with sales and use tax audits. The department is authorized to provide the LCPA with information obtained in such audits if such information indicates that a seller may not be complying with the provisions of this section and section 10, and amendments thereto. The LCPA may request the department to initiate collection or audit procedures on individual sellers if collection efforts by the LCPA are unsuccessful.

(c) The department shall establish procedures by which a seller may document that a sale is not a retail sale, which procedures shall substantially coincide with procedures for documenting sale for resale transactions for article 36 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

(d) The department shall transfer all remitted prepaid wireless 911 fees to the LCPA within 30 days of receipt for distribution as provided in section 13, and amendments thereto.

(e) The department may retain up to \$70,000 of remitted funds in fiscal year 2012 only for use in paying for programming and other one-time costs for establishing a system for collecting the prepaid wireless 911 fee.

(f) This section shall take effect on and after January 1, 2012.

New Sec. 12. (a) The prepaid wireless 911 fee imposed in this act shall be the only 911 funding obligation imposed with respect to prepaid wireless service in this state. No tax, fee, surcharge or other charge shall be imposed by this state, any political subdivision of this state or any intergovernmental agency for 911 funding purposes upon any prepaid wireless service provider, seller or consumer with respect to the sale, purchase, use or provision of prepaid wireless service.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 13. (a) Not later than 30 days after the receipt of moneys from providers pursuant to sections 9 and 10, and amendments

thereto, and the department pursuant to section 11, and amendments thereto, the LCPA shall distribute such moneys to PSAPs based upon the following distribution method: In a county with a population over 80,000, 82% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 65,000 and 79,999, 85% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 55,000 and 64,999, 88% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 45,000 and 54,999, 91% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 35,000 and 44,999, 94% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 25,000 and 34,999, 97% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; and in a county with a population of less than 25,000, 100% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information. There shall be a minimum county distribution of \$50,000 and no county shall receive less than \$50,000 of direct distribution moneys. If there is more than one PSAP in a county then the direct distribution allocated to that county by population shall be deducted from the minimum county distribution and the difference shall be proportionately divided between the PSAPs in the county. All moneys remaining after distribution and any moneys which cannot be attributed to a specific PSAP shall be transferred to the 911 state grant fund.

(b) All fees remitted to the LCPA shall be deposited in the 911 state fund and for the purposes of this act be treated as if they are public funds, pursuant to article 14 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

(c) All moneys in the 911 state fund that have been collected from the prepaid wireless 911 fee shall be deposited in the 911 state grant fund unless \$2 million of such moneys have been deposited in any given year then all remaining moneys shall be distributed to the PSAPs pursuant to subsection (a).

(d) The LCPA shall keep accurate accounts of all receipts and disbursements of moneys from the 911 fees.

(e) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to this act will be treated as proprietary records which will be withheld from the public upon request of the party submitting such records.

(f) The provisions of subsection (e) shall expire on July 1, 2017, unless the legislature acts to reenact such provision. The provisions of subsection (e) shall be reviewed by the legislature prior to July 1, 2016.

(g) This section shall take effect on and after January 1, 2012.

New Sec. 14. (a) The proceeds of the 911 fees imposed pursuant to this act, and any interest earned on revenue derived from such fee, shall be used only for necessary and reasonable costs incurred or to be incurred by PSAPs for: (1) Implementation of 911 services; (2) purchase of 911 equipment and upgrades; (3) maintenance and license fees for 911 equipment; (4) training of personnel; (5) monthly recurring charges billed by service suppliers; (6) installation, service establishment and nonrecurring start-up charges billed by the service supplier; (7) charges for capital improvements and equipment or other physical enhancements to the 911 system; or (8) the original acquisition and installation of road signs designed to aid in the delivery of emergency service. Such costs shall not include expenditures to lease, construct, expand, acquire, re-

model, renovate, repair, furnish or make improvements to buildings or similar facilities. Such costs shall also not include expenditures to purchase subscriber radio equipment.

(b) If the 911 coordinating council, based upon information obtained from the PSAP reports or an audit of the PSAPs, determines that any PSAP has used any 911 fees for any purpose other than those authorized in this act, such PSAP shall repay all such funds used for any unauthorized purposes plus 10% to the LCPA for deposit in the 911 state grant fund. No such repayment of 911 fees shall be imposed pursuant to this section except upon the written order of the council. Such order shall state the unauthorized purposes for which the funds were used, the amount of funds to be repaid and the right of such PSAP to appeal to a hearing before the council. Any such PSAP may, within 15 days after service of the order, make a written request to the council for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Any action of the council pursuant to subsection (b) is subject to review in accordance with the Kansas judicial review act.

(d) As long as the PSAP is working in good faith to use the 911 fees for expenditures authorized by this act, no repayment of 911 fees shall be required prior to January 1, 2013.

(e) This section shall take effect on and after January 1, 2012.

New Sec. 15. (a) Except as provided by the Kansas tort claims act, and except for failure to use ordinary care, or for intentional acts, the LCPA and each provider, and their employees and agents, and each seller, and their employees and agents, shall not be liable for the payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining or providing 911 service.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 16. (a) The receipts and disbursements of the LCPA shall be audited yearly by a licensed municipal accountant or certified public accountant.

(b) The LCPA may require an audit of any provider's books and records concerning the collection and remittance of fees pursuant to this act. The cost of any such audit shall be paid from the 911 state grant fund.

(c) On or before December 31, 2013, and at least once every three years thereafter, the division of post audit shall conduct an audit of the 911 system to determine: (1) Whether the moneys received by PSAPs pursuant to this act are being used appropriately; (2) whether the amount of moneys collected pursuant to this act is adequate; and (3) the status of 911 service implementation. The auditor to conduct such audit shall be specified in accordance with K.S.A. 46-1122, and amendments thereto. The post auditor shall compute the reasonably anticipated cost of providing audits pursuant to this subsection, subject to review and approval by the contract audit committee established by K.S.A. 46-1120, and amendments thereto. Upon such approval, the 911 state grant fund shall reimburse the division of post audit for the amount approved by the contract audit committee. The audit report shall be submitted to the 911 coordinating council, the LCPA, the house energy and utilities committee and the senate utilities committee.

(d) The legislature shall review this act at the regular 2014 legislative session and at the regular legislative session every five years thereafter.

(e) This section shall take effect on and after January 1, 2012.

New Sec. 17. (a) Nothing in this act shall be construed to limit the ability of a provider from recovering directly from the provider's customers its costs associated with designing, developing, deploying and maintaining 911 service and its cost of collection and administration of the fees imposed by this act, whether such costs are itemized on the customer's bill as a surcharge or by any other lawful method.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 18. A provider of wireless telecommunications service shall: (1) Receive prior approval of the PSAP of that jurisdiction before directing emergency calls to such PSAP; and (2) establish the unique emergency telephone number "911" across the state, excluding the Kansas turnpike assistance telephone number.

(continued)

New Sec. 19. The governing body of each city and county shall provide or contract for the 24-hour receipt of wireless emergency calls for all wireless service areas within the jurisdiction of the city or county.

Sec. 20. K.S.A. 2010 Supp. 12-5327 is hereby amended to read as follows: 12-5327. (a) After providing for public comment and review each year, the secretary, in conjunction with the advisory board, shall prepare a plan identifying the intended uses of the moneys available in the fund. The intended use plan shall include, but not be limited to:

- ~~(a)~~ (1) The wireless enhanced 911 project priority list;
- ~~(b)~~ (2) a description of the short-term and long-term goals and objectives of the fund for the deployment of wireless enhanced 911;
- ~~(c)~~ (3) provisions addressing the needs of persons with communication disabilities;
- ~~(d)~~ (4) information on the projects to be financed, including a description thereof, the terms of grants to be provided and the municipalities receiving the grants; and
- ~~(e)~~ (5) the criteria and method established for the provision of grants to be made from the fund.

(b) *Notwithstanding the provisions of subsection (a), moneys in the fund shall be used to pay any expenses authorized by this act incurred by the 911 coordinating council in effectuating the provisions of this act.*

Sec. 21. K.S.A. 2010 Supp. 12-5338 is hereby amended to read as follows: 12-5338. ~~(a) On July January 1, 2011 2012;~~

~~(1) the wireless enhanced 911 grant fee shall be discontinued, the advisory board shall be abolished, any unobligated balance of the wireless enhanced 911 grant fund shall be paid to the local collection point administrator for distribution to PSAP's based on the population of the municipality or municipalities served by the respective PSAP distributed pursuant to subsection (a) of section 7, and amendments thereto, and the fund shall be abolished.~~

~~(2) Within any county which has a population of 125,000 or more, the amount of the tax imposed pursuant to K.S.A. 12-5302, and amendments thereto, shall not exceed \$.25 per month per access line or its equivalent and the amount of the wireless enhanced 911 local fee within such jurisdiction shall be an equal amount per month per wireless subscriber account.~~

~~(3) Within any county which has a population of less than 125,000 the amount of the tax imposed pursuant to K.S.A. 12-5302, and amendments thereto, shall not exceed \$.50 per month per access line or its equivalent and the amount of the wireless enhanced 911 local fee shall be an equal amount per month per wireless subscriber account.~~

~~(4) The provisions of K.S.A. 2010 Supp. 12-5323 through 12-5329, and amendments thereto, shall expire.~~

~~(b) On and after July 1, 2011, the proceeds of the wireless enhanced 911 local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2010 Supp. 12-5330, and amendments thereto.~~

Sec. 22. K.S.A. 2010 Supp. 12-5361 is hereby amended to read as follows: 12-5361. ~~(a) On July January 1, 2011 2012;~~

~~(1) the VoIP enhanced 911 grant fee shall be discontinued.~~

~~(2) The amount of the tax per access line or its equivalent imposed within a jurisdiction pursuant to K.S.A. 12-5302, and amendments thereto, and the amount of the VoIP enhanced 911 local fee per VoIP subscriber whose primary residence is within such jurisdiction shall be an equal amount per month.~~

~~(3) The provisions of K.S.A. 2010 Supp. 12-5354 and 12-5355, and amendments thereto, shall expire.~~

~~(b) On and after July 1, 2011, the proceeds of the VoIP local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2010 Supp. 12-5330, and amendments thereto.~~

Sec. 23. On and after July 1, 2011, K.S.A. 2010 Supp. 45-221, as amended by section 192 of 2011 House Bill No. 2339, is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation over-

sight relating to information submitted to the committee pursuant to K.S.A. 2010 Supp. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2010 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

- (A) Is in the public interest;
- (B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;
- (C) would not reveal the identity of any confidential source or undercover agent;
- (D) would not reveal confidential investigative techniques or procedures not known to the general public;
- (E) would not endanger the life or physical safety of any person; and
- (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or sections 65 through 77 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of

power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

(41) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(continued)

(42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214). Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) *Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.*

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as

to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 24. On and after July 1, 2011, K.S.A. 2010 Supp. 75-5133, as amended by section 276 of 2011 House Bill No. 2339, is hereby amended to read as follows: 75-5133. (a) Except as otherwise more specifically provided by law, all information received by the secretary of revenue, the director of taxation or the director of alcoholic beverage control from returns, reports, license applications or registration documents made or filed under the provisions of any law imposing any sales, use or other excise tax administered by the secretary of revenue, the director of taxation, or the director of alcoholic beverage control, or from any investigation conducted under such provisions, shall be confidential, and it shall be unlawful for any officer or employee of the department of revenue to divulge any such information except in accordance with other provisions of law respecting the enforcement and collection of such tax, in accordance with proper judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

(b) The secretary of revenue or the secretary's designee may:

(1) Publish statistics, so classified as to prevent identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or the attorney general's designee;

(3) provide the post auditor access to all such excise tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106, and amendments thereto;

(4) disclose taxpayer information from excise tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) provide information from returns and reports filed under article 42 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, to county appraisers as is necessary to insure proper valuations of property. Information from such returns and reports may also be exchanged with any other state agency administering and collecting conservation or other taxes and fees imposed on or measured by mineral production;

(6) provide, upon request by a city or county clerk or treasurer or finance officer of any city or county receiving distributions from a local excise tax, monthly reports identifying each retailer doing business in such city or county or making taxable sales sourced to such city or county, setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month, and identifying each business location maintained by the retailer and such retailer's sales or use tax registration or account number;



(7) provide information from returns and applications for registration filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-3601, and amendments thereto, to a city or county treasurer or clerk or finance officer to explain the basis of statistics contained in reports provided by subsection (b)(6);

(8) disclose the following oil and gas production statistics received by the department of revenue in accordance with K.S.A. 79-4216 et seq., and amendments thereto: Volumes of production by well name, well number, operator's name and identification number assigned by the state corporation commission, lease name, leasehold property description, county of production or zone of production, name of purchaser and purchaser's tax identification number assigned by the department of revenue, name of transporter, field code number or lease code, tax period, exempt production volumes by well name or lease, or any combination of this information;

(9) release or publish liquor brand registration information provided by suppliers, farm wineries and microbreweries in accordance with the liquor control act. The information to be released is limited to: Item number, universal numeric code, type status, product description, alcohol percentage, selling units, unit size, unit of measurement, supplier number, supplier name, distributor number and distributor name;

(10) release or publish liquor license information provided by liquor licensees, distributors, suppliers, farm wineries and microbreweries in accordance with the liquor control act. The information to be released is limited to: County name, owner, business name, address, license type, license number, license expiration date and the process agent contact information;

(11) release or publish cigarette and tobacco license information obtained from cigarette and tobacco licensees in accordance with the Kansas cigarette and tobacco products act. The information to be released is limited to: County name, owner, business name, address, license type and license number;

(12) provide environmental surcharge or solvent fee, or both, information from returns and applications for registration filed pursuant to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary of health and environment or the secretary's designee for the sole purpose of ensuring that retailers collect the environmental surcharge tax or solvent fee, or both;

(13) provide water protection fee information from returns and applications for registration filed pursuant to K.S.A. 82a-954, and amendments thereto, to the secretary of the state board of agriculture or the secretary's designee and the secretary of the Kansas water office or the secretary's designee for the sole purpose of verifying revenues deposited to the state water plan fund;

(14) provide to the secretary of commerce copies of applications for project exemption certificates sought by any taxpayer under the enterprise zone sales tax exemption pursuant to subsection (cc) of K.S.A. 79-3606, and amendments thereto;

(15) disclose information received pursuant to the Kansas cigarette and tobacco act and subject to the confidentiality provisions of this act to any criminal justice agency, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, or to any law enforcement officer, as defined in section 11 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation; ~~and~~

(16) provide to retailers tax exemption information for the sole purpose of verifying the authenticity of tax exemption numbers issued by the department; ~~and~~

(17) provide information concerning remittance by sellers, as defined in section 2, and amendments thereto, of prepaid wireless 911 fees from returns to the local collection point administrator, as defined in section 2, and amendments thereto, for purposes of verifying seller compliance with collection and remittance of such fees.

(c) Any person receiving any information under the provisions of subsection (b) shall be subject to the confidentiality provisions of subsection (a) and to the penalty provisions of subsection (d).

(d) Any violation of this section shall be a class A, nonperson misdemeanor, and if the offender is an officer or employee of this state, such officer or employee shall be dismissed from office. Reports of violations of this paragraph shall be investigated by the attorney general. The district attorney or county attorney and the attorney general shall have authority to prosecute any violation of

this section if the offender is a city or county clerk or treasurer or finance officer of a city or county.

New Sec. 25. The provisions of this act are declared to be severable and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this act.

Sec. 26. K.S.A. 12-5309 and K.S.A. 2010 Supp. 12-5327, 12-5338 and 12-5361 are hereby repealed.

Sec. 27. From and after July 1, 2011, K.S.A. 2010 Supp. 45-221, as amended by section 192 of 2011 House Bill No. 2339 and 75-5133, as amended by section 276 of 2011 House Bill No. 2339 are hereby repealed.

Sec. 28. From and after January 1, 2012, K.S.A. 12-5303, 12-5305, 12-5306, 12-5307, 12-5308 and K.S.A. 2010 Supp. 12-5301, 12-5302, 12-5304, 12-5310, 12-5321, 12-5322, 12-5323, 12-5324, 12-5325, 12-5326, 12-5327, 12-5328, 12-5329, 12-5330, 12-5331, 12-5332, 12-5333, 12-5334, 12-5335, 12-5336, 12-5337, 12-5351, 12-5352, 12-5353, 12-5354, 12-5355, 12-5356, 12-5357, 12-5358, 12-5359 and 12-5360 are hereby repealed.

Sec. 29. This act shall take effect and be in force from and after its publication in the Kansas register.

(Published in the Kansas Register May 26, 2011.)

### SENATE BILL No. 93

AN ACT concerning racial or other biased-based policing; amending K.S.A. 22-4606, 22-4609, 22-4610 and 22-4611 and repealing the existing sections; also repealing K.S.A. 22-4604 and 22-4608.

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

Section 1. K.S.A. 22-4606 is hereby amended to read as follows: 22-4606. As used in this act:

(a) "Governmental unit" means the state, or any county, city or other political subdivision thereof, or any department, division, board or other agency of any of the foregoing, *except governmental unit shall not include the board of education of any school district employing school security officers.*

(b) "Law enforcement agency" means the governmental unit employing the law enforcement officer.

(c) "Law enforcement officer" has the meaning ascribed thereto in K.S.A. 74-5602, and amendments thereto, *except law enforcement officer shall not include school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222, and amendments thereto.*

(d) "~~Racial profiling~~" means the practice of a law enforcement officer or agency relying, as the sole factor, on race, ethnicity, national origin, gender or religious dress in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity. ~~Racial profiling does not include reliance on such criteria in combination with other identifying factors when the law enforcement officer or agency is seeking to apprehend a specific suspect whose race, ethnicity, national origin, gender or religious dress is part of the description of the suspect.~~ "*Racial or other biased-based policing*" means the unreasonable use of race, ethnicity, national origin, gender or religion by a law enforcement officer in deciding to initiate an enforcement action. It is not racial or other biased-based policing when race, ethnicity, national origin, gender or religion is used in combination with other identifying factors as part of a specific individual description to initiate an enforcement action.

(e) "~~Routine investigatory activities~~" includes, but is not limited to, the following activities conducted by law enforcement officers and agencies in conjunction with traffic stops: (1) Frisks and other types of body searches, and (2) consensual or nonconsensual searches of persons or possessions, including vehicles, dormitory rooms, school lockers, homes and apartments. "*Enforcement action*" means any law enforcement act, as described in K.S.A. 22-4609, and amendments thereto, during a nonconsensual contact with an individual or individuals.

(continued)

(f) "Collection of data" means that information collected by Kansas law enforcement officers after each traffic stop.

Sec. 2. K.S.A. 22-4609 is hereby amended to read as follows: 22-4609. ~~The race, ethnicity, national origin, gender or religious dress of an individual or group shall not be the sole factor in~~ *It is unlawful to use racial or other biased-based policing in:*

(a) Determining the existence of probable cause to take into custody or to arrest an individual ~~or in;~~

(b) constituting a reasonable and articulable suspicion that an offense has been or is being committed so as to justify the detention of an individual or the investigatory stop of a vehicle; *or*

(c) *determining the existence of probable cause to conduct a search of an individual or a conveyance.*

Sec. 3. K.S.A. 22-4610 is hereby amended to read as follows: 22-4610. (a) All law enforcement agencies in this state shall adopt a detailed, written policy to preempt racial ~~profiling or other biased-based policing.~~ Each agency's policy shall include the definition of racial ~~profiling or other biased-based policing~~ found in K.S.A. 22-4606, and amendments thereto.

(b) Policies adopted pursuant to this section shall be implemented by all Kansas law enforcement agencies within one year after the effective date of this act. The policies and data collection procedures shall be available for public inspection during normal business hours.

(c) The policies adopted pursuant to this section shall include, but not be limited to, the following:

(1) ~~A prohibition of racial profiling. A detailed written policy that prohibits racial or other biased-based policing and that clearly defines acts constituting racial or other biased-based policing using language that has been recommended by the attorney general.~~

~~(2) Annual educational training which shall include, but not be limited to, an understanding of the historical and cultural systems that perpetuate racial profiling, assistance in identifying racial profiling practices, and providing officers with self-evaluation strategies to preempt racial profiling prior to stopping a citizen.~~

(2) (A) *The agency policies shall require annual racial or other biased-based policing training which shall include, but not be limited to, training relevant to racial or other biased-based policing. Distance learning training technology shall be allowed for racial or other biased-based policing training.*

(B) *Law enforcement agencies may appoint an advisory body of not less than five persons composed of representatives of law enforcement, community leaders and educational leaders to recommend and review appropriate training curricula.*

(3) (A) ~~For law enforcement agencies of cities of the first class, establishment or use of current independent citizen of cities or counties that have exercised the option to establish community advisory boards pursuant to section 6, and amendments thereto, use of such community advisory boards which include participants who reflect the racial and ethnic community, to advise and assist in policy development, education and community outreach and communications related to racial profiling or other biased-based policing by law enforcement officers and agencies.~~

(B) *Community advisory boards shall receive training on fair and impartial policing and comprehensive plans for law enforcement agencies.*

(4) ~~Policies for discipline of law enforcement officers and agencies who engage in racial profiling or other biased-based policing.~~

(5) ~~A provision that, if the investigation of a complaint of racial profiling or other biased-based policing reveals the officer was in direct violation of the law enforcement agency's written policies regarding racial profiling or other biased-based policing, the employing law enforcement agency shall take appropriate action consistent with applicable laws, rules and regulations, resolutions, ordinances or policies, including demerits, suspension or removal of the officer from the agency.~~

(6) ~~Provisions for community outreach and communications efforts to inform the public of the individual's right to file with the law enforcement agency or the Kansas human rights commission office of the attorney general complaints regarding racial profiling or other biased-based policing, which outreach and communications to the community shall include ongoing efforts to notify the public of the law enforcement agency's complaint process.~~

(7) ~~Procedures for individuals to file complaints of racial profiling or other biased-based policing with the agency, which, if appro-~~

priate, may provide for use of current procedures for addressing such complaints.

(d) (1) Each law enforcement agency shall compile an annual report of all complaints of racial profiling received for the period of July 1 to June 30 and shall submit the report on or before January 31 to the office of the attorney general for review. ~~The annual report shall include: (1) The date the complaint is filed; (2) action taken in response to the complaint; (3) the decision upon disposition of the complaint; and (4) the date the complaint is closed.~~ Annual reports filed pursuant to this subsection shall be open public records and shall be posted on the official website of the attorney general.

(2) *The annual report shall include:*

(A) *The number of racial or other biased-based policing complaints received;*

(B) *the date each racial or other biased-based policing complaint is filed;*

(C) *action taken in response to each racial or other biased-based policing complaint;*

(D) *the disposition of each racial or other biased-based policing complaint;*

(E) *the date each racial or other biased-based policing complaint is closed;*

(F) *whether or not all agency law enforcement officers not exempted by Kansas commission on peace officers' standards and training received the training required in subsection (c)(2)(A);*

(G) *whether the agency has a policy prohibiting racial or other biased-based policing;*

(H) *whether the agency policy mandates specific discipline for sustained complaints of racial or other biased-based policing;*

(I) *whether the agency has a community advisory board; and*

(J) *whether the agency has a racial or other biased-based policing comprehensive plan or if it collects traffic or pedestrian stop data.*

Sec. 4. K.S.A. 22-4611 is hereby amended to read as follows: 22-4611. (a) Any person who believes such person has been subjected to racial ~~profiling or other biased-based policing~~ by a law enforcement officer or agency may file a complaint with the law enforcement agency. The complainant may also file a complaint with the ~~Kansas human rights commission office of the attorney general.~~ The office of the attorney general ~~commission~~ shall review and, if necessary, investigate the complaint and may find there is insufficient evidence of racial or other biased-based policing or may forward the complaint for further review and possible action to the Kansas commission on peace officers' standards and training. The commission shall review and, if necessary, further investigate the complaint. The commission may take action on the officer's certification or other corrective action as allowed by its governing statutes and rules and regulations. The ~~commission's designee~~ commission shall consult with the head of the law enforcement agency before ~~making taking final recommendations~~ action regarding discipline of any law enforcement officer or other disposition of the complaint.

(b) *Within 10 days of receiving a complaint, the office of the attorney general shall provide notification that such complaint has been filed to the accused officer and to the head of the accused officer's law enforcement agency, including a copy of all complaint documentation submitted by the complainant.*

~~(c)~~ (c) Upon disposition of a complaint as provided for in subsection (a) the complainant shall have a civil cause of action in the district court against the law enforcement officer or law enforcement agency, or both, and shall be entitled to recover damages if it is determined by the court that such ~~persons~~ officer or agency engaged in racial ~~profiling or other biased-based policing.~~ The court may allow the prevailing party reasonable attorney fees and court costs.

New Sec. 5. (a) The governing body of a city or the sheriff of the county may develop a comprehensive plan in conjunction with a community advisory board, if one exists, or with community leaders to prevent racial or other biased-based policing or may require the law enforcement agency of such city or county to collect traffic or pedestrian stop data and make such data available to the public.

(b) Any comprehensive plan adopted pursuant to this section shall include the following:

(1) Policies prohibiting racial or other biased-based policing to guide well-meaning officers and address racist officers;

(2) policies to promote the recruitment and hiring of a diverse workforce to ensure the workforce is comprised of people who can police in a race-neutral and nonbiased fashion;

(3) training to promote employees' controlled responses to override racial and other biases;

(4) ongoing training of supervisors to enable them to detect and respond effectively to biased behavior;

(5) implement a style of policing that promotes positive interactions between police officers and all communities;

(6) whether or not the governing body or sheriff has included data collection as part of the comprehensive plan; and

(7) other matters deemed appropriate.

(c) Data collection, if required, may consist of, but shall not be limited to, one or more of the following for every vehicle or pedestrian stop:

(1) Originating agency and officer identifier number;

(2) time and date of the stop;

(3) duration of the stop in ranges of one to 15 minutes, 16 to 30 minutes or more than 30 minutes;

(4) beat, district, territory or response area where the traffic stop is conducted;

(5) primary reason for the officer's investigation, and specifically, whether the stop was call related or self initiated;

(6) primary reason for the stop, and specifically, whether the stop was based on a moving violation, an equipment violation, reasonable suspicion of a criminal offense, other violation, to render service or assistance, suspicious circumstances, pre-existing knowledge or special detail;

(7) if a vehicle stop, the county code of vehicle registration, if registered in Kansas, and state code, if registered outside Kansas;

(8) age, race, gender and ethnicity of the primary person stopped by the officer;

(9) source of the information required by paragraph (8), and specifically, whether it was obtained from officer perception or investigation;

(10) whether the officer was aware of the information required by paragraph (8) prior to the stop;

(11) if a vehicle stop, the number of occupants in the stopped vehicle, including the driver;

(12) type of action taken, including citation, warning, search, arrest, assistance provided or no action. If the action taken is an arrest, the data collection shall also include the type of arrest, including warrant, resisting arrest, property crime, persons crime, drug crime, traffic crime, DUI or other type of arrest;

(13) if a search was conducted, the rationale for the search, including vehicle indicators, verbal indicators, physical or visual indicators, document indicators (DOT), incident to arrest or other rationale;

(14) if a search was conducted, the type of search, including consent search, consent requested but consent denied, inventory, stop and frisk, search warrant, incident to arrest, plain view or probable cause; or

(15) if a search was conducted, the type of contraband seized, if any, including currency, firearms, other weapons, drugs, drug paraphernalia, alcohol products, tobacco products, stolen property or other contraband.

(d) Nothing in this section shall require a governmental entity to collect data concerning pedestrian stops.

New Sec. 6. The governing body of any city, by ordinance or the sheriff of any county may, establish a community advisory board to work with the law enforcement agency of such city or county in accordance with the provisions of K.S.A. 22-4606 et seq., and amendments thereto.

Sec. 7. K.S.A. 22-4604, 22-4606, 22-4608, 22-4609, 22-4610 and 22-4611 are hereby repealed.

Sec. 8. 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 2009 Volumes of the *Kansas Administrative Regulations* and the 2010 Supplement of the *Kansas Administrative Regulations*.

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1-16-18a	Amended	V. 29, p. 678
1-16-20	Amended	V. 29, p. 680
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1-66-1	New	V. 30, p. 44
1-66-2	New	V. 30, p. 45
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