

SENATE BILL No. 396

By Committee on Federal and State Affairs

1-26

1 AN ACT concerning federal mandates; creating the constitution and
2 federalism defense act; establishing the joint commission on federalism
3 to evaluate the constitutionality of federal mandates; creating the
4 constitution and federalism defense fund.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. The provisions of sections 1 through 7, and amendments
8 thereto, shall be known and may be cited as the constitution and federalism
9 defense act.

10 Sec. 2. The legislature declares that the authority for sections 1
11 through 7, and amendments thereto, is the following:

12 (a) The tenth amendment to the constitution of the United States
13 guarantees to the states and their people all powers not granted to the
14 federal government elsewhere in the constitution and reserves to the state
15 and people of Kansas certain powers as they were understood at the time
16 that Kansas was admitted to statehood in 1861. The guaranty of those
17 powers is a matter of contract between the state and people of Kansas and
18 the United States as of the time that the compact with the United States
19 was agreed upon and adopted by Kansas in 1859 and the United States in
20 1861.

21 (b) The ninth amendment to the constitution of the United States
22 guarantees to the people rights not granted in the constitution and reserves
23 to the people of Kansas certain rights as they were understood at the time
24 that Kansas was admitted to statehood in 1861. The guaranty of those
25 rights is a matter of contract between the state and people of Kansas and
26 the United States as of the time that the compact with the United States
27 was agreed upon and adopted by Kansas in 1859 and the United States in
28 1861.

29 Sec. 3. As used in sections 3 through 7, and amendments thereto:

30 (a) "Agency of the United States" means a department, agency,
31 authority, commission, council, board, office, bureau or other
32 administrative unit of the executive branch of the United States
33 government.

34 (b) "Commission" means the joint commission on federalism
35 established in section 4, and amendments thereto.

36 (c) "Federal governmental entity" means:

- 1 (1) The president of the United States;
- 2 (2) the United States congress;
- 3 (3) an agency of the United States; or
- 4 (4) an employee or official appointed by the president of the United
- 5 States.

6 (d) "Federal issue" means a matter relating to the federal
7 government's dealings with the state.

8 (e) "Federal law" means:

- 9 (1) An executive order issued by the president of the United States;
- 10 (2) a statute passed by the United States congress;
- 11 (3) a regulation adopted by an agency of the United States; or
- 12 (4) a policy statement, order, guidance or action by:
 - 13 (A) An agency of the United States; or
 - 14 (B) an employee or official appointed by the president of the United
 - 15 States.

16 Sec. 4. (a) There is established the joint commission on federalism
17 consisting of the following nine members:

- 18 (1) The president of the senate, or a member of the senate appointed
19 by the president, who shall serve as co-chairperson of the commission;
- 20 (2) two members of the senate appointed by the president;
- 21 (3) the speaker of the house of representatives, or a member of the
22 house of representatives appointed by the speaker, who shall serve as co-
23 chairperson of the commission;
- 24 (4) three members of the house of representatives appointed by the
25 speaker;
- 26 (5) the minority leader of the senate or a member of the senate
27 appointed by the minority leader; and
- 28 (6) the minority leader of the house of representatives or a member of
29 the house of representatives appointed by the minority leader.

30 (b) All members of the joint commission on federalism shall serve for
31 terms ending on the first day of the regular legislative session in odd-
32 numbered years. On and after the first day of the regular legislative session
33 in odd-numbered years, the joint commission shall organize upon call of
34 one of the co-chairpersons. Any vacancy shall be filled by appointment in
35 accordance with subsection (a).

36 (c) A quorum of the joint commission shall be five. All actions of the
37 joint commission shall be taken by a majority of all of the members of the
38 joint commission.

39 (d) The joint commission may meet at any time and at any place
40 within the state on the call of one of the co-chairpersons, except the total
41 number of meeting days each year shall not exceed nine unless additional
42 meeting days are approved by the legislative coordinating council.

43 (f) In accordance with K.S.A. 46-1204, and amendments thereto, the

1 legislative coordinating council may provide for such professional services
2 as may be requested by the joint commission. Additionally, staff of the
3 office of revisor of statutes, the legislative research department and the
4 division of legislative administrative services shall provide assistance as
5 may be requested by the joint commission.

6 (g) Any member of the joint commission, when attending an
7 authorized meeting of the commission, shall receive compensation and
8 travel expenses and subsistence expenses or allowances as provided in
9 K.S.A. 75-3212, and amendments thereto.

10 Sec. 5. (a) In accordance with section 6, and amendments thereto, the
11 joint commission on federalism may evaluate a federal law:

12 (1) As agreed by a majority of the joint commission; or

13 (2) submitted to the joint commission by the governor or a member of
14 the legislature.

15 (b) The joint commission may request information from a United
16 States senator or representative elected from the state regarding a federal
17 law under evaluation.

18 (c) If the joint commission determines that a federal law is not
19 authorized by the constitution of the United States or violates the principle
20 of federalism as described in section 6, and amendments thereto, a co-
21 chairperson of the joint commission may:

22 (1) Request any of the following from a United States senator or
23 representative elected from the state:

24 (A) Information about the federal law being evaluated; or

25 (B) assistance in communicating with a federal governmental entity
26 regarding the federal law being evaluated;

27 (2) give written notice that an evaluation is being made to the federal
28 governmental entity responsible for adopting or administering the federal
29 law being evaluated and request a response to the evaluation from the
30 federal governmental entity by a specific date; and

31 (3) request a meeting, conducted in person or by electronic means,
32 with the federal governmental entity, a representative from another state or
33 a United States senator or representative elected from the state to discuss
34 the evaluation of federal law and any possible remedy.

35 (d) The joint commission may recommend to the governor that the
36 governor call a special session of the legislature to give the legislature an
37 opportunity to respond to the joint commission's evaluation of a federal
38 law.

39 (e) A co-chairperson of the joint commission may correspond with
40 the presiding officer of the legislative branch of another state or an entity
41 of another state that has powers and duties that are similar to the joint
42 commission to discuss and coordinate the evaluation of and response to
43 federal law.

1 (f) The joint commission shall keep a current list on the legislature's
2 website of any:

- 3 (1) Federal law that the joint commission evaluates under this act;
4 (2) action taken by a co-chairperson under this act;
5 (3) coordination undertaken with another state under section 7, and
6 amendments thereto; and
7 (4) response received from a federal government entity that was
8 requested under this act.

9 (g) The joint commission shall submit a report on or before January
10 15 of each year to the standing committees on federal and state affairs of
11 the senate and the house of representatives that:

- 12 (1) Describes any action taken by the joint commission or a co-
13 chairperson under this act; and
14 (2) includes any proposed legislation the joint commission
15 recommends.

16 Sec. 6. (a) The joint commission on federalism shall evaluate whether
17 a federal law evaluated under section 5, and amendments thereto, is
18 authorized by:

19 (1) Article I, section 2 of the constitution of the United States to
20 provide for the decennial census;

21 (2) article I, section 4 of the constitution of the United States to
22 override state laws regulating the times, places and manner of
23 congressional elections, other than the place of senatorial elections;

24 (3) article I, section 6 of the constitution of the United States to fix
25 the pay of members of congress;

26 (4) article I, section 7 of the constitution of the United States to veto
27 bills, orders and resolutions by congress;

28 (5) article I, section 8 of the constitution of the United States to:

29 (A) Lay and collect taxes, duties, imposts and excises, to pay the
30 debts and provide for the common defense and general welfare of the
31 United States, but all duties, imposts and excises shall be uniform
32 throughout the United States;

33 (B) borrow money on the credit of the United States;

34 (C) regulate commerce with foreign nations, among the several states
35 and with the Indian tribes;

36 (D) establish a uniform rule of naturalization and uniform laws on the
37 subject of bankruptcies throughout the United States;

38 (E) coin money, regulate the value of coin money and of foreign coin
39 and fix the standard of weights and measures;

40 (F) provide for the punishment of counterfeiting the securities and
41 current coin of the United States;

42 (G) establish post offices and post roads;

43 (H) promote the progress of science and useful arts by securing for

- 1 limited times to authors and inventors the exclusive right to their
2 respective writings and discoveries;
- 3 (I) constitute tribunals inferior to the supreme court;
- 4 (J) define and punish piracies and felonies committed on the high
5 seas and offenses against the law of nations;
- 6 (K) declare war, grant letters of marque and reprisal and make rules
7 concerning captures on land and water;
- 8 (L) raise and support armies, but no appropriation of money to that
9 use shall be for a longer term than two years;
- 10 (M) provide and maintain a navy;
- 11 (N) make rules for the government and regulation of the land and
12 naval forces;
- 13 (O) provide for calling forth the militia to execute the laws of the
14 union, suppress insurrections and repel invasions;
- 15 (P) provide for organizing, arming and disciplining the militia, and
16 for governing the part of the militia that may be employed in the service of
17 the United States, reserving to the states respectively, the appointment of
18 the officers and the authority of training the militia according to the
19 discipline prescribed by congress;
- 20 (Q) exercise exclusive legislation in all cases whatsoever, over such
21 district, not exceeding 10 miles square, as may, by cession of particular
22 states and the acceptance of congress, become the seat of the government
23 of the United States, and to exercise like authority over all places
24 purchased by the consent of the legislature of the state in which the place
25 shall be, for the erection of forts, magazines, arsenals, dock-yards and
26 other needful buildings; or
- 27 (R) make all laws which shall be necessary and proper for carrying
28 into execution the powers listed in this section, and all other powers vested
29 by the constitution of the United States in the government of the United
30 States, or in any department or officer of the United States;
- 31 (6) article I, section 9 of the constitution of the United States to
32 authorize a federal officer to receive benefits from a foreign nation;
- 33 (7) article II, section 1 of the constitution of the United States to:
- 34 (A) Set the time for choosing electors; or
- 35 (B) establish who succeeded to the presidency after the vice
36 president;
- 37 (8) article II, section 2 of the constitution of the United States to:
- 38 (A) Serve as commander-in-chief of the armed forces;
- 39 (B) require the written opinions of executive officers;
- 40 (C) grant reprieves and pardons;
- 41 (D) make vacancy appointments;
- 42 (E) make treaties, subject to the advice and consent of the United
43 States senate;

- 1 (F) appoint foreign affairs officers subject to the advice and consent
2 of the United States senate;
- 3 (G) appoint domestic affairs officers subject either to the advice and
4 consent of the United States senate or pursuant to law;
- 5 (H) appoint judges subject to the advice and consent of the United
6 States senate; or
- 7 (I) authorize the president to fill designated inferior offices without
8 senatorial consent;
- 9 (9) article II, section 3 of the constitution of the United States to:
10 (A) Receive representatives of foreign powers;
11 (B) execute the laws;
12 (C) commission United States officers;
13 (D) give congress information;
14 (E) make recommendations to congress;
15 (F) convene congress on extraordinary occasions; or
16 (G) adjourn congress if it cannot agree on a time;
- 17 (10) article III, section 2 of the constitution of the United States to:
18 (A) Create exceptions to the supreme court's appellate jurisdiction; or
19 (B) fix the jurisdiction of federal courts inferior to the supreme court;
- 20 (11) article III, section 3 of the constitution of the United States to
21 declare the punishment for treason;
- 22 (12) article IV, section 1 of the constitution of the United States to
23 establish the rules by which the records and judgments of states are proved
24 in other states;
- 25 (13) article IV, section 3 of the constitution of the United States to:
26 (A) Manage federal property;
27 (B) dispose of federal property;
28 (C) govern the federal territories; or
29 (D) consent to admission of new states or the combination of existing
30 states;
- 31 (14) article IV, section 4 of the constitution of the United States to
32 defend states from invasion, insurrection and guarantee a republican form
33 of government;
- 34 (15) article V, section 1 of the constitution of the United States to
35 propose constitutional amendments;
- 36 (16) article VI, section 1 of the constitution of the United States to
37 prescribe the oath for federal officers;
- 38 (17) the thirteenth amendment to the constitution of the United States
39 to abolish slavery;
- 40 (18) the fourteenth amendment to the constitution of the United States
41 to guard people from certain state abuses;
- 42 (19) the sixteenth amendment to the constitution of the United States
43 to impose taxes on income from any source without having to apportion

1 the total dollar amount of tax collected from each state according to each
2 state's population in relation to the total national population;

3 (20) the twentieth amendment to the constitution of the United States
4 to revise the manner of presidential succession;

5 (21) the fifteenth, nineteenth, twenty-third or twenty-fourth
6 amendment to the constitution of the United States to extend and protect
7 the right to vote; or

8 (22) the seventeenth amendment to the constitution of the United
9 States to grant a pay raise to a sitting congress.

10 (b) The joint commission shall evaluate whether a federal law
11 evaluated under section 5, and amendments thereto, violates the principle
12 of federalism by:

13 (1) Affecting the distribution of power and responsibility among the
14 state and national government;

15 (2) limiting the policymaking discretion of the state;

16 (3) impacting a power or a right reserved to the state or its citizens by
17 the ninth or tenth amendment to the constitution of the United States; or

18 (4) impacting the sovereignty rights and interest of the state or a
19 political subdivision to provide for the health, safety and welfare and
20 promote the prosperity of the state's or political subdivision's inhabitants.

21 (c) In the evaluation of a federal law, the joint commission:

22 (1) Shall rely on:

23 (A) The text of the constitution of the United States and any
24 amendments thereto;

25 (B) the meaning of the text of the constitution of the United States
26 and any amendments thereto, at the time the constitution of the United
27 States and any amendments thereto were drafted and ratified; and

28 (C) a primary source document that:

29 (i) Is directly relevant to the drafting, adoption, ratification or initial
30 implementation of the constitution of the United States and any
31 amendments thereto; or

32 (ii) was created by a person directly involved in the drafting,
33 adoption, ratification or initial implementation of the constitution of the
34 United States and any amendments thereto;

35 (2) may rely on other relevant sources, including federal court
36 decisions; and

37 (3) is not bound by any holding issued by a federal court, except the
38 United States supreme court.

39 Sec. 7. (a) The joint commission on federalism shall develop
40 curriculum for a seminar on the principles of federalism. The curriculum
41 shall be available to the general public and include:

42 (1) Fundamental principles of federalism;

43 (2) the sovereignty, supremacy and jurisdiction of the individual

1 states, including the police powers of the states;

2 (3) the history and practical implementation of the tenth amendment
3 to the constitution of the United States;

4 (4) the authority and limits on the authority of the federal government
5 as found in the constitution of the United States;

6 (5) the relationship between the state and federal governments;

7 (6) methods of evaluating a federal law in the context of the
8 principles of federalism;

9 (7) how and when challenges should be made to a federal law or
10 regulation on the basis of federalism;

11 (8) the separate and independent powers of the state that serve as a
12 check on the federal government;

13 (9) rights and freedoms contained in the first amendment to the
14 constitution of the United States; and

15 (10) any other issues relating to federalism the joint commission
16 considers necessary.

17 (b) The joint commission may apply for and receive grants and
18 receive private donations to assist in funding the creation, enhancement
19 and dissemination of the curriculum. All moneys received by or for the
20 joint commission or any member thereof for such purposes shall be
21 remitted to the state treasurer in accordance with the provisions of K.S.A.
22 75-4215, and amendments thereto. Upon receipt of each such remittance,
23 the state treasurer shall deposit the entire amount in the state treasury and
24 credit such amount to the constitution and federalism defense fund
25 established by subsection (d).

26 (c) Every state agency and political subdivision of this state shall
27 designate at least one employee of such entity as the individual to which
28 all questions and inquiries regarding federalism shall be directed. The
29 designated employee shall be required to attend a seminar on the principles
30 of federalism at least once every two years. The designated employee may
31 complete the requirements of this section by attending a seminar in person
32 or online.

33 (d) There is hereby established in the state treasury the constitution
34 and federalism defense fund to be administered by the legislative
35 coordinating council. All expenditures from the constitution and
36 federalism defense fund shall be made for the purposes described in
37 subsection (b) and in accordance with appropriation acts upon warrants of
38 the director of accounts and reports issued pursuant to vouchers approved
39 by the chairperson of the legislative coordinating council or by an
40 individual designated by the chairperson.

41 Sec. 8. This act shall take effect and be in force from and after its
42 publication in the statute book.