

CORRECTED

Journal of the Senate

SEVENTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Monday, June 1, 2015, 11:00 a.m.

The Senate was called to order by Vice President Jeff King.
The roll was called with 38 senators present.
Senators Arpke and Wilborn were excused.
Invocation by Reverend Cecil T. Washington:

Heavenly Father,

When the man that You created made the decision to choose wrongly, (Genesis 2:16-17, 3:6), a leaning...a bent toward wrong choices, has plagued us...and has plagued our world ever since. The bias of nature has been toward the wild (Gen. 3:17-18). Like a lawn which is left to itself, will go to weeds; like a child that is left to itself, will go astray, naturally a leader without Your guidance will go awry. In Proverbs 3:5-7, You made it clear that we are to trust You and NOT lean on or follow the natural bent of our own understanding. You said that in ALL our ways we should acknowledge You and that You would direct us. Emphatically, You said we are NOT to be wise in our own eyes. So, Lord, please don't leave us to ourselves. Like the gardener that intervenes to prevent the natural decline of the lawn, intervene here as we move about in making decisions. Without Your intervention, the decisions we make follow the dangerous course of the natural. But when You step in, the results will be super natural. So Lord, have Your way in this place. And don't leave us to ourselves. In the dear name of Jesus. Amen

The Pledge of Allegiance was led by Vice President Jeff King.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to Committee as indicated:

Ways and Means: **SB 311**.

MESSAGE FROM THE HOUSE

The House adopts the Conference Committee report on **H Sub SB 12**.

On motion of Senator Bruce the Senate recessed until 2:00 p.m.

The Senate met pursuant to recess with Vice President King in the chair.
On motion of Senator Bruce the Senate recessed until 3:00 p.m.

The Senate met pursuant to recess with President Wagle in the chair.

MESSAGE FROM THE HOUSE

The House adopts the Conference Committee report on **HB 2005**.

ORIGINAL MOTION

Senator Bruce moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **H Sub SB 12**.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 12** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as House Substitute for Senate Bill No. 12, as follows:

On page 1, by striking all in lines 7 through 36;

By striking all on pages 2 through 8;

On page 9, by striking all in lines 1 through 4; following line 4, by inserting:

"Section 1. K.S.A. 59-29a01 is hereby amended to read as follows: 59-29a01. (a) The legislature finds that there exists an extremely dangerous group of sexually violent predators who have a mental abnormality or personality disorder and who are likely to engage in repeat acts of sexual violence if not treated for their mental abnormality or personality disorder. Because the existing civil commitment procedures under K.S.A. 59-2901 et seq. and amendments thereto, are inadequate to address the special needs of sexually violent predators and the risks they present to society, the legislature determines that a separate involuntary civil commitment process for the potentially long-term control, care and treatment of sexually violent predators is necessary. The legislature also determines that because of the nature of the mental abnormalities or personality disorders from which sexually violent predators suffer and the dangers they present, it is necessary to house involuntarily committed sexually violent predators in an environment separate from persons involuntarily committed under K.S.A. 59-2901 et seq. and amendments thereto.

(b) Notwithstanding any other evidence of legislative intent, it is hereby declared that any time requirements set forth in K.S.A. 59-29a01 et seq., and amendments thereto, either as originally enacted or as amended, are intended to be directory and not mandatory and serve as guidelines for conducting proceedings under K.S.A. 59-29a01 et seq., and amendments thereto.

(c) The provisions of K.S.A. 59-29a01 et seq. and amendments thereto, shall be known and may be cited as the Kansas sexually violent predator act.

Sec. 2. K.S.A. 59-29a03 is hereby amended to read as follows: 59-29a03. (a) When it appears that a person may meet the criteria of a sexually violent predator as defined in

K.S.A. 59-29a02, and amendments thereto, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection ~~(d)~~ (f), 90 days prior to:

(1) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than 90 days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

(2) release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to K.S.A. 22-3305, and amendments thereto;

(3) release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to K.S.A. 22-3428, and amendments thereto; or

(4) release of a person who has been found not guilty of a sexually violent offense pursuant to K.S.A. 22-3428, and amendments thereto, and the jury who returned the verdict of not guilty answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221, and amendments thereto.

(b) The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection ~~(d)~~ (f) of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history; and

(2) documentation of institutional adjustment and any treatment received.

(c) Any reports of evaluations prepared or provided pursuant to subsection (b) shall demonstrate that the person evaluated was informed of the following: (1) The nature and purpose of the evaluation; and (2) that the evaluation will not be confidential and that any statements made by the person and any conclusions drawn by the evaluator may be disclosed to a court, the detained person's attorney, the prosecutor and the trier of fact at any proceeding conducted under the Kansas sexually violent predator act.

(d) The permitted disclosures required to be submitted to the attorney general under this section shall be deemed to be in response to the attorney general's civil demand for relevant and material information to investigate whether a petition shall be filed. The information provided shall be specific to the purposes of the Kansas sexually violent predator act and as limited in scope as reasonably practicable.

~~(e)~~ (c) The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection ~~(d)~~ (f), members of the prosecutor's review committee appointed as provided in subsection ~~(e)~~ (g) and individuals contracting, appointed or volunteering to perform services hereunder shall be immune from liability for any good-faith conduct under this section.

~~(f)~~ (f) The secretary of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection (a). The team shall include the mental health professional who prepared any evaluation, interviewed the person or made any recommendation to the attorney general. The team, ~~within 30 days of receiving notice,~~ shall assess whether or not the person meets the definition of a sexually violent predator, as established in K.S.A. 59-29a02, and amendments thereto. The team shall notify the attorney general of its assessment.

~~(g)~~ (g) The attorney general shall appoint a prosecutor's review committee to

review the records of each person referred to the attorney general pursuant to subsection (a). The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

~~(f)~~ (h) The provisions of this section are not jurisdictional and failure to comply with such provisions not affecting constitutional rights in no way prevents the attorney general from proceeding against a person otherwise subject to the ~~provision of K.S.A. 59-29a01 et seq. and amendments thereto~~ provisions of the Kansas sexually violent predator act.

Sec. 3. K.S.A. 2014 Supp. 59-29a04 is hereby amended to read as follows: 59-29a04. (a) ~~When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee, appointed as provided in subsection (e) of K.S.A. 59-29a03(g), and amendments thereto, has determined that the person meets the definition of a sexually violent predator, the attorney general, within 75 days of the date the attorney general received the written notice by the agency of jurisdiction as provided in subsection (a) of K.S.A. 59-29a03(a), and amendments thereto, may file a petition in the county where the person was convicted of or charged with a sexually violent offense alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.~~

(b) Notwithstanding the provisions of subsection (a), when the person named in the petition is a person who has been convicted of or charged with a federal or other state offense that under the laws of this state would be a sexually violent offense, as defined in K.S.A. 59-29a02, and amendments thereto, the attorney general may file the petition in the county where the person now resides, was charged or convicted of any offense, or was released.

(c) Service of the petition on the attorney appointed or hired to represent the person shall be deemed sufficient service.

~~(b)~~ (d) The provisions of this section are not jurisdictional, and failure to comply with such provisions not affecting constitutional rights in no way prevents the attorney general from proceeding against a person otherwise subject to the ~~provision of K.S.A. 59-29a01 et seq. and amendments thereto~~ provisions of the Kansas sexually violent predator act.

~~(e)~~ (e) Whenever a determination is made regarding whether a person may be a sexually violent predator, the county responsible for the costs incurred, including, but not limited to, costs of investigation, prosecution, defense, juries, witness fees and expenses, expert fees and expenses and other expenses related to determining whether a person may be a sexually violent predator, shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.

(f) The person against whom a petition is filed shall be responsible for the costs of the medical care and treatment provided or made accessible by the governmental entity having custody, and the governmental entity having custody may seek reimbursement from the person against whom a petition has been filed for such costs.

(g) Pre-commitment proceedings, post-commitment proceedings, including conditional release and final discharge and other court proceedings are civil in nature. Such proceedings shall follow the procedures set forth in chapter 60 of the Kansas Statutes Annotated, and amendments thereto, except as expressly provided elsewhere in the Kansas sexually violent predator act.

Sec. 4. K.S.A. 2014 Supp. 59-29a04a is hereby amended to read as follows: 59-29a04a. (a) There is hereby created in the state treasury the sexually violent predator expense fund which shall be administered by the attorney general. All moneys credited to such fund shall be used to reimburse counties under:

(1) K.S.A. 59-29a04, and amendments thereto, responsible for the costs related to determining whether a person may be a sexually violent predator; and

(2) K.S.A. 2014 Supp. 59-29a23, and amendments thereto, for the costs related to a person filing a petition pursuant to K.S.A. 60-1501 et seq., and amendments thereto, civil action relating to the civil commitment pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto~~ the Kansas sexually violent predator act.

(b) All expenditures from the sexually violent predator expense 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 attorney general or the attorney general's designee.

Sec. 5. K.S.A. 2014 Supp. 59-29a05 is hereby amended to read as follows: 59-29a05. (a) Upon filing of a petition under K.S.A. 59-29a04, and amendments thereto, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall:

(1) Direct that person be taken into custody and detained in the county jail until such time as a determination is made that the person is a sexually violent predator subject to commitment under the Kansas sexually violent predator act; and

(2) file a protective order permitting disclosures of protected health information to the parties, their counsel, evaluators, experts and others necessary to the litigation during the course of the proceedings subject to the Kansas sexually violent predator act.

(b) Within 72 hours after a person is taken into custody pursuant to subsection (a), or as soon as reasonably practicable or agreed upon by the parties, such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall: (1) Verify the detainer's identity; and (2) determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) At the probable cause hearing as provided in subsection (b), the detained person shall have the following rights in addition to the rights previously specified: (1) To be represented by counsel; (2) to present evidence on such person's behalf; (3) to cross-examine witnesses who testify against such person; and (4) to view and copy all petitions and reports in the court file.

(d) If the probable cause determination is made, the court shall order that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The evaluation ordered by the court shall be conducted by a person deemed to be

professionally qualified to conduct such an examination.

(e) The person conducting the evaluation ordered by the court pursuant to this section shall notify the detained person of the following: (1) The nature and purpose of the evaluation; and (2) that the evaluation will not be confidential and that any statements made by the detained person and any conclusions drawn by the evaluator, will be disclosed to the court, the detained person's attorney, the prosecutor and the trier of fact at any proceeding conducted under ~~K.S.A. 59-29a01 et seq. and amendments thereto~~ the Kansas sexually violent predator act.

Sec. 6. K.S.A. 2014 Supp. 59-29a06 is hereby amended to read as follows: 59-29a06. (a) Within 60 days after the completion of any hearing held pursuant to K.S.A. 59-29a05, and amendments thereto, the court shall ~~conduct a trial set the matter for a~~ pretrial conference to establish a mutually agreeable date for trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice and when the respondent will not be substantially prejudiced.

(b) ~~At all stages of the proceedings under K.S.A. 59-29a01 et seq., and amendments thereto, any person subject to K.S.A. 59-29a01 et seq., and amendments thereto, In proceedings under this section, the person~~ shall be entitled to the assistance of counsel and an independent examination pursuant to K.S.A. 60-235, and amendments thereto, and if the person is indigent, the court shall appoint counsel to assist such person. ~~Whenever any person is subjected to an examination under K.S.A. 59-29a01 et seq., and amendments thereto, such person may retain experts or professional persons to perform an examination of such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such~~ pursuant to K.S.A. 60-235, and amendments thereto, the examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional person's examiner's requested compensation for such services is reasonable, the court shall assist the person in obtaining an ~~expert or professional person~~ examiner to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source.

(c) Notwithstanding K.S.A. 60-456, and amendments thereto, at any proceeding conducted under ~~K.S.A. 59-29a01 et seq., and amendments thereto~~ the Kansas sexually violent predator act, the parties shall be permitted to call expert witnesses. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If the facts or data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, such facts and data need not be admissible in evidence in order for the opinion or inference to be admitted.

(d) The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed,

in writing, at least four days prior to trial. Number and selection of jurors shall be determined as provided in K.S.A. 22-3403, and amendments thereto. If no demand is made, the trial shall be before the court.

(e) A jury shall consist of 12 jurors unless the parties agree in writing with the approval of the court that the jury shall consist of any number of jurors less than 12 jurors. The person and the attorney general shall each have eight peremptory challenges, or in the case of a jury of less than 12 jurors, a proportionally equal number of peremptory challenges.

~~(f) The provisions of this section are not jurisdictional and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person otherwise subject to the provision of K.S.A. 59-29a01 et seq. and amendments thereto. Notwithstanding any other provision of law to the contrary, the provisions of this section relating to jury trials shall not apply to proceedings for annual review or proceedings on a petition for transitional release, conditional release or final discharge.~~

Sec. 7. K.S.A. 2014 Supp. 59-29a07 is hereby amended to read as follows: 59-29a07. (a) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed in the manner provided for civil cases in article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the secretary for aging and disability services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the Kansas department for aging and disability services.

(b) At all times, persons committed for control, care and treatment by the Kansas department for aging and disability services pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ the Kansas sexually violent predator act shall be kept in a secure facility and such persons shall be segregated ~~at all times on different units~~ from any other patient under the supervision of the secretary for aging and disability services and commencing June 1, 1995, such persons committed pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ the Kansas sexually violent predator act shall be kept in a facility or building separate from any other patient under the supervision of the secretary. The provisions of this subsection shall apply to any facility or building utilized in any transitional release program or conditional release program.

(c) The Kansas department for aging and disability services is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the secretary of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the secretary of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

(d) If any person while committed to the custody of the secretary pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ the Kansas sexually violent predator act shall be taken into custody by any law enforcement officer as defined in K.S.A. 2014 Supp. 21-5111, and amendments thereto, pursuant to any parole revocation proceeding or any arrest or conviction for a criminal offense of any nature, upon the

person's release from the custody of any law enforcement officer, the person shall be returned to the custody of the secretary for further treatment pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto~~ the Kansas sexually violent predator act. During any such period of time a person is not in the actual custody or supervision of the secretary, the secretary shall be excused from the provisions of K.S.A. 59-29a08, and amendments thereto, with regard to providing that person an annual examination, annual notice and annual report to the court, except that the secretary shall give notice to the court as soon as reasonably possible after the taking of the person into custody that the person is no longer in treatment pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto~~, the Kansas sexually violent predator act and notice to the court when the person is returned to the custody of the secretary for further treatment.

(e) If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(f) Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial, unless such subsequent trial is continued as provided in K.S.A. 59-29a06, and amendments thereto.

(g) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released pursuant to K.S.A. 22-3305 and amendments thereto and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue and may proceed to consider whether the person should be committed pursuant to this section.

Sec. 8. K.S.A. 2014 Supp. 59-29a08 is hereby amended to read as follows: 59-29a08. (a) Each person committed under ~~K.S.A. 59-29a01 et seq., and amendments thereto~~, the Kansas sexually violent predator act shall have a current examination of the person's mental condition made once every year. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the annual report, as well as the annual notice and waiver form, to the court that committed the person under ~~K.S.A. 59-29a01 et seq., and amendments thereto~~, the Kansas sexually violent predator act. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person

shall have access to all records concerning the person. The court that committed the person under ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ the Kansas sexually violent predator act shall then conduct an annual review of the status of the committed person's mental condition. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

(b) ~~Nothing contained in K.S.A. 59-29a01 et seq., and amendments thereto,~~ the Kansas sexually violent predator act shall prohibit the person in conditional release from otherwise petitioning the court for discharge ~~at this the annual review hearing.~~

(c) ~~(+)~~ If the court at the annual review hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, then the court shall set a hearing on the issue.

~~(2) The court may order and hold a hearing when:~~

~~(A) There is current evidence from an expert or professional person that an identified physiological change to the committed person, such as paralysis, stroke or dementia, that renders the committed person unable to commit a sexually violent offense and this change is permanent; and~~

~~(B) the evidence presents a change in condition since the person's last hearing.~~

~~(3) At either hearing,~~ The committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person ~~at the initial commitment proceeding pursuant to K.S.A. 59-29a06, and amendments thereto.~~ The attorney general shall represent the state and shall have a right ~~to a jury trial and~~ to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at ~~either hearing the hearing for~~ transitional release shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence.

(d) If, after the hearing, the court ~~or jury~~ is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(e) If the court determines that the person should be placed in transitional release, the secretary shall transfer the person to the transitional release program. The secretary may contract for services to be provided in the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the secretary may establish for this program and every directive of the treatment staff of the transitional release program.

(f) At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and

return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written, facsimile or electronic form delivered to the court by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(g) Upon the person being returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the secretary to the court. The court shall set the matter for a hearing within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

Sec. 9. K.S.A. 59-29a10 is hereby amended to read as follows: 59-29a10. (a) If the secretary determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in repeat acts of sexual violence if placed in transitional release, the secretary shall authorize the person to petition the court for transitional release. The petition shall be served upon the court and the attorney general. The court, upon receipt service of the petition for transitional release, shall order issue notice of a hearing to be scheduled within 30 days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of such attorney's choice. ~~The hearing shall be before a jury if demanded by either the petitioner or the attorney general.~~ The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if placed in transitional release is likely to engage in repeat acts of sexual violence.

(b) If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not ~~appropriate for~~ sufficiently safe to warrant transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(c) The provisions of ~~subsections (e), (f) and (g) of~~ K.S.A. 59-29a08 ~~(e), (f) and (g),~~ and amendments thereto, shall apply to a transitional release pursuant to this section.

Sec. 10. K.S.A. 2014 Supp. 59-29a11 is hereby amended to read as follows: 59-29a11. (a) ~~Nothing in this act shall prohibit a person from filing a petition for transitional release, conditional release or final discharge pursuant to this act. However, If a person has previously filed a petition for transitional release, conditional release or final discharge without the secretary for aging and disability services approval and the court determined either upon review of the petition or following a hearing, that the petitioner's person's petition was frivolous or that the petitioner's person's condition had not so changed that the person was safe~~ significantly changed so that it is safe for the person to be at large, then the court shall deny the subsequent petition, unless the petition contains facts upon which a court could find the condition of the petitioner had ~~so changed significantly changed so~~ that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the secretary's approval,

the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and if so shall deny the petition without a hearing.

(b) No transitional release or conditional release facility or building shall be located within 2,000 feet of a licensed child care facility, an established place of worship, any residence in which a child under 18 years of age resides, or the real property of any school upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any grades one through 12. This subsection shall not apply to any state institution or facility.

(c) Transitional release or conditional release facilities or buildings shall be subject to all regulations applicable to other property and buildings located in the zone or area that are imposed by any municipality through zoning ordinance, resolution or regulation, such municipality's building regulatory codes, subdivision regulations or other nondiscriminatory regulations.

(d) On and after ~~January 1, 2009~~ July 1, 2015, the secretary for aging and disability services shall place no more than ~~eight~~ 16 sexually violent predators in any one county on transitional release or conditional release.

(e) The secretary for aging and disability services shall submit an annual report to the governor and the legislature during the first week of the regular legislative session detailing activities related to the transitional release and conditional release of sexually violent predators. The report shall include the status of such predators who have been placed in transitional release or conditional release including the number of any such predators and their locations; information regarding the number of predators who have been returned to the sexually violent predator treatment program at Larned state hospital along with the reasons for such return; and any plans for the development of additional transitional release or conditional release facilities.

Sec. 11. K.S.A. 2014 Supp. 59-29a22 is hereby amended to read as follows: 59-29a22. (a) As used in this section:

(1) "Patient Person" means any individual:

(A) Who is receiving services for mental illness and who is admitted, detained, committed, transferred or placed in the custody of the secretary for aging and disability services under the authority of K.S.A. 22-3219, 22-3302, 22-3303, 22-3428a, 22-3429, 22-3430, 59-29a05, 75-5209 and 76-1306, and amendments thereto.

(B) In the custody of the secretary for aging and disability services after being found a sexually violent predator pursuant to ~~K.S.A. 59-29a01 et seq. and amendments thereto~~ the Kansas sexually violent predator act, including any sexually violent predator placed on transitional release.

(2) "Restraints" means the application of any devices, other than human force alone, to any part of the body of the ~~patient person~~ patient person for the purpose of preventing the ~~patient person~~ patient person from causing injury to self or others.

(3) "Seclusion" means the placement of a ~~patient person~~ patient person, alone, in a room, where the ~~patient's person's~~ patient person's freedom to leave is restricted and where the ~~patient person~~ patient person is not under continuous observation.

(4) "Emergency lockdown" means a safety measure used to isolate all or a designated number of persons greater than one to their rooms for a period necessary to ensure a safe and secure environment.

(5) "Individual person management plan" means a safety measure used to isolate an individual person when the person presents a safety or security risk that cannot be addressed through routine psychiatric methods.

(b) Each ~~patient~~ person shall have the following statutory rights:

(1) Upon admission or commitment, to be informed orally and in writing of the patient's person's rights under this section. Copies of this section shall be posted conspicuously in each ~~patient area facility,~~ and shall be available to the ~~patient's~~ person's guardian and immediate family.

(2) ~~The right~~ To refuse to perform labor which is of financial benefit to the facility in which the ~~patient~~ person is receiving treatment or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this subsection. Tasks of a personal housekeeping nature are not considered compensable labor. ~~Patients~~ A person may voluntarily engage in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the department and if:

(A) ~~The specific~~ labor is an integrated part of the ~~patient's~~ person's treatment plan approved as a therapeutic activity by the professional staff member responsible for ~~supervising the patient's treatment;~~

(B) the labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity;

(C) the ~~patient~~ person has given written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and

(D) the labor involved is evaluated for its appropriateness by the staff of the facility at least once every ~~120~~ 180 days.

(3) ~~A right~~ To receive ~~prompt and adequate treatment, rehabilitation and educational services~~ appropriate for such ~~patient's~~ person's condition, ~~within the limits of available state and federal funds.~~

(4) ~~Have the right~~ To be informed of such ~~patient's~~ person's treatment and care and to participate in the planning of such treatment and care.

(5) ~~Have the following rights, under the following procedures, to refuse medication and treatment:~~

(A) ~~Have the right~~ To refuse all medication and treatment except as ordered by a court or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others. Except when medication or medical treatment has been ordered by the court or is necessary to prevent serious physical harm to others as evidenced by a recent overt act, attempt or threat to do such harm, a patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment.

(5) To refuse to consent to the administration of any medication prescribed for medical or psychiatric treatment, except in a situation in which the person is in a mental health crisis and less restrictive or intrusive measures have proven to be inadequate or clinically inappropriate. Treatment for a mental health crisis shall include medication or treatment necessary to prevent serious physical harm to the person or to others. After full explanation of the benefits and risks of such medication, the medication may be administered over the person's objection, except that the objection shall be recorded in the person's medical record and at the same time written notice thereof shall be

forwarded to the medical director of the treatment facility or the director's designee. Within five days after receiving such notice, excluding Saturdays, Sundays and legal holidays, the medical director or designee shall deliver to the person's medical provider the medical director's or designee's written decision concerning the administration of that medication, and a copy of that decision shall be placed in the person's medical record.

~~(B)(A)~~ Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program; or in quantities that interfere with a ~~patient's~~ person's treatment program.

~~(C)(B)~~ ~~Patients~~ A person will have the right to have explained the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered.

~~(6)~~ ~~Except as provided in paragraph (2), have a right to be free from physical restraint and seclusion. To be subjected to restraint, seclusion, emergency lockdown, individual person management plan, or any combination thereof, only as provided in this subsection.~~

~~(A)~~ ~~Restraints or seclusion shall not be applied to a patient unless, or both, may be used in the following circumstances:~~

~~(i)~~ ~~If it is determined by the superintendent of the treatment facility or a physician or licensed psychologist medical staff to be necessary to prevent immediate substantial bodily injury to the patient person or others and that other alternative methods to prevent such injury are not sufficient to accomplish this purpose. Restraint or seclusion shall never be used as a punishment or for the convenience of staff. When used, the extent of the restraint or seclusion applied to the patient person shall be the least restrictive measure necessary to prevent such injury to the patient person or others, and the use of restraint or seclusion in a treatment facility shall not exceed three hours without medical reevaluation. When restraints or seclusion are applied, there shall be monitoring of the patient's person's condition at a frequency determined by the treating physician or licensed psychologist, which shall be no less than once per each 15 30 minutes. The superintendent of the treatment facility or a physician or licensed psychologist shall sign a statement explaining the treatment necessity for the use of any restraint or seclusion and shall make such statement a part of the permanent treatment record of the patient person.~~

~~(ii)~~ ~~For security reasons during transport to or from the person's unit, including, but not limited to, transport to another treatment or health care facility, another secure facility or court. Any person committed or transferred to a hospital or other health care facility for medical care may be isolated for security reasons within a locked area.~~

~~(B)~~ ~~The provisions of clause (A) shall not prevent Emergency lockdown may be used in the following circumstances:~~

~~(i)~~ ~~The use of seclusion as part of a treatment methodology that calls for time out when the patient is refusing to participate in a treatment or has become disruptive of a treatment process.~~

~~(ii)~~ ~~Patients may be restrained for security reasons during transport to or from the patient's building, including transport to another treatment facility. Any patient committed or transferred to a hospital or other health care facility for medical care may be isolated for security reasons within locked facilities in the hospital.~~

~~(iii)~~ ~~Patients may be locked or restricted in such patient's room during the night~~

shift, if such patient resides in a unit in which each room is equipped with a toilet and sink or if the patients who do not have toilets in the rooms shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

(iv) Patients may be locked in such patient's room for a period of time no longer than one hour during each change of shift by staff to permit staff review of patient needs.

~~(v)(i) Patients may also be locked in such patient's room on a unit-wide or facility-wide basis. When necessary as an emergency measure as needed for security purposes, to deal with an escape or attempted escape, the discovery of a dangerous weapon or explosive device in the unit or facility or the receipt of reliable information that a dangerous weapon or explosive device is in the unit or facility, or to prevent or control a riot or the taking of a hostage or for the discovery of contraband or a unit-wide search. A unit-wide or facility-wide emergency isolation An emergency lockdown order may only be authorized only by the superintendent of the facility where the order is applicable or the superintendent's designee. A unit-wide or facility-wide emergency isolation order shall be approved within one hour after it is authorized by the superintendent or the superintendent's designee.~~

(ii) During a period of emergency lockdown, the status of each person shall be reviewed every 30 minutes to ensure the safety of the person, and each person who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

(iii) The facility shall have a written policy covering the use of emergency lockdown that ensures the safety of the individual is secured and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required.

~~(iv) An emergency order for unit-wide or facility-wide isolation lockdown order may only be in effect for the period of time needed to preserve order while dealing with the situation and may not be used as a substitute for adequate staffing. During a period of unit-wide or facility-wide isolation, the status of each patient shall be reviewed every 30 minutes to ensure the safety and comfort of the patient, and each patient who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. The facility shall have a written policy covering the use of isolation that ensures that the dignity of the individual is protected, that the safety of the individual is secured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required.~~

~~(vi) Individual patients who are referred by the court or correctional facilities for criminal evaluations may be placed in administrative confinement for security reasons and to maintain proper institutional management when treatment cannot be addressed through routine psychiatric methods. Administrative confinement of individuals shall be limited to only patients that demonstrate or threaten substantial injury to other patients or staff and when there are no clinical interventions available that will be effective to maintain a safe and therapeutic environment for both patients and staff. Administrative confinement shall not be used for any patient who is actively psychotic or likely to be psychologically harmed. The status of each patient shall be reviewed every 15 minutes to ensure the safety and comfort of the patient. The patient shall be afforded all patient rights including being offered a minimum of one hour of supervised opportunity for personal hygiene, exercise and to meet other personal needs.~~

(C) Individual person management plan may be used in any of the following

situations:

(i) As needed when a person demonstrates or threatens substantial injury to others, and routine psychiatric methods have been ineffective or are unlikely to be effective in reducing such risk.

(ii) As needed for safety or security purposes, to deal with an escape or attempted escape, the discovery of a dangerous weapon or explosive device in the unit or facility or the receipt of reliable information that a dangerous weapon or explosive device is in the unit or facility, to prevent or control a riot or the taking of a hostage or for the discovery of contraband.

(iii) The status of the person shall be reviewed every 30 minutes to ensure the safety of the person.

(D) Restraint, seclusion, emergency lockdown, individual person management plan, or any combination thereof, may be used in any other situation deemed necessary by treatment staff for the safety of a person or persons, facility staff or visitors. In all situations, restraint, seclusion, emergency lockdown, or individual person management plan shall never be used as a punishment or for the convenience of staff.

(E) A person may be locked or restricted in such person's room during the night shift if such person resides in a unit in which each room is equipped with a toilet and sink or, if a person does not have a toilet in the room, if such person is given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

(7) ~~The right not~~ To not be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the ~~patient person~~ or the written consent of a parent or legal guardian, if such ~~patient person~~ is a minor or has a legal guardian provided that the guardian has obtained authority to consent to such from the court which has venue over the guardianship following a hearing held for that purpose.

(8) ~~The right~~ To individual religious worship within the facility if the ~~patient person~~ desires such an opportunity, as long as it complies with applicable laws and facility rules and policies. The provisions for worship shall be available to all ~~patients persons~~ on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(9) ~~A right~~ To a humane psychological and physical environment within the hospital facilities. All facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.

(10) ~~The right~~ To confidentiality of all treatment records; and, as permitted by other applicable state or federal laws, ~~have the right to inspect and to, upon receipt of payment of reasonable costs, to~~ receive a copy of such records. The head of any treatment facility or designee who has the records may refuse to disclose portions of such records if the head of the treatment facility or designee states in writing that such disclosure will likely be injurious to the welfare of the person.

(11) Except as otherwise provided, ~~have a right~~ to not be filmed or taped, unless the ~~patient person~~ signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the ~~patient person~~ for a particular purpose or project during a specified time period. The ~~patient person~~ may specify in such consent periods during which, or situations in which, the ~~patient person~~ may not be filmed or

taped. If a patient person is legally incompetent, such consent shall be granted on behalf of the patient person by the patient's person's guardian. A patient person may be filmed or taped for security purposes without the patient's person's consent.

(12) ~~The right~~ To be informed in writing upon or at a reasonable time after admission, of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

(13) ~~The right~~ To be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility.

(14) ~~Patients have an unrestricted right~~ To send ~~sealed mail~~ and receive sealed mail to or from legal counsel, the courts, the secretary for aging and disability services, the superintendent of the treatment facility, the agency designated as the developmental disabilities protection and advocacy agency pursuant to P.L. 94-103, as amended, private physicians and licensed psychologists, ~~and, A person who is indigent may~~ have reasonable access to letter-writing materials.

(15) ~~The right as specified under clause (A) to send and receive sealed mail, subject to the limitations specified under clause (B):~~

(A) ~~A patient shall also have a right to send sealed mail and receive sealed mail to or from other persons, subject to physical examination in the patient's presence if there is reason to believe that such communication contains contraband materials or objects that threaten the security of patients or staff. The officers and staff of a facility may not read any mail covered by this clause.~~

(B) ~~The above rights to send and receive sealed and confidential mail are subject to the following limitations:~~

(15) To send and receive mail with reasonable limitations. A person's mail is subject to physical examination and inspection for contraband, as defined by facility rules and policies.

(i)(A) An officer or employee of the facility at which the patient person is placed may delay delivery of the mail to the patient person for a reasonable period of time to verify whether the mail contains contraband, as defined by facility rules and policies, or whether the person named as the sender actually sent the mail; may open the mail and inspect it for contraband outside the presence of the patient; or may, if the officer or staff member cannot determine whether the mail contains contraband, return the mail to the sender along with notice of the facility mail policy. If contraband is found, such contraband may be returned to the sender or confiscated by the facility. If the officer or staff member cannot determine whether the person named as the sender actually sent the mail, the officer or staff member may return the mail to the sender along with notice of the facility mail policy.

(ii)(B) The superintendent of the facility or the superintendent's designee may, in accordance with the standards and the procedure under subsection (c) ~~for denying a right for cause,~~ authorize a member of the facility treatment staff to read the mail, if the superintendent or the superintendent's designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of the patient person or others.

(iii) Residents may be restricted in receiving in the mail items deemed to be pornographic, offensive or which is deemed to jeopardize their individual treatment or that of others.

(C) A person may not receive through the mail any sexually explicit materials, items that are considered contraband, as defined by facility rules and policies, or items deemed to jeopardize the person's individual treatment, another person's treatment or the therapeutic environment of the facility.

(16) Reasonable access to a telephone to make and receive telephone calls within reasonable limits.

~~(17) Be permitted to use and wear such patient's~~ To wear and use such person's own clothing and personal possessions, including toilet articles, as long as such wear and use complies with facility rules and policies, or to be furnished with an adequate allowance of clothes if none are available. Provision shall be made to launder the patient's clothing.

~~(18) To possess personal property in a reasonable amount, as long as the property complies with state laws and facility rules and policies, and be provided a reasonable amount of individual-secure storage space for private use pursuant to facility rules and policies. In no event shall a person be allowed to possess or store contraband.~~

(19) Reasonable protection of privacy in such matters as toileting and bathing.

~~(20) Be permitted~~ To see a reasonable number of visitors who do not pose a threat to the safety and security or therapeutic climate of other patients the person, other persons, visitors or the facility.

~~(21) The right~~ To present grievances under the procedures established by each facility on the patient's person's own behalf or that of others to the staff or superintendent of the treatment facility without justifiable fear of reprisal and to communicate, subject to paragraph (14), with public officials or with any other person without justifiable fear of reprisal.

~~(22) The right~~ To spend such patient's person's money as such patient person chooses with reasonable limitations, except under the following circumstances: (A) When restricted by facility rules and policies; or (B) to the extent that authority over the money is held by another, including the parent of a minor, a court-appointed guardian of the patient's person's estate or a representative payee. A treatment facility may, as a part of its security procedures, use a patient trust account in lieu of currency that is held by a patient person, and may establish reasonable policies governing patient account transactions.

~~(c)(1) A patient's rights guaranteed~~ A person's rights under subsections (b)(15) to (b)(21) ~~(22)~~ may be denied for cause after review by the superintendent of the facility or the superintendent's designee, and may be denied or when medically or therapeutically contraindicated as documented by the patient's physician or licensed psychologist ~~or licensed master's level psychologist~~ in the patient's person's treatment record. The individual shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right in an informal hearing before the superintendent of the facility or the superintendent's designee. There shall be documentation of the grounds for withdrawal of rights in the patient's person's treatment record. ~~After an informal hearing is held, a patient or such patient's representative may petition for review of the denial of any right under this subsection through the use of the grievance procedure provided in subsection (d).~~

(2) Notwithstanding subsection (c)(1), when the facility makes an administrative decision that applies equally to all persons and there is a legitimate governmental reason

for the decision, notice of the decision is all that is required.

(d) The secretary for aging and disability services shall establish procedures to assure protection of ~~patients'~~ persons' rights guaranteed under this section.

(e) No person may intentionally retaliate or discriminate against any ~~patient~~ person or employee for contacting or providing information to any state official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section.

~~(f) (1) This section shall be a part of and supplemental to article 29a of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. Proceedings under this section or any other appeal concerning an action by the Kansas department for aging and disability services shall be governed under the Kansas administrative procedure act and the Kansas judicial review act. A person appealing any alleged violations of this section or any other agency determination shall exhaust all administrative remedies available through the Larned state hospital, including the sexual predator treatment program, before having any right to request a hearing under the Kansas administrative procedure act.~~

(2) A final agency determination shall include notice of the right to appeal such determination only to the office of administrative hearings. Within 30 days after service of a final agency determination and the notice of right to appeal, the appellant may file a request for hearing in writing with the office of administrative hearings for a review of that determination. Any request for hearing must be accompanied by a copy of the final agency determination. Failure to timely request a hearing constitutes a waiver of the right to any review. The request shall be examined by the presiding officer assigned. If the appellant seeks to challenge the final agency determination on any grounds other than material facts in controversy or agency violation of a relevant rule, regulation or statute, the appellant shall express such allegations with particularity within the request for hearing. If it plainly appears from the face of the request and accompanying final agency determination that the appellant failed to state a claim on which relief could be granted, the request shall be dismissed. The burden shall be on the appellant to prove by a preponderance of the evidence that the agency action violated a specific rule, regulation or statute. If the request for hearing does not allege a violation of a specific rule, regulation or statute, the burden shall be on the appellant to prove by a preponderance of the evidence that the agency had no legitimate government interest in taking such action. Any dispositive ruling of the hearing officer assigned by the office of administrative hearings shall be deemed an initial order under the Kansas administrative procedure act.

(3) The person shall participate by telephone or other electronic means at any hearing before the office of administrative hearings or any proceeding under the Kansas judicial review act, unless the presiding officer or court determines that the interests of justice require an in-person proceeding. Notwithstanding K.S.A. 77-609, and amendments thereto, if an in-person proceeding is necessary, such proceeding shall be conducted at the place where the person is committed.

(4) Except as otherwise provided in the Kansas sexually violent predator act and notwithstanding K.S.A. 77-609, and amendments thereto, venue shall be in Pawnee county, Kansas, for all proceedings brought pursuant to the Kansas judicial review act.

Sec. 12. K.S.A. 2014 Supp. 59-29a23 is hereby amended to read as follows: 59-

29a23. (a) ~~Whenever a person civilly committed pursuant to K.S.A. 59-29a01 et seq. and amendments thereto, files a petition pursuant to K.S.A. 60-1501 et seq. and amendments thereto, the Kansas sexually violent predator act files any civil action relating to such commitment, including, but not limited to, an action pursuant to K.S.A. 60-1501 et seq., and amendments thereto, the costs incurred, including, but not limited to, the filing fee, costs of appointed counsel fees and expenses, witness fees and expenses, expert fees and expenses and other expenses related to the prosecution and defense of such petition, shall be taxed to the county responsible for the costs civilly committed person bringing the action. Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county except that it may refuse to approve the same for payment only on the ground that it is not the county responsible for the costs. If the claim for costs is not paid within 120 days, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county.~~

(b) (1) Subject to subsection (c), any court may authorize the commencement of any civil action, or appeal therein, without prepayment of fees or security therefor, by a civilly committed person who submits an affidavit that includes a statement of all assets that such person possesses and a statement that such person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the civil action or appeal and the affiant's belief that the person is entitled to redress.

(2) A civilly committed person seeking to bring a civil action, or appeal therein, without prepayment of fees or security therefor, in addition to filing the affidavit required by subsection (b)(1), shall submit a certified copy of the trust fund account statement, or institutional equivalent, for such person for the six-month period immediately preceding the filing of the action or notice of appeal, obtained from the appropriate official of each facility at which such person is or was committed. In addition, such person shall submit a certified copy of all private banking account and investment account statements for the six-month period immediately preceding the filing of the action or notice of appeal for which the person is the account owner or beneficiary.

(3) If the court determines, based on the affidavit and information provided pursuant to this subsection, that the person is indigent, the costs incurred shall be taxed to the county responsible for the costs.

(4) Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county, except that it may refuse to approve the same for payment only on the ground that it is not the county responsible for the costs. If the claim for costs is not paid within 120 days, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county.

(5) The county responsible for the costs incurred pursuant to this subsection (a) shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.

(6) An appeal may not be taken in forma pauperis if the trial court certifies in

writing that such appeal is not taken in good faith.

(c) (1) Notwithstanding subsection (b), if a civilly committed person brings a civil action or files an appeal in forma pauperis, such person shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect as a partial payment of any court fees required by law, an initial partial filing fee of 20% of the greater of:

(A) The average monthly deposits to the civilly committed person's trust account, or institutional equivalent; or

(B) the average monthly balance in the civilly committed person's trust account, or institutional equivalent, for the six-month period immediately preceding the filing of the action or notice of appeal.

(2) After payment of the initial partial filing fee, the civilly committed person shall be required to make monthly payments of 20% of the preceding month's income credited to the civilly committed person's account. The agency having custody of the civilly committed person shall forward payments from the civilly committed person's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid. The clerk shall then forward the payments to the county responsible for the costs for reimbursement.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action.

(4) In no event shall a civilly committed person be prohibited from bringing a civil action or appealing a civil action for the reason that such person has no assets and no means by which to pay the initial partial filing fee.

(d) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:

(1) The allegation of poverty is untrue; or

(2) the action or appeal:

(A) Is frivolous or malicious;

(B) fails to state a claim on which relief may be granted; or

(C) seeks monetary relief against a defendant who is immune from such relief.

(e) (1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings.

(2) (A) If the judgment against a civilly committed person includes the payment of costs under this subsection, such person shall be required to pay the full amount of the costs ordered.

(B) The civilly committed person shall be required to make payments for costs under this subsection in the same manner provided for filing fees under subsection (c).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(f) In no event shall a civilly committed person bring a civil action or appeal a judgment in a civil action or proceeding in forma pauperis if such person has, on three or more prior occasions, while confined in any facility, brought an action or appeal in a court of the state of Kansas or of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless such person is under imminent danger of serious physical injury.

(e)-(g) As used in this section, "county responsible for the costs" means the county where the person was determined to be a sexually violent predator pursuant to ~~K.S.A.~~

~~59-29a01 et seq. and amendments thereto~~ the Kansas sexually violent predator act.

Sec. 13. K.S.A. 2014 Supp. 59-29a24 is hereby amended to read as follows: 59-29a24. (a) ~~Any patient in the custody of the secretary of social and rehabilitation services~~ person civilly committed pursuant to K.S.A. 59-29a01 et seq. and amendments thereto the Kansas sexually violent predator act, prior to filing any civil action, including, but not limited to, an action pursuant to K.S.A. 60-1501 et seq., and amendments thereto, naming as the defendant pursuant to the rules of civil procedure, the state of Kansas, any political subdivision of the state of Kansas, any public official, the secretary of social and rehabilitation for aging and disability services or an employee of the Kansas department of social and rehabilitation for aging and disability services, while such employee is engaged in the performance of such employee's duty, shall be required to have exhausted ~~such patient's~~ all administrative remedies, established by procedures adopted pursuant to subsection (d) of K.S.A. 59-29a22 and ~~amendments thereto~~, concerning such civil action. Upon filing a petition in a civil action, such ~~patient~~ person shall file with such petition proof that ~~the~~ all administrative remedies have been exhausted.

(b) ~~Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:~~

(1) ~~The allegation of poverty is untrue, notwithstanding the fact that a filing fee, or any portion thereof has been paid; or~~

(2) ~~the action or appeal:~~

(A) ~~Is frivolous or malicious;~~

(B) ~~fails to state a claim on which relief may be granted; or~~

(C) ~~seeks monetary relief against a defendant who is immune from such relief.~~

(c) ~~In no event shall such patient bring a civil action or appeal a judgment in a civil action or proceeding under this section if such patient has, on three or more prior occasions, while in the custody of the secretary of social and rehabilitation services pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, brought an action or appeal in a court of the state of Kansas or of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless the patient is under imminent danger of serious physical injury.~~

(d) ~~The provisions of this section shall not apply to a writ of habeas corpus.~~

Sec. 14. K.S.A. 2014 Supp. 59-2401a is hereby amended to read as follows: 59-2401a. (a) An appeal by an interested party from a district magistrate judge who is not regularly admitted to practice law in Kansas to a district judge may be taken no later than 14 days from any final order, judgment or decree entered in any proceeding pursuant to:

(1) The Kansas adoption and relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto;

(2) the care and treatment act for mentally ill persons, K.S.A. 59-2945 et seq., and amendments thereto;

(3) the care and treatment act for persons with an alcohol or substance abuse problem, K.S.A. 59-29b45 et seq., and amendments thereto; or

(4) the act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto.

The appeal shall be heard no later than 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo. Except as

provided further, if a record was made of the proceedings, the district judge shall conduct the appeal on the record. Upon motion of any party to the proceedings, the district judge may hold a trial de novo.

(b) An appeal by an interested party from a district judge, or a district magistrate judge who is regularly admitted to practice law in Kansas, to an appellate court shall be taken pursuant to article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, from any final order, judgment or decree entered in any proceeding pursuant to:

(1) The Kansas adoption and relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto;

(2) the care and treatment act for mentally ill persons, K.S.A. 59-2945 et seq., and amendments thereto;

(3) the Kansas sexually violent predator act, K.S.A. 59-29a01 et seq., and amendments thereto;

(4) the care and treatment act for persons with an alcohol or substance abuse problem, K.S.A. 59-29b45 et seq., and amendments thereto; or

(5) the act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto.

Except for appeals under the Kansas judicial review act and cases otherwise specifically provided for by law, appeals under this section shall have priority over all others.

(c) Pending the determination of an appeal pursuant to subsection (a) or (b), any order appealed from shall continue in force unless modified by temporary orders entered by the court hearing the appeal. The supersedeas bond provided for in K.S.A. 60-2103, and amendments thereto, shall not stay proceedings under an appeal from the district court to an appellate court.

(d) In an appeal taken pursuant to subsection (a) or (b), the court from which the appeal is taken may require an appropriate party, other than the state of Kansas, any subdivision thereof, and all cities and counties in this state, to file a bond in such sum and with such sureties as may be fixed and approved by the court to ensure that the appeal will be prosecuted without unnecessary delay and to ensure the payment of all judgments and any sums, damages and costs that may be adjudged against that party.

(e) As used in this section, "interested party" means:

(1) The parent in a proceeding pursuant to the Kansas adoption and relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto;

(2) the patient under the care and treatment act for mentally ill persons, K.S.A. 59-2945 et seq., and amendments thereto;

(3) the patient under the care and treatment act for persons with an alcohol or substance abuse problem, K.S.A. 59-29b45 et seq., and amendments thereto;

(4) the person adjudicated a sexually violent predator under the Kansas sexually violent predator act, K.S.A. 59-29a01 et seq., and amendments thereto;

(5) the ward or conservatee under the act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto;

(6) the parent of a minor person adjudicated a ward or conservatee under the act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto;

(7) the petitioner in the case on appeal; and

(8) any other person granted interested party status by the court from which the appeal is being taken.

(f) This section shall be part of and supplemental to the Kansas probate code.

Sec. 15. K.S.A. 2014 Supp. 77-603 is hereby amended to read as follows: 77-603.

(a) This act applies to all agencies and all proceedings for judicial review and civil enforcement of agency actions not specifically exempted by statute from the provisions of this act.

(b) This act creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes.

(c) This act does not apply to agency actions:

(1) Of the prisoner review board concerning inmates or persons under parole or conditional release supervision;

(2) concerning the management, discipline or release of persons in the custody of the secretary of corrections;

(3) concerning the management, discipline or release of persons in the custody of the commissioner of juvenile justice;

(4) under the election laws contained in chapter 25 of the Kansas Statutes Annotated, and amendments thereto, except as provided by K.S.A. 25-4185, and amendments thereto;

(5) concerning pardon, commutation of sentence, clemency or extradition;

(6) concerning military or naval affairs other than actions relating to armories;

(7) governed by the provisions of the open records act and subject to an action for enforcement pursuant to K.S.A. 45-222, and amendments thereto; or

(8) governed by the provisions of K.S.A. 75-4317 et seq., and amendments thereto, relating to open public meetings, and subject to an action for civil penalties or enforcement pursuant to K.S.A. 75-4320 or 75-4320a, and amendments thereto; or

~~(9) concerning the civil commitment of sexually violent predators pursuant to K.S.A. 59-29a01 et seq. and amendments thereto.~~

New Sec. 16. (a) Whenever there is current evidence since the last annual examination from an expert or professional person that an identified physiological change to the committed person, such as paralysis, stroke or dementia, renders the committed person unable to commit a sexually violent offense and that this change is permanent, the person may petition the court for a hearing to be released.

(b) If the court finds after a hearing that the person has demonstrated by clear and convincing evidence that the person suffers from a permanent physiological change rendering the person unable to commit a sexually violent offense, the court shall discharge the person from the program and notify the secretary. At the hearing, the person shall have the right to counsel. The state shall have the right to have the person examined before the hearing. The burden of proof shall be on the person to prove the physiological change is permanent and renders the person unable to commit a sexually violent offense.

(c) If the court finds the person has not suffered a permanent physiological change or is not safe, the person shall remain in secure commitment.

(d) This section shall be a part of and supplemental to the Kansas sexually violent predator act.

New Sec. 17. (a) The cost of any post-commitment hearings, annual review hearings, including those provided by the office of administrative hearings, evaluations

or other expenses expressly provided for in the Kansas sexually violent predator act shall be paid by the county responsible for the costs.

(b) The cost of any sexual predator treatment program administrative hearings involving K.S.A. 2014 Supp. 59-29a22, and amendments thereto, or other program decisions appealed to or received by the office of administrative hearings shall be paid by the county responsible for the costs.

(c) At the conclusion of any of the proceedings described in this section, the office of administrative hearings shall provide a statement to the county responsible for the costs. The county shall pay the office of administrative hearings within 60 days following the receipt of the bill or prior to the expiration of the fiscal year in which the costs were incurred, whichever occurs first.

(d) As used in this section, "county responsible for the costs" means the county where the person was determined to be a sexually violent predator pursuant to the Kansas sexually violent predator act.

(e) This section shall be a part of and supplemental to the Kansas sexually violent predator act.

New Sec. 18. (a) (1) Whenever a person civilly committed pursuant to K.S.A. 59-29a07, and amendments thereto, is in the custody of a county law enforcement agency for a pending criminal proceeding, the costs incurred for the care and custody of such person by the county with custody of such person, including, but not limited to, reasonable costs of medical care and treatment, housing, food and transportation, shall be paid by such county.

(2) The secretary for aging and disability services shall reimburse such county from the Larned state hospital – SPTP new crimes reimbursement account of the state general fund for all costs that would have been paid from such account if such person had remained in the custody of the secretary for aging and disability services.

(b) (1) Whenever a person civilly committed pursuant to K.S.A. 59-29a07, and amendments thereto, commits a crime and is prosecuted for such crime, the costs incurred for such prosecution shall be paid by the county where such prosecution occurs.

(2) The secretary for aging and disability services shall reimburse such county from the Larned state hospital – SPTP new crimes reimbursement account of the state general fund for all reasonable costs incurred for such prosecution.

(c) If there are no moneys available in the Larned state hospital – SPTP new crimes reimbursement account of the state general fund to pay any reimbursements described in subsection (a) or (b), the county entitled to such reimbursement may file a claim against the state pursuant to article 9 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto.

(d) The secretary for aging and disability services shall develop and implement a procedure to provide the reimbursements described in subsections (a) and (b) on or before January 1, 2016.

(e) All expenditures pursuant to this section from the Larned state hospital – SPTP new crimes reimbursement account of the state general 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 secretary for aging and disability services or the secretary's designee.

Sec. 19. K.S.A. 59-29a01, 59-29a03, 59-29a10 and 59-29a18 and K.S.A. 2014

Supp. 59-2401a, 59-29a04, 59-29a04a, 59-29a05, 59-29a06, 59-29a07, 59-29a08, 59-29a11, 59-29a22, 59-29a23, 59-29a24 and 77-603 are hereby repealed.";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "concerning"; by striking all in lines 2 and 3; in line 4, by striking all before the period and inserting "civil commitment of sexually violent predators; amending K.S.A. 59-29a01, 59-29a03 and 59-29a10 and K.S.A. 2014 Supp. 59-2401a, 59-29a04, 59-29a04a, 59-29a05, 59-29a06, 59-29a07, 59-29a08, 59-29a11, 59-29a22, 59-29a23, 59-29a24 and 77-603 and repealing the existing sections; also repealing K.S.A. 59-29a18";

And your committee on conference recommends the adoption of this report.

JOHN BARKER

CHARLES MACHEERS

JOHN CARMICHAEL

Conferees on part of House

JEFF KING

GREG SMITH

PAT PETTEY

Conferees on part of Senate

Senator King moved the Senate adopt the Conference Committee Report on **H Sub SB 12**.

On roll call, the vote was: Yeas 36; Nays 2; Present and Passing 0; Absent or Not Voting 2.

Yeas: Abrams, Bowers, Bruce, Denning, Donovan, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, Schmidt, Smith, Wagle, Wolf.

Nays: Baumgardner, Tyson.

Absent or Not Voting: Arpke, Wilborn.

The Conference Committee Report was adopted.

EXPLANATION OF VOTE

Madam President: House Substitute for Senate Bill 12 mandates a 100 percent increase in the number of sexually violent predators to be housed in Miami County. This was at the request of the Kansas Department for Aging and Disability Services (KDADS) Secretary. We have been in ongoing communication with the Secretary and her staff, however this expansion, that directly impacts our communities, was never communicated. We cannot support such a significant change without the opportunity to communicate this action with county leaders and community members, prior to a final vote.--MOLLY BAUMGARDNER and CARYN TYSON

ORIGINAL MOTION

Senator Haley moved to not adopt the conference committee report on **SB 113**, and requested a new conference committee be appointed. Motion failed.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 113** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee amendments, as follows:

On page 1, by striking all in lines 7 through 36;

By striking all on pages 2 through 4;

On page 5, by striking all in line 1; following line 1, by inserting:

"New Section 1. (a) A victim of the conduct of another that would constitute conduct prohibited by K.S.A. 2014 Supp. 21-5426, and amendments thereto, human trafficking or aggravated human trafficking, or K.S.A. 2014 Supp. 21-6422, and amendments thereto, commercial sexual exploitation of a child, may bring an action in an appropriate state court against the person or persons who engaged in such conduct if the victim suffered personal or psychological injury as a result of the conduct. Such victim may seek actual damages, exemplary or punitive damages, injunctive relief and any other appropriate relief.

(b) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees. A victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$150,000.

(c) Notwithstanding any other provision of law, any action commenced under this section shall be filed within 10 years after the later of the date on which the victim:

- (1) Was freed from the human trafficking situation; or
- (2) attained 18 years of age.

(d) At the victim's request, the attorney general may pursue cases on behalf of any Kansas victim under this section. All damages obtained shall go to the victim, and the attorney general may seek reasonable attorney fees and costs.

(e) Any action brought under this section shall be subject to the provisions of K.S.A. 74-7312, and amendments thereto.

(f) This section does not preclude any other remedy available to the victim under federal law or law of this state.

Sec. 2. K.S.A. 2014 Supp. 21-5501 is hereby amended to read as follows: 21-5501. The following definitions shall apply when the words and phrases defined are used in article 55 of chapter 21 of the Kansas Statutes Annotated, and K.S.A. 2014 Supp. 21-6419 through ~~21-6424~~ 21-6422, and amendments thereto, except when a particular context clearly requires a different meaning:

(a) "Sexual intercourse" means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse. "Sexual intercourse" does not include penetration of the female sex organ by a finger or object in the course of the performance of:

- (1) Generally recognized health care practices; or
- (2) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(b) "Sodomy" means oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal. "Sodomy" does not include penetration of the anal opening by a finger or object in the course of the performance of:

- (1) Generally recognized health care practices; or
- (2) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(c) "Spouse" means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the protection from abuse act.

(d) "Unlawful sexual act" means any rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, lewd and lascivious behavior, sexual battery or aggravated sexual battery, as defined in this code.

Sec. 3. K.S.A. 2014 Supp. 21-6328 is hereby amended to read as follows: 21-6328. As used in the Kansas racketeer influenced and corrupt organization act:

(a) "Beneficial interest" means:

- (1) The interest of a person as a beneficiary under any trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or
- (2) the interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term "beneficial interest" does not include the interest of a stock holder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(b) "Covered person" means any person who:

(1) Is a criminal street gang member or criminal street gang associate, as defined in K.S.A. 2014 Supp. 21-6313, and amendments thereto;

(2) has engaged in or is engaging in any conduct prohibited by K.S.A. 2014 Supp. 21-5426, and amendments thereto, human trafficking or aggravated human trafficking, or K.S.A. 2014 Supp. 21-6422, and amendments thereto, commercial sexual exploitation of a child; or

(3) has engaged in or is engaging in any conduct prohibited by K.S.A. 2014 Supp. 21-5703, and amendments thereto, unlawful manufacturing of controlled substances, or K.S.A. 2014 Supp. 21-5705, and amendments thereto, unlawful cultivation or distribution of controlled substances.

(c) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(d) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal street gang, as defined in K.S.A. 2014 Supp. 21-6313, and amendments thereto, constitutes an enterprise.

(e) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years, excluding any period of imprisonment, after a prior incident of racketeering activity.

(f) "Racketeering activity" means to commit, attempt to commit, conspire to commit or to solicit, coerce or intimidate another person to commit:

(1) Any felony or misdemeanor violation of: The felony provisions of K.S.A. 8-1568, and amendments thereto, fleeing or attempting to elude a police officer; K.S.A. 9-508 et seq., and amendments thereto, Kansas money transmitter act; article 12a of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, Kansas uniform securities act; K.S.A. 2014 Supp. 21-5401, and amendments thereto, capital murder; K.S.A. 2014 Supp. 21-5402, and amendments thereto, murder in the first degree; K.S.A. 2014 Supp. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 2014 Supp. 21-5408, and amendments thereto, kidnapping or aggravated kidnapping; K.S.A. 2014 Supp. 21-5412, and amendments thereto; K.S.A. 2014 Supp. 21-5413, and amendments thereto; K.S.A. 2014 Supp. 21-5414, and amendments thereto, domestic battery; K.S.A. 2014 Supp. 21-5415, and amendments thereto, criminal threat or aggravated criminal threat; K.S.A. 2014 Supp. 21-5420, and amendments thereto, robbery or aggravated robbery; K.S.A. 2014 Supp. 21-5421, and amendments thereto, terrorism; K.S.A. 2014 Supp. 21-5422, and amendments thereto, illegal use of weapons of mass destruction; K.S.A. 2014 Supp. 21-5423, and amendments thereto; K.S.A. 2014 Supp. 21-5426, and amendments thereto, human trafficking or aggravated human trafficking; K.S.A. 2014 Supp. 21-5428, and amendments thereto, blackmail; K.S.A. 2014 Supp. 21-5510, and amendments thereto, sexual exploitation of a child; K.S.A. 2014 Supp. 21-5601, and amendments thereto, endangering a child or aggravated endangering a child; K.S.A. 2014 Supp. 21-5602, and amendments thereto, abuse of a child; K.S.A. 2014 Supp. 21-5603, and amendments thereto, contributing to a child's misconduct or deprivation; ~~subsection (b) of~~ K.S.A. 2014 Supp. 21-5607(b), and amendments thereto, furnishing alcoholic beverages to a minor for illicit purposes; article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, crimes involving controlled substances; K.S.A. 2014 Supp. 21-5801, and amendments thereto, theft; K.S.A. 2014 Supp. 21-5803, and amendments thereto, criminal deprivation of property; K.S.A. 2014 Supp. 21-5805, and amendments thereto; K.S.A. 2014 Supp. 21-5807, and amendments thereto, burglary or aggravated burglary; K.S.A. 2014 Supp. 21-5812, and amendments thereto, arson or aggravated arson; K.S.A. 2014 Supp. 21-5813, and amendments thereto, criminal damage to property; K.S.A. 2014 Supp. 21-5814, and amendments thereto, criminal use of an explosive; K.S.A. 2014 Supp. 21-5818, and amendments thereto, tampering with a pipeline; K.S.A. 2014 Supp.

21-5821, and amendments thereto, giving a worthless check; K.S.A. 2014 Supp. 21-5823, and amendments thereto, forgery; K.S.A. 2014 Supp. 21-5824, and amendments thereto, making false information; K.S.A. 2014 Supp. 21-5825, and amendments thereto, counterfeiting; K.S.A. 2014 Supp. 21-5826, and amendments thereto, destroying written instrument; K.S.A. 2014 Supp. 21-5828, and amendments thereto, criminal use of a financial card; K.S.A. 2014 Supp. 21-5838, and amendments thereto, conducting a pyramid promotional scheme; K.S.A. 2014 Supp. 21-5839, and amendments thereto; K.S.A. 2014 Supp. 21-5903, and amendments thereto, perjury; K.S.A. 2014 Supp. 21-5904, and amendments thereto, interference with law enforcement; K.S.A. 2014 Supp. 21-5905, and amendments thereto, interference with the judicial process; K.S.A. 2014 Supp. 21-5909, and amendments thereto, intimidation of a witness or victim or aggravated intimidation of a witness or victim; K.S.A. 2014 Supp. 21-5912, and amendments thereto, aiding escape; K.S.A. 2014 Supp. 21-5913, and amendments thereto, obstructing apprehension or prosecution; K.S.A. 2014 Supp. 21-5918, and amendments thereto; K.S.A. 2014 Supp. 21-6001, and amendments thereto, bribery; K.S.A. 2014 Supp. 21-6002, and amendments thereto, official misconduct; K.S.A. 2014 Supp. 21-6301, and amendments thereto, criminal use of weapons; K.S.A. 2014 Supp. 21-6302, and amendments thereto, criminal carrying of a weapon; K.S.A. 2014 Supp. 21-6303, and amendments thereto, criminal distribution of firearms to a felon; K.S.A. 2014 Supp. 21-6304, and amendments thereto, criminal possession of a firearm by a convicted felon; K.S.A. 2014 Supp. 21-6305, and amendments thereto, aggravated weapons violation by a convicted felon; K.S.A. 2014 Supp. 21-6306, and amendments thereto, defacing identification marks of a firearm; K.S.A. 2014 Supp. 21-6308, and amendments thereto, criminal discharge of a firearm; K.S.A. 2014 Supp. 21-6310, and amendments thereto, unlawful endangerment; K.S.A. 2014 Supp. 21-6312, and amendments thereto; K.S.A. 2014 Supp. ~~21-6313 through 21-6316~~ 21-6314 and 21-6315, and amendments thereto; K.S.A. 2014 Supp. 21-6401, and amendments thereto, promoting obscenity or promoting obscenity to minors; K.S.A. 2014 Supp. 21-6404, and amendments thereto, gambling; K.S.A. 2014 Supp. 21-6405, and amendments thereto, illegal bingo operation; K.S.A. 2014 Supp. 21-6406, and amendments thereto, commercial gambling; K.S.A. 2014 Supp. 21-6407, and amendments thereto, dealing in gambling devices; K.S.A. 2014 Supp. 21-6408, and amendments thereto; K.S.A. 2014 Supp. 21-6409, and amendments thereto, installing communication facilities for gamblers; ~~subsections (a) or (b) of~~ K.S.A. 2014 Supp. 21-6414 ~~(a) or (b)~~, and amendments thereto, unlawful conduct of dog fighting or unlawful possession of dog fighting paraphernalia; ~~subsections (a) or (b) of~~ K.S.A. 2014 Supp. 21-6417 ~~(a) or (b)~~, and amendments thereto, unlawful conduct of cockfighting or unlawful possession of cockfighting paraphernalia; K.S.A. 2014 Supp. 21-6419, and amendments thereto, selling sexual relations; K.S.A. 2014 Supp. 21-6420, and amendments thereto, promoting the sale of sexual relations; K.S.A. 2014 Supp. 21-6422, and amendments thereto, commercial sexual exploitation of a child; K.S.A. 2014 Supp. 21-6501, and amendments thereto, extortion; K.S.A. 2014 Supp. 21-6502, and amendments thereto, debt adjusting; K.S.A. 2014 Supp. 21-6504, and amendments thereto, equity skimming; K.S.A. 2014 Supp. 21-6506, and amendments thereto, commercial bribery; K.S.A. 2014 Supp. 21-6507, and amendments thereto, sports bribery; K.S.A. 2014 Supp. 21-6508, and amendments thereto, tampering with a sports contest; K.S.A. 39-720, and amendments thereto, social welfare service fraud; K.S.A.

40-2,118, and amendments thereto, fraudulent insurance acts; K.S.A. 41-101 et seq., and amendments thereto, Kansas liquor control act; K.S.A. 44-5,125, and amendments thereto, workers' compensation act; K.S.A. 65-1657, and amendments thereto, nonresident pharmacy registration; K.S.A. 65-3441, and amendments thereto, hazardous waste; K.S.A. 65-4167, and amendments thereto, trafficking in counterfeit drugs; article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas parimutuel racing act; or K.S.A. 79-3321, and amendments thereto, Kansas cigarette and tobacco products act; or

(2) any conduct defined as "racketeering activity" under 18 U.S.C. § 1961(1).

(g) "Real property" means any real property or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(h) "Trustee" means:

(1) Any person acting as trustee pursuant to a trust in which the trustee holds legal or record title to real property;

(2) any person who holds legal or record title to real property in which any other person has a beneficial interest; or

(3) any successor trustee or trustees to any or all of the foregoing persons.

The term "trustee" does not include any person appointed or acting as a personal representative as defined in K.S.A. 59-102, and amendments thereto, or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

(i) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(1) In violation of any of the following provisions of law: Article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas parimutuel racing act; K.S.A. 2014 Supp. 21-6404, and amendments thereto, gambling; K.S.A. 2014 Supp. 21-6405, and amendments thereto, illegal bingo operation; K.S.A. 2014 Supp. 21-6406, and amendments thereto, commercial gambling; K.S.A. 2014 Supp. 21-6407, and amendments thereto, dealing in gambling devices; K.S.A. 2014 Supp. 21-6408, and amendments thereto, unlawful possession of a gambling device; or K.S.A. 2014 Supp. 21-6409, and amendments thereto, installing communication facilities for gamblers; or

(2) in gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

Sec. 4. K.S.A. 2014 Supp. 22-3424 is hereby amended to read as follows: 22-3424.

(a) The judgment shall be rendered and sentence imposed in open court.

(b) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody and the obligation of the defendant's appearance bond.

(c) If the verdict or finding is guilty, judgment shall be rendered and sentence pronounced without unreasonable delay, allowing adequate time for the filing and disposition of post-trial motions and for completion of such presentence investigation as the court may require.

(d)(1) If the verdict or finding is guilty, upon request of the victim or the victim's family and before imposing sentence, the court shall hold a hearing to establish restitution. The defendant may waive the right to the hearing and accept the amount of restitution as established by the court. If the court orders restitution to be paid to the victim or the victim's family, the order shall be enforced as a judgment of restitution pursuant to K.S.A. 60-4301 through 60-4304, and amendments thereto.

(2) (A) The court shall order a person convicted of human trafficking or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2014 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, K.S.A. 2014 Supp. 21-6422, and amendments thereto, to pay restitution to the victim of the offense for:

(i) Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney fees and costs; and

(ii) an amount equal to three times the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:

(a) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;

(b) the amount the defendant contracted to pay the victim; or

(c) the value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the federal fair labor standards act, 29 U.S.C. § 201 et seq., or under K.S.A. 44-1203, and amendments thereto, whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.

(B) The court shall order restitution under subsection (d)(2) even if the victim is unavailable to accept payment of restitution.

(C) If the victim does not claim restitution ordered under subsection (d)(2) for five years after entry of the order, the restitution must be paid to the human trafficking victim assistance fund created by K.S.A. 2014 Supp. 75-758, and amendments thereto, to help victims.

(e) Before imposing sentence the court shall: (1) Allow the prosecuting attorney to address the court, if the prosecuting attorney so requests; (2) afford counsel an opportunity to speak on behalf of the defendant; (3) allow the victim or such members of the victim's family as the court deems appropriate to address the court, if the victim or the victim's family so requests; and (4) address the defendant personally and ask the defendant if the defendant wishes to make a statement on the defendant's own behalf and to present any evidence in mitigation of punishment.

(f) After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of the defendant's right to appeal and of the right of a person who is unable to pay the costs of an appeal to appeal in forma pauperis.

Sec. 5. K.S.A. 2014 Supp. 22-3436 is hereby amended to read as follows: 22-3436. This section applies if a defendant is charged with a crime pursuant to articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through ~~21-6421~~ 21-6422, and amendments thereto;.

(a) The prosecuting attorney, as defined in K.S.A. 22-2202, and amendments thereto, shall: (1) Inform the victim or the victim's family before any dismissal or declining of prosecuting charges; (2) inform the victim or the victim's family of the nature of any proposed plea agreement; and (3) inform and give notice to the victim or the victim's family of the rights established in subsection (b);.

(b) The victim of a crime or the victim's family have the right to be present at any hearing where a plea agreement is reviewed or accepted and the parties may submit written arguments to the court prior to the date of the hearing.

Sec. 6. K.S.A. 2014 Supp. 22-3701 is hereby amended to read as follows: 22-3701. ~~(+)(a)~~ The governor may pardon, or commute the sentence of, any person convicted of a crime in any court of this state upon such terms and conditions as prescribed in the order granting the pardon or commutation.

~~(2)-(b)~~ The prisoner review board, hereafter referred to as the board, shall adopt rules and regulations governing the procedure for initiating, processing, and reviewing applications for pardon, or commutation of sentence filed by and on behalf of persons convicted of crime.

~~(3)-(c)~~ Except as otherwise provided, no pardon or commutation of sentence shall be granted until more than 30 days after written notice of the application therefor has been given to: ~~(a)-(1)~~ The prosecuting attorney and the judge of the court in which the defendant was convicted; and ~~(b)-(2)~~ any victim of the person's crime or the victim's family, if the person was convicted of a crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through ~~21-6421~~ 21-6422, and amendments thereto. Notice of such application for pardon or commutation of sentence shall be given by the secretary of corrections to the victim who is alive and whose address is known to the secretary of corrections, or if the victim is deceased, to the victim's family if the family's address is known to the secretary of corrections. Notice of the receipt of such application shall be given by publication in the official county paper of the county of conviction. The form of notice shall be prescribed by the board. If the applicant executes a poverty affidavit, the cost of one publication of the notice during a ~~twelve-month~~ 12-month period shall be paid by the state. If more than one notice of application is published during any ~~twelve-month~~ 12-month period the additional cost of publication shall be paid by the applicant. Subject to the provisions of subsection ~~(4)-(d)~~, if written notification is not given to such victim who is alive and whose address is known to the secretary of corrections or, if the victim is deceased, to the victim's family if the family's address is known to the secretary of corrections, the governor shall not grant or deny such application until a time at least 30 days after notification is given by publication as provided in this section.

~~(4)-(d)~~ All applications for pardon or commutation of sentence shall be referred to the board. The board shall examine each case and submit a report, together with such information as the board may have concerning the applicant, to the governor within 120 days after referral to the board. The governor shall not grant or deny any such application until the governor has received the report of the board or until 120 days after the referral to the board, whichever time is the shorter and the provisions of subsection ~~(3)-(c)~~ have been satisfied.

Sec. 7. K.S.A. 2014 Supp. 22-3727 is hereby amended to read as follows: 22-3727. (a) Prior to the release of any inmate on parole, conditional release, expiration of sentence or postrelease supervision, if an inmate is released into the community under a program under the supervision of the secretary of corrections, or after the escape of an inmate or death of an inmate while in the secretary of corrections' custody, the secretary of corrections shall give written notice of such release, escape or death to any victim of the inmate's crime who is alive and whose address is known to the secretary or, if the victim is deceased, to the victim's family if the family's address is known to the secretary. Such notice shall be required to be given to the victim or the victim's family only if the inmate was convicted of any crime in article 33, 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 53, 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through ~~21-6421~~ 21-6422, and amendments thereto. Except for notifications of releases due to a court order, escape or death, notification shall be given at least 14 working days prior to the release of such inmate. Failure to notify the victim or the victim's family as provided in this section shall not be a reason for postponement of parole, conditional release or other forms of release.

(b) As used in this section, "victim's family" means a spouse, surviving spouse, children, parents, legal guardian, siblings, ~~stepparent~~ stepparents or grandparents.

Sec. 8. K.S.A. 2014 Supp. 22-3727a is hereby amended to read as follows: 22-3727a. (a) The county or district attorney shall, as soon as practicable, provide notification as provided in K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430 and 22-3431, and amendments thereto, and upon the escape or death of a committed defendant while in the custody of the secretary for aging and disability services, to any victim of the defendant's crime whose address is known to the county or district attorney, and the victim's family, if so requested and the family's addresses are known to the county or district attorney. Such notice shall be required to be given only if the defendant was charged with any crime in article 33, 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 53, 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through ~~21-6421~~ 21-6422, and amendments thereto.

(b) As used in this section, "victim's family" means a spouse, surviving spouse, children, parents, legal guardian, siblings, ~~stepparent~~ stepparents or grandparents.

Sec. 9. K.S.A. 2014 Supp. 22-4614 is hereby amended to read as follows: 22-4614. No law enforcement officer, government official or prosecutor shall request or require any person who is alleged to be a victim of an offense described in article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, human trafficking or aggravated human trafficking as defined in K.S.A. 2014 Supp. 21-5426, and amendments thereto, or incest as defined in subsection (a) of K.S.A. 2014 Supp. 21-5604, and amendments thereto, or aggravated incest as defined in subsection (a)(2) of subsection (b)(2) of K.S.A. 2014 Supp. 21-5604, and amendments thereto, to submit to a polygraph examination or similar truth telling device as a condition for proceeding with an investigation, or charging or prosecuting such an offense.

Sec. 10. K.S.A. 2014 Supp. 23-2225 is hereby amended to read as follows: 23-2225. (a) Except as provided in subsection (d), a parent granted rights pursuant to ~~subsection (d) of~~ K.S.A. 2014 Supp. 23-2215(d), and amendments thereto, shall give written notice to the other parent who has been granted rights pursuant to ~~subsection (d) of~~ K.S.A. 2014 Supp. 23-2215(d), and amendments thereto, not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence or the removal of a child from this state as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of child support, custody or parenting time. In determining any such motion, the court shall consider all factors the court deems appropriate including, but not limited to:

- (1) The effect of the move on the best interests of the child;
- (2) the effect of the move on any party having rights granted pursuant to ~~subsection (d) of~~ K.S.A. 2014 Supp. 23-2215(d), and amendments thereto; and
- (3) the increased cost the move will impose on any party seeking to exercise rights granted under ~~subsection (d) of~~ K.S.A. 2014 Supp. 23-2215(d), and amendments thereto.

(d) A parent who has been granted rights pursuant to ~~subsection (d) of~~ K.S.A. 2014 Supp. 23-2215(d), and amendments thereto, shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through ~~21-6421~~ 21-6422, and amendments thereto, in which the child is the victim of such crime.

(e) This section shall be part of and supplemental to the Kansas parentage act.

Sec. 11. K.S.A. 2014 Supp. 23-3222 is hereby amended to read as follows: 23-3222. (a) Except as provided in subsection (d), a parent entitled to legal custody or residency of or parenting time with a child under this article shall give written notice to the other parent not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence or the removal of a child as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time. In determining any motion seeking a modification of a prior order based on change of residence or removal as described in (a), the court shall consider all factors the court deems appropriate including, but not limited to: (1) The effect of the move on the best interests of the child; (2) the effect of the move on any party having rights granted under this article; and (3) the increased cost the move will impose on any party seeking to exercise rights granted under this article.

(d) A parent entitled to the legal custody or residency of a child under this article shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or K.S.A. 2014 Supp. 21-5401 through 21-5609, 21-6104, 21-6325, 21-6326, ~~or 21-6419, 21-6420 or 21-6421 through 21-6422~~, and amendments thereto, in which the child is the victim of such crime.

Sec. 12. K.S.A. 2014 Supp. 38-2202 is hereby amended to read as follows: 38-2202. As used in the revised Kansas code for care of children, unless the context otherwise indicates:

(a) "Abandon" or "abandonment" means to forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.

(b) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(c) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(d) "Child in need of care" means a person less than 18 years of age at the time of filing of the petition or issuance of an ex parte protective custody order pursuant to K.S.A. 2014 Supp. 38-2242, and amendments thereto, who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 41-727, ~~subsection (j) of K.S.A. 74-8810(j), subsection (m) or (n) of K.S.A. 79-3321(m) or (n), or subsection (a)(14) of K.S.A. 2014 Supp. 21-6301(a)(14)~~, and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 2014 Supp. 21-5102, and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;

(12) while less than 10 years of age commits the offense defined in ~~subsection (a)~~ ~~(14)~~ of K.S.A. 2014 Supp. 21-6301(a)(14), and amendments thereto; or

(13) has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve.

(e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 2014 Supp. 38-2207 and 38-2208, and amendments thereto.

(f) "Civil custody case" includes any case filed under chapter 23 of the Kansas Statutes Annotated, and amendments thereto, the Kansas family law code, article 11, of chapter 38 of the Kansas Statutes Annotated, and amendments thereto, determination of parentage, article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, adoption and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, guardians and conservators.

(g) "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2014 Supp. 38-2206, and amendments thereto, in a proceeding pursuant to this code.

(h) "Custody" whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(i) "Extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.

(j) "Educational institution" means all schools at the elementary and secondary levels.

(k) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in ~~subsection (a)~~ of K.S.A. 72-89b03(a), and amendments thereto.

(l) "Harm" means physical or psychological injury or damage.

(m) "Interested party" means the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court pursuant to

K.S.A. 2014 Supp. 38-2241, and amendments thereto, or Indian tribe seeking to intervene that is not a party.

(n) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(o) "Juvenile detention facility" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(p) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(q) "Kinship care" means the placement of a child in the home of the child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.

(r) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(s) "Multidisciplinary team" means a group of persons, appointed by the court under K.S.A. 2014 Supp. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(t) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:

(1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;

(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to ~~subsection (a)(2)~~ of K.S.A. 2014 Supp. 38-2217(a)(2), and amendments thereto.

(u) "Parent" when used in relation to a child or children, includes a guardian and

every person who is by law liable to maintain, care for or support the child.

(v) "Party" means the state, the petitioner, the child, any parent of the child and an Indian child's tribe intervening pursuant to the Indian child welfare act.

(w) "Permanency goal" means the outcome of the permanency planning process which may be reintegration, adoption, appointment of a permanent custodian or another planned permanent living arrangement.

(x) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to K.S.A. 2014 Supp. 38-2272, and amendments thereto.

(y) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered.

(z) "Placement" means the designation by the individual or agency having custody of where and with whom the child will live.

(aa) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(bb) "Secretary" means the secretary of the department for children and families or the secretary's designee.

(cc) "Secure facility" means a facility, other than a staff secure facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(dd) "Sexual abuse" means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall include allowing, permitting or encouraging a child to engage in the sale of sexual relations or commercial sexual exploitation of a child, or to be photographed, filmed or depicted in pornographic material. Sexual abuse also shall include allowing, permitting or encouraging a child to engage in aggravated human trafficking, as defined in K.S.A. 2014 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the offender or another.

(ee) "Shelter facility" means any public or private facility or home, other than a juvenile detention facility or staff secure facility, that may be used in accordance with this code for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(ff) "Staff secure facility" means a facility described in K.S.A. 2014 Supp. 65-535, and amendments thereto: (1) That does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein; (2) that may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. No staff secure facility shall be in a city or county jail.

(gg) "Transition plan" means, when used in relation to a youth in the custody of the secretary, an individualized strategy for the provision of medical, mental health,

education, employment and housing supports as needed for the adult and, if applicable, for any minor child of the adult, to live independently and specifically provides for the supports and any services for which an adult with a disability is eligible including, but not limited to, funding for home and community based services waivers.

(hh) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 13. K.S.A. 2014 Supp. 38-2271 is hereby amended to read as follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-414, and amendments thereto, that a parent is unfit by reason of conduct or condition which renders the parent unable to fully care for a child, if the state establishes, by clear and convincing evidence, that:

(1) A parent has previously been found to be an unfit parent in proceedings under K.S.A. 2014 Supp. 38-2266 et seq., and amendments thereto, or comparable proceedings under the laws of another jurisdiction;

(2) a parent has twice before been convicted of a crime specified in article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or comparable offenses under the laws of another jurisdiction, or an attempt or attempts to commit such crimes and the victim was under the age of 18 years;

(3) on two or more prior occasions a child in the physical custody of the parent has been adjudicated a child in need of care as defined by ~~subsection (d)(1), (d)(3), (d)(5) or (d)(11)~~ of K.S.A. 2014 Supp. 38-2202(d)(1), (d)(3), (d)(5) or (d)(11), and amendments thereto, or comparable proceedings under the laws of another jurisdiction;

(4) the parent has been convicted of causing the death of another child or stepchild of the parent;

(5) the child has been in an out-of-home placement, under court order for a cumulative total period of one year or longer and the parent has substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home;

(6) (A) the child has been in an out-of-home placement, under court order for a cumulative total period of two years or longer; (B) the parent has failed to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home; and (C) there is a substantial probability that the parent will not carry out such plan in the near future;

(7) a parent has been convicted of capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2014 Supp. 21-5401, and amendments thereto, murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto, murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2014 Supp. 21-5403, and amendments thereto, ~~or~~ voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2014 Supp. 21-5404, and amendments thereto, human trafficking or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2014 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, K.S.A. 2014 Supp. 21-6422, and amendments thereto, or comparable proceedings under the laws of another jurisdiction or, has been adjudicated a juvenile offender because of an act which if committed by an

adult would be an offense as provided in this subsection, and the victim of such murder was the other parent of the child;

(8) a parent abandoned or neglected the child after having knowledge of the child's birth or either parent has been granted immunity from prosecution for abandonment of the child under ~~subsection (b)~~ of K.S.A. 21-3604**(b)**, prior to its repeal, or ~~subsection (d)~~ of K.S.A. 2014 Supp. 21-5605**(d)**, and amendments thereto; or

(9) a parent has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;

(10) a father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;

(11) a father abandoned the mother after having knowledge of the pregnancy;

(12) a parent has been convicted of rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2014 Supp. 21-5503, and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child; or

(13) a parent has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition. In making this determination the court may disregard incidental visitations, contacts, communications or contributions.

(b) The burden of proof is on the parent to rebut the presumption of unfitness by a preponderance of the evidence. In the absence of proof that the parent is presently fit and able to care for the child or that the parent will be fit and able to care for the child in the foreseeable future, the court shall terminate parental rights in proceedings pursuant to K.S.A. 2014 Supp. 38-2266 et seq., and amendments thereto.

Sec. 14. K.S.A. 2014 Supp. 38-2309 is hereby amended to read as follows: 38-2309. (a) *Official file*. The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held, judgments and decrees entered by the court. The official file shall be kept separate from other records of the court.

(b) The official file shall be open for public inspection, unless the judge determines that opening the official file for public inspection is not in the best interests of a juvenile who is less than 14 years of age. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, or human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2014 Supp. 21-5426, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing such victim's identity. An official file closed pursuant to this section and information identifying the victim or alleged victim of any sex offense shall be disclosed only to the following:

(1) A judge of the district court and members of the staff of the court designated by the judge;

- (2) parties to the proceedings and their attorneys;
- (3) any individual or any public or private agency or institution: (A) Having custody of the juvenile under court order; or (B) providing educational, medical or mental health services to the juvenile;
- (4) the juvenile's court appointed special advocate;
- (5) any placement provider or potential placement provider as determined by the commissioner or court services officer;
- (6) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;
- (7) the Kansas racing commission, upon written request of the commission chairperson, for the purpose provided by K.S.A. 74-8804, and amendments thereto, except that information identifying the victim or alleged victim of any sex offense shall not be disclosed pursuant to this subsection;
- (8) juvenile intake and assessment workers;
- (9) the commissioner;
- (10) any other person when authorized by a court order, subject to any conditions imposed by the order; and
- (11) the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

(c) *Social file.* Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by attorneys for the parties, juvenile intake and assessment workers, court appointed special advocates, juvenile community corrections officers, the juvenile's guardian ad litem, if any, or upon order of a judge of the district court or appellate court. The reports shall not be further disclosed without approval of the court or by being presented as admissible evidence.

(d) *Preservation of records.* The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code whenever such records otherwise would be destroyed. The Kansas state historical society shall make available for public inspection any unexpunged docket entry or official file in its custody concerning any juvenile 14 or more years of age at the time an offense is alleged to have been committed by the juvenile. No other such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (b) and (c). A judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code.

(e) Relevant information, reports and records, shall be made available to the department of corrections upon request, and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

Sec. 15. K.S.A. 2014 Supp. 38-2310 is hereby amended to read as follows: 38-2310. (a) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile under 14 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

(1) The judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) the Kansas department for children and families;

(4) the juvenile's court appointed special advocate, any officer of a public or private agency or institution or any individual having custody of a juvenile under court order or providing educational, medical or mental health services to a juvenile;

(5) any educational institution, to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees;

(6) any educator, to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils;

(7) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(8) the central repository, as defined by K.S.A. 22-4701, and amendments thereto, for use only as a part of the juvenile offender information system established under K.S.A. 2014 Supp. 38-2326, and amendments thereto;

(9) juvenile intake and assessment workers;

(10) ~~the juvenile justice authority~~ department of corrections.

(11) juvenile community corrections officers;

(12) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(13) as provided in subsection (c).

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated, and amendments thereto; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile 14 or more years of age shall be subject to the same disclosure restrictions as the records of adults. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, ~~or and amendments thereto.~~ K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, ~~or human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2014 Supp. 21-5426, and amendments thereto.~~ shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records, shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

(e) All records, reports and information obtained as a part of the juvenile intake and assessment process for juveniles shall be confidential, and shall not be disclosed except as provided by statutory law and rules and regulations promulgated by the commissioner ~~thereunder~~.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified by the commissioner of juvenile justice, may authorize disclosure of such records, reports and other information to:

(A) A person licensed to practice the healing arts who has before that person a juvenile whom the person reasonably suspects may be abused or neglected;

(B) a court-appointed special advocate for a juvenile or an agency having the legal responsibility or authorization to care for, treat or supervise a juvenile;

(C) a parent or other person responsible for the welfare of a juvenile, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the juvenile, the attorney and a guardian ad litem, if any, for such juvenile;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the Kansas code for care of children or the revised Kansas juvenile justice code, whichever is applicable;

(G) members of a multidisciplinary team under this code;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a juvenile who is the subject of a report or record of child abuse or neglect, specifically including the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, ~~physicians'~~ physician assistants, community mental health workers, ~~alcohol and drug abuse~~ addiction counselors and licensed or registered child care providers;

(J) a citizen review board pursuant to K.S.A. 2014 Supp. 38-2207, and amendments thereto;

(K) an educational institution to the extent necessary to enable such institution to provide the safest possible environment for pupils and employees of the institution;

(L) any educator to the extent necessary for the protection of the educator and pupils; and

(M) any juvenile intake and assessment worker of another certified juvenile intake and assessment program.

Sec. 16. K.S.A. 2014 Supp. 39-970 is hereby amended to read as follows: 39-970.

(a) (1) No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2014 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto, second degree murder, pursuant to ~~subsection (a) of K.S.A. 21-3402(a)~~, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5403(a)~~, and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or K.S.A. 2014 Supp. 21-5404, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2014 Supp. 21-5407, and amendments thereto, mistreatment of a dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2014 Supp. 21-5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2014 Supp. 21-5426(a), and amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 2014 Supp. 21-5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 2014 Supp. 21-5503, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5506(a)~~, and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5506(b)~~, and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5504(b)~~, and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5508(a)~~, and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5508(b)~~, and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2014 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5505(a)~~, and amendments thereto, ~~or~~ aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5505(b)~~, and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2014 Supp. 21-6422, and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a) (1), pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2014 Supp. 21-5302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2014 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government. The provisions of subsection (a)(2)(C) shall not apply to any person who is employed by an adult care home on July 1, 2010, and while continuously employed by the same adult care home.

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through 21-6421, and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 2014 Supp. 21-5606, and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A. 2014 Supp. 21-5801, and amendments thereto; (D) an attempt to commit any of the crimes listed in this subsection (a)(2), pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in subsection (a)(2), pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2014 Supp. 21-5302, and amendments thereto; (F) criminal solicitation of any of the crimes listed in subsection (a)(2), pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2014 Supp. 21-5303, and amendments thereto; or (G) similar statutes of other states or the federal government.

(b) No person shall operate an adult care home if such person has been found to be in need of a guardian or conservator, or both as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary for aging and disability services shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the Kansas department for aging and disability services a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the Kansas department for aging and disability services information regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, and which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary for aging and disability services determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the Kansas department for aging and disability services of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) The secretary for aging and disability services shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(f) (1) The secretary for aging and disability services shall provide each operator requesting information under this section with the criminal history record information concerning any criminal history information and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau

of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary for aging and disability services shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2014 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2014 Supp. 21-5801, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2014 Supp. 21-5801, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection ~~(F)~~ shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph ~~(S)~~ shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(i) An operator may request from the Kansas department for aging and disability services criminal history information on persons employed under subsections (g) and (h).

(j) No person who has been employed by the same adult care home since July 1, 1992, shall be subject to the provisions of this section while employed by such adult care home.

(k) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

(l) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(m) For purposes of this section, the Kansas bureau of investigation shall report any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, to the secretary for aging and disability services when a background check is requested.

(n) This section shall be part of and supplemental to the adult care home licensure act.

Sec. 17. K.S.A. 2014 Supp. 44-706 is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection. For purposes of this subsection, "good cause" is cause of such gravity that would impel a reasonable, not supersensitive, individual exercising ordinary common sense to leave employment. Good cause requires a showing of good faith of the individual leaving work, including the presence of a genuine desire to work. Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available. As used in this paragraph "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the spouse of an individual who is a member of the armed forces of the United States who left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job. For the purposes of this provision the term "armed forces" means active duty in the army, navy, marine corps, air force, coast guard or any branch of the military reserves of the United States;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph, "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a consideration of: (A) The safety measures used or the lack thereof; and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal trade act of 1974, and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge and that would impel the average worker to give up such worker's employment;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of: (A) The rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted; (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted; and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a substantial violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating. For the purposes of this paragraph, a demotion based on performance does not constitute a violation of the work agreement;

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification; or

(12) (A) the individual left work due to circumstances resulting from domestic violence, including:

(i) The individual's reasonable fear of future domestic violence at or en route to or from the individual's place of employment;

(ii) the individual's need to relocate to another geographic area in order to avoid future domestic violence;

(iii) the individual's need to address the physical, psychological and legal impacts of domestic violence;

(iv) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; or

(v) the individual's reasonable belief that termination of employment is necessary to avoid other situations which may cause domestic violence and to provide for the future safety of the individual or the individual's family.

(B) An individual may prove the existence of domestic violence by providing one of the following:

(i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction;

(ii) a police record documenting the abuse;

(iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through ~~21-6421~~ 21-6422, and amendments thereto, where the victim was a family or household member;

(iv) medical documentation of the abuse;

(v) a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or

(vi) a sworn statement from the individual attesting to the abuse.

(C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of labor unless consent for disclosure is given by the individual.

(b) If the individual has been discharged or suspended for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and in cases where the disqualification is due to discharge for misconduct has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for

gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection, "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment including, but not limited to, a violation of a company rule, including a safety rule, if: (A) The individual knew or should have known about the rule; (B) the rule was lawful and reasonably related to the job; and (C) the rule was fairly and consistently enforced.

(2) (A) Failure of the employee to notify the employer of an absence and an individual's leaving work prior to the end of such individual's assigned work period without permission shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

(B) For the purposes of this subsection, misconduct shall include, but not be limited to, violation of the employer's reasonable attendance expectations if the facts show:

- (i) The individual was absent or tardy without good cause;
- (ii) the individual had knowledge of the employer's attendance expectation; and
- (iii) the employer gave notice to the individual that future absence or tardiness may or will result in discharge.

(C) For the purposes of this subsection, if an employee disputes being absent or tardy without good cause, the employee shall present evidence that a majority of the employee's absences or tardiness were for good cause. If the employee alleges that the employee's repeated absences or tardiness were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a)(1).

(3) (A) The term "gross misconduct" as used in this subsection shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection. Gross misconduct shall include, but not be limited to: (i) Theft; (ii) fraud; (iii) intentional damage to property; (iv) intentional infliction of personal injury; or (v) any conduct that constitutes a felony.

(B) For the purposes of this subsection, the following shall be conclusive evidence of gross misconduct:

- (i) The use of alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;
- (ii) the impairment caused by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;
- (iii) a positive breath alcohol test or a positive chemical test, provided:
 - (a) The test was either:
 - (1) Required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq.;
 - (2) administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;
 - (3) requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment;

(4) required by law and the test constituted a required condition of employment for the individual's job; or

(5) there was reasonable suspicion to believe that the individual used, had possession of, or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(b) the test sample was collected either:

(1) As prescribed by the drug free workplace act, 41 U.S.C. § 701 et seq.;

(2) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

(3) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment;

(4) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job; or

(5) at a time contemporaneous with the events establishing probable cause;

(c) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual certified pursuant to paragraph (b)(3)(A)(iii)(f) or authorized to collect or label test samples by federal or state law, or a federal or state rule or regulation having the force or effect of law, including law enforcement personnel;

(d) the chemical test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(e) the chemical test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample or a breath alcohol test;

(f) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to a description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(g) the foundation evidence establishes, beyond a reasonable doubt, that the test results were from the sample taken from the individual;

(iv) an individual's refusal to submit to a chemical test or breath alcohol test, provided:

(a) The test meets the standards of the drug free workplace act, 41 U.S.C. § 701 et seq.;

(b) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

(c) the test was otherwise required by law and the test constituted a required condition of employment for the individual's job;

(d) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or

(e) there was reasonable suspicion to believe that the individual used, possessed or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(v) an individual's dilution or other tampering of a chemical test.

(C) For purposes of this subsection:

(i) "Alcohol concentration" means the number of grams of alcohol per 210 liters of breath;

(ii) "alcoholic liquor" shall be defined as provided in K.S.A. 41-102, and amendments thereto;

(iii) "cereal malt beverage" shall be defined as provided in K.S.A. 41-2701, and amendments thereto;

(iv) "chemical test" shall include, but is not limited to, tests of urine, blood or saliva;

(v) "controlled substance" shall be defined as provided in K.S.A. 2014 Supp. 21-5701, and amendments thereto;

(vi) "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in an open meeting by the governing body of any special district or other local governmental entity;

(vii) "positive breath test" shall mean a test result showing an alcohol concentration of 0.04 or greater, or the levels listed in 49 C.F.R. part 40, if applicable, unless the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, in which case "positive chemical test" shall mean a test result showing an alcohol concentration at or above the levels provided for in the assistance or treatment program;

(viii) "positive chemical test" shall mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, or 49 C.F.R. part 40, as applicable, for the drugs or abuse listed therein, unless the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, in which case "positive chemical test" shall mean a chemical result showing a concentration at or above the levels provided for in the assistance or treatment program.

(4) An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit, except that the individual shall be disqualified after the time at which such individual intended to quit and any individual who commits misconduct after such individual gives notice to such individual's intent to quit shall be disqualified;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency; (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience; (iii) isolated instances of ordinary negligence or inadvertence; (iv) good-faith errors in judgment or discretion; or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or

(C) the individual's refusal to perform work in excess of the contract of hire.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; and (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, or legal needs relating to such domestic violence.

(d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection, failure or refusal to cross a picket

line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.

(g) For the period of five years beginning with the first day following the last week of unemployment for which the individual received benefits, or for five years from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor. In addition to the penalties set forth in K.S.A. 44-719, and amendments thereto, an individual who has knowingly made a false statement or representation or who has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor shall be liable for a penalty in the amount equal to 25% of the amount of benefits unlawfully received. Notwithstanding any other provision of law, such penalty shall be deposited into the employment security trust fund.

(h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States.

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in ~~subsection (v) of~~ K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in ~~subsection (v) of~~ K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the

individual under this subsection and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in ~~subsection (v) of K.S.A. 44-703(v)~~, and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced, but not below zero, by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced, but not below zero, by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an

employer, or any person or organization, who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection; or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection. No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) which an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection, the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in ~~subsection (v) of~~ K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities.

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in ~~subsection (v) of~~ K.S.A. 44-703(v), and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection provided:

(1) The individual was engaged in full-time employment concurrent with the individual's school attendance;

(2) the individual is attending approved training as defined in ~~subsection (s) of~~ K.S.A. 44-703(s), and amendments thereto; or

(3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under ~~subsection (e)~~ of K.S.A. 44-705(c), and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

(1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.

(2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717, and amendments thereto.

(t) (1) Any applicant for or recipient of unemployment benefits who tests positive for unlawful use of a controlled substance or controlled substance analog shall be required to complete a substance abuse treatment program approved by the secretary of labor, secretary of commerce or secretary for children and families, and a job skills program approved by the secretary of labor, secretary of commerce or the secretary for children and families. Subject to applicable federal laws, any applicant for or recipient of unemployment benefits who fails to complete or refuses to participate in the substance abuse treatment program or job skills program as required under this subsection shall be ineligible to receive unemployment benefits until completion of such substance abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job skills programs, such applicant for or recipient of unemployment benefits may be subject to periodic drug screening, as determined by the secretary of labor. Upon a second positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or recipient of unemployment benefits shall be ordered to complete again a substance abuse treatment program and job skills program, and shall be terminated from unemployment benefits for a period of 12 months, or until such applicant for or recipient of unemployment benefits completes both substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or a recipient of unemployment benefits shall be terminated from receiving unemployment benefits, subject to applicable federal law.

(2) Any individual who has been discharged or refused employment for failing a preemployment drug screen required by an employer may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any such individual who requests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening.

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970 or 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970 or 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970 or 65-5117, and amendments thereto. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

Sec. 18. K.S.A. 2014 Supp. 59-2132 is hereby amended to read as follows: 59-2132. (a) Except as provided in subsection (h), in independent and agency adoptions, the court shall require the petitioner to obtain an assessment of the advisability of the adoption by a court approved:

(1) (A) Licensed social worker, licensed specialist social worker, licensed specialist clinical social worker, licensed masters social worker, licensed baccalaureate social worker or licensed associate social worker licensed by the behavioral sciences regulatory board;

(B) licensed clinical marriage and family therapist as defined in K.S.A. 65-6402, and amendments thereto;

(C) licensed marriage and family therapist as defined in K.S.A. 65-6402, and amendments thereto;

(D) licensed clinical professional counselor as defined in K.S.A. 65-5802, and amendments thereto;

(E) licensed professional counselor as defined in K.S.A. 65-5802, and amendments thereto;

(F) licensed psychologist as defined in K.S.A. 65-6319, and amendments thereto;

(G) licensed masters level psychologist as defined in K.S.A. 74-5362, and amendments thereto;

(H) licensed clinical psychotherapist as defined in K.S.A. 74-5363, and amendments thereto; or

(I) a licensed child-placing agency.

(2) Any person performing an assessment pursuant to this subsection shall:

(A) Possess a minimum of two years experience in adoption services or be supervised by a person with such experience; or

(B) if licensed by the behavioral sciences regulatory board to diagnose and treat mental disorders in independent practice, possess a minimum of one year of experience in adoption services or be supervised by a person with such experience.

(b) The petitioner shall file with the court, not less than 10 days before the hearing on the petition, a report of the assessment and, if necessary, confirmation or clarification of the information filed under K.S.A. 59-2130, and amendments thereto.

(c) If there is no one authorized pursuant to this section available to make the assessment and report to the court, the court may use the Kansas department for children and families for that purpose.

(d) The costs of making the assessment and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(e) In making the assessment, the person authorized pursuant to this section or Kansas department for children and families is authorized to observe the child in the petitioner's home, verify financial information of the petitioner, shall clear the name of the petitioner with the child abuse and neglect registry through the Kansas department for children and families and, when appropriate, with a similar registry in another state or nation, shall determine whether the petitioner has been convicted of a felony for any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through ~~21-6421~~ 21-6422, and amendments thereto, or, within the last five years been convicted of a felony violation of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, and, when appropriate, any similar conviction in another jurisdiction, and to contact the agency or individuals consenting to the adoption and confirm and, if necessary, clarify any genetic and medical history filed with the petition. This information shall be made a part of the report to the court. The report to the court by any person authorized pursuant to this section to perform this assessment shall include the results of the investigation of the petitioner, the petitioner's home and the ability of the petitioner to care for the child.

(f) In the case of a nonresident who is filing a petition to adopt a child in Kansas, the assessment and report required by this section must be completed in the petitioner's state of residence by a person authorized in that state to conduct such assessments. Such report shall be filed with the court not less than 10 days before the hearing on the petition.

(g) The assessment and report required by this section shall comply with any applicable rules and regulations of the department of health and environment and shall have been completed not more than one year prior to the filing of the petition for adoption.

(h) The assessment and report required by this section may be waived by the court upon: (1) Review of a petition requesting such waiver by a relative of the child; or

(2) the court's own motion.

Sec. 19. K.S.A. 2014 Supp. 59-29a14 is hereby amended to read as follows: 59-29a14. (a) The county or district attorney shall file a special allegation of sexual motivation within 14 days after arraignment in every criminal case other than sex offenses as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(b) In a criminal case wherein there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury, if it finds the defendant guilty, also shall find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be

applied to sex offenses as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto.

(c) The county or district attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

Sec. 20. K.S.A. 2014 Supp. 60-455 is hereby amended to read as follows: 60-455.

(a) Subject to K.S.A. 60-447, and amendments thereto, evidence that a person committed a crime or civil wrong on a specified occasion, is inadmissible to prove such person's disposition to commit crime or civil wrong as the basis for an inference that the person committed another crime or civil wrong on another specified occasion.

(b) Subject to K.S.A. 60-445 and 60-448, and amendments thereto, such evidence is admissible when relevant to prove some other material fact including motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

(c) Subject to K.S.A. 60-445 and 60-448, and amendments thereto, in any criminal action other than a criminal action in which the defendant is accused of a sex offense under articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or ~~21-6418~~ 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, such evidence is admissible to show the modus operandi or general method used by a defendant to perpetrate similar but totally unrelated crimes when the method of committing the prior acts is so similar to that utilized in the current case before the court that it is reasonable to conclude the same individual committed both acts.

(d) Except as provided in K.S.A. 60-445, and amendments thereto, in a criminal action in which the defendant is accused of a sex offense under articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or ~~21-6418~~ 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, evidence of the defendant's commission of another act or offense of sexual misconduct is admissible, and may be considered for its bearing on any matter to which it is relevant and probative.

(e) In a criminal action in which the prosecution intends to offer evidence under this rule, the prosecuting attorney shall disclose the evidence to the defendant, including statements of witnesses, at least 10 days before the scheduled date of trial or at such later time as the court may allow for good cause.

(f) This rule shall not be construed to limit the admission or consideration of evidence under any other rule or to limit the admissibility of the evidence of other crimes or civil wrongs in a criminal action under a criminal statute other than in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or ~~21-6418~~ 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto.

(g) As used in this section, an "act or offense of sexual misconduct" includes:

(1) Any conduct proscribed by article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto;

(2) the sexual gratification component of aggravated human trafficking, as described in ~~subsection (a)(1)(B) and (a)(2) of K.S.A. 21-3447(a)(1)(B) or (a)(2), prior to its repeal, or subsection (b)(1)(B) or (b)(2) of K.S.A. 2014 Supp. 21-5426(b)(1)(B) or (b)(2), and amendments thereto;~~

(3) exposing another to a life threatening communicable disease, as described in ~~subsection (a)(1) of K.S.A. 21-3435(a)(1), prior to its repeal, or subsection (a)(1) of K.S.A. 2014 Supp. 21-5424(a)(1), and amendments thereto;~~

(4) incest, as described in K.S.A. 21-3602, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5604(a), and amendments thereto;~~

(5) aggravated incest, as described in K.S.A. 21-3603, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5604(b), and amendments thereto;~~

(6) contact, without consent, between any part of the defendant's body or an object and the genitals, mouth or anus of the victim;

(7) contact, without consent, between the genitals, mouth or anus of the defendant and any part of the victim's body;

(8) deriving sexual pleasure or gratification from the infliction of death, bodily injury or physical pain to the victim;

(9) an attempt, solicitation or conspiracy to engage in conduct described in paragraphs (1) through (8); or

(10) any federal or other state conviction of an offense, or any violation of a city ordinance or county resolution, that would constitute an offense under article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, the sexual gratification component of aggravated human trafficking, as described in ~~subsection (a)(1)(B) and (a)(2) of K.S.A. 21-3447(a)(1)(B) or (a)(2), prior to its repeal, or subsection (b)(1)(B) or (b)(2) of K.S.A. 2014 Supp. 21-5426(b)(1)(B) or (b)(2), and amendments thereto;~~ incest, as described in K.S.A. 21-3602, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5604(a), and amendments thereto;~~ or aggravated incest, as described in K.S.A. 21-3603, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5604(b), and amendments thereto,~~ or involved conduct described in paragraphs (6) through (9).

(h) If any provisions of this section or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or application. To this end the provisions of this section are severable.

Sec. 21. K.S.A. 2014 Supp. 60-5001 is hereby amended to read as follows: 60-5001. (a) Any person who, while under the age of 18, was a victim of an offense described in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, human trafficking, as defined in K.S.A. 21-3446, prior to its repeal, or K.S.A. 2014 Supp. 21-5426(a), and amendments thereto, aggravated human trafficking, as defined in K.S.A. 21-3447, prior

to its repeal, or K.S.A. 2014 Supp. 21-5426(b), and amendments thereto, incest as defined in K.S.A. 21-3602, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-5604(a), and amendments thereto, or aggravated incest as defined in ~~subsection (a)(2)~~ of K.S.A. 21-3603(a)(2), prior to its repeal, or ~~subsection (b)(2)~~ of K.S.A. 2014 Supp. 21-5604(b)(2), and amendments thereto, where such offense resulted in a conviction and any portion of such offense was used in the production of child pornography, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such child pornography, may bring an action in an appropriate state court against the producer, promoter or intentional possessor of such child pornography, regardless of whether the victim is now an adult.

(b) In any action brought under this section, a prevailing plaintiff shall recover the actual damages such person sustained and the cost of the suit, including reasonable attorney's fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$150,000.

(c) Notwithstanding any other provision of law, any action commenced under this section shall be filed within three years after the later of:

- (1) The conclusion of a related criminal case;
- (2) the notification to the victim by a member of a law enforcement agency of the creation, possession, or promotion of the child pornography; or
- (3) in the case of a victim younger than 18, within three years after the person reaches the age of 18.

(d) It is not a defense to a civil cause of action under this section that the respondent did not know the victim or commit the abuse depicted in the child pornography.

(e) At the victim's request, the attorney general may pursue cases on behalf of any Kansas victim under this section. All damages obtained shall go to the victim, and the attorney general may seek reasonable attorney's fees and costs.

(f) Any action brought under this section shall be subject to the provisions of K.S.A. 74-7312, and amendments thereto.

(g) As used in this section, "child pornography" includes, but is not limited to, any visual depiction, as described in ~~subsection (a)~~ of K.S.A. 21-3516(a), prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-5510(a), and amendments thereto, and any performance, as defined in ~~subsection (b)~~ of K.S.A. 21-3516(b), prior to its repeal, or ~~subsection (c)~~ of K.S.A. 2014 Supp. 21-5510(c), and amendments thereto.

(h) This section shall not apply to acts done in the performance of duty by any: (1) Law enforcement officer of the state of Kansas or any political subdivision thereof; (2) forensic examiner; (3) any prosecuting attorney, as defined in K.S.A. 22-2202, and amendments thereto; or (4) any bona fide child advocacy organization, including, but not limited to, the national center for missing and exploited children.

Sec. 22. K.S.A. 2014 Supp. 65-5117 is hereby amended to read as follows: 65-5117. (a) (1) No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439, prior to its repeal, or K.S.A. 2014 Supp. 21-5401, and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401, prior to its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto, second degree murder, pursuant to ~~subsection (a)~~ of K.S.A.

21-3402(a), prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5403(a)~~, and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403, prior to its repeal, or K.S.A. 2014 Supp. 21-5404, and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406, prior to its repeal, or K.S.A. 2014 Supp. 21-5407, and amendments thereto, mistreatment of a dependent adult or mistreatment of an elder person, pursuant to K.S.A. 21-3437, prior to its repeal, or K.S.A. 2014 Supp. 21-5417, and amendments thereto, human trafficking, pursuant to K.S.A. 21-3446, prior to its repeal, or K.S.A. 2014 Supp. 21-5426(a), and amendments thereto, aggravated human trafficking, pursuant to K.S.A. 21-3447, prior to its repeal, or K.S.A. 2014 Supp. 21-5426(b), and amendments thereto, rape, pursuant to K.S.A. 21-3502, prior to its repeal, or K.S.A. 2014 Supp. 21-5503, and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5506(a)~~, and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5506(b)~~, and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5504(b)~~, and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5508(a)~~, and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5508(b)~~, and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516, prior to its repeal, or K.S.A. 2014 Supp. 21-5510, and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5505(a)~~, and amendments thereto, ~~or~~ aggravated sexual battery, pursuant to K.S.A. 21-3518, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5505(b)~~, and amendments thereto, commercial sexual exploitation of a child, pursuant to K.S.A. 2014 Supp. 21-6422, and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a) (1), pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2014 Supp. 21-5302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2014 Supp. 21-5303, and amendments thereto, or similar statutes of other states or the federal government. The provisions of subsection (a)(2)(C) shall not apply to any person who is employed by a home health agency on July 1, 2010, and while continuously employed by the same home health agency.

(2) A person operating a home health agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, except those crimes listed in subsection (a)(1); (B)

articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through 21-6421, and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605, prior to its repeal, or K.S.A. 2014 Supp. 21-5606, and amendments thereto; (C) K.S.A. 21-3701, prior to its repeal, or K.S.A. 2014 Supp. 21-5801, and amendments thereto; (D) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, prior to its repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto; (E) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, prior to its repeal, or K.S.A. 2014 Supp. 21-5302, and amendments thereto; (F) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, prior to its repeal, or K.S.A. 2014 Supp. 21-5303, and amendments thereto; or (G) similar statutes of other states or the federal government.

(b) No person shall operate a home health agency if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of a home health agency shall request from the department of health and environment information regarding any criminal history information, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For

the purpose of complying with this section, the operator of a home health agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning any criminal history information and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2014 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2014 Supp. 21-5801, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of

receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2014 Supp. 21-5801, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(h) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(i) An operator may request from the department of health and environment criminal history information on persons employed under subsections (g) and (h).

(j) No person who has been employed by the same home health agency since July 1, 1992, shall be subject to the requirements of this section while employed by such home health agency.

(k) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.

(l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, prior to their repeal, or K.S.A. 2014 Supp. 21-5417, ~~subsection (a) of 21-5505(a)~~ and 21-5801, and amendments thereto, to the secretary of health and environment when a background check is requested.

(m) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 23. K.S.A. 2014 Supp. 72-1397 is hereby amended to read as follows: 72-1397. (a) The state board of education shall not knowingly issue a license to or renew the license of any person who has been convicted of:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2014 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5506(a)~~, and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5506(b)~~, and amendments thereto;

(4) criminal sodomy, as defined in ~~subsection (a)(2) or (a)(3) of K.S.A. 21-3505(a)(2) or (a)(3)~~, prior to its repeal, or ~~subsection (a)(3) or (a)(4) of K.S.A. 2014 Supp. 21-5504(a)(3) or (a)(4)~~, and amendments thereto;

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5504(b)~~, and amendments thereto;

(6) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5508(a)~~, and amendments thereto;

(7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5508(b)~~, and amendments thereto;

(8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2014 Supp. 21-5510, and amendments thereto;

(9) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5604(b)~~, and amendments thereto;

(10) aggravated endangering a child, as defined in K.S.A. 21-3608a, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5601(b)~~, and amendments thereto;

(11) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2014 Supp. 21-5602, and amendments thereto;

(12) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2014 Supp. 21-5401, and amendments thereto;

(13) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto;

(14) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2014 Supp. 21-5403, and amendments thereto;

(15) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2014 Supp. 21-5404, and amendments thereto;

(16) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2014 Supp. 21-5405, and amendments thereto;

(17) involuntary manslaughter while driving under the influence of alcohol or drugs, as defined in K.S.A. 21-3442, prior to its repeal;

(18) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5505(a)~~, and amendments thereto, when, at the time the crime was committed, the victim was less than 18 years of age or a student of the person committing such crime;

(19) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5505(b)~~, and amendments thereto;

(20) commercial sexual exploitation of a child, as defined in K.S.A. 2014 Supp. 21-6422, and amendments thereto;

(21) human trafficking, as defined in K.S.A. 21-3446, prior to its repeal, or K.S.A. 2014 Supp. 21-5426(a), and amendments thereto;

(22) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2014 Supp. 21-5426(b), and amendments thereto;

~~(20)~~(23) attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto, to commit any act specified in this subsection;

~~(21)~~(24) conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2014 Supp. 21-5302, and amendments thereto, to commit any act specified in this subsection;

~~(22)~~(25) an act in another state or by the federal government that is comparable to any act described in this subsection; or

~~(23)~~(26) an offense in effect at any time prior to the effective date of this act that is comparable to an offense as provided in this subsection.

(b) Except as provided in subsection (c), the state board of education shall not knowingly issue a license to or renew the license of any person who has been convicted of, or has entered into a criminal diversion agreement after having been charged with:

(1) A felony under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009;

(2) a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, other than an act specified in subsection (a), or a battery, as described in K.S.A. 21-3412, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-5413(a), and amendments thereto, or domestic battery, as described in K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2014 Supp. 21-5414, and amendments thereto, if the victim is a minor or student;

(3) a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through 21-6421, and amendments thereto, other than an act specified in subsection (a);

(4) any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 56 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, other than an act specified in subsection (a);

(5) a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the Kansas Statutes Annotated, or ~~subsection (a)(6)~~ of K.S.A. 2014 Supp. 21-6412(a)(6), and amendments thereto;

(6) promoting obscenity, as described in K.S.A. 21-4301, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-6401(a), and amendments thereto, promoting obscenity to minors, as described in K.S.A. 21-4301a, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2014 Supp. 21-6401(b), and amendments thereto, or promoting to minors obscenity harmful to minors, as described in K.S.A. 21-4301c, prior to its repeal, or K.S.A. 2014 Supp. 21-6402, and amendments thereto;

(7) endangering a child, as defined in K.S.A. 21-3608, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-5601(a), and amendments thereto;

(8) driving under the influence of alcohol or drugs in violation of K.S.A. 8-1567 or 8-2,144, and amendments thereto, when the violation is punishable as a felony;

(9) attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto, to commit any act specified in this subsection;

(10) conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2014 Supp. 21-5302, and amendments thereto, to commit any act specified in this subsection; or

(11) an act committed in violation of a federal law or in violation of another state's law that is comparable to any act described in this subsection.

(c) The state board of education may issue a license to or renew the license of a person who has been convicted of committing an offense or act described in subsection (b) or who has entered into a criminal diversion agreement after having been charged with an offense or act described in subsection (b) if the state board determines, following a hearing, that the person has been rehabilitated for a period of at least five years from the date of conviction of the offense or commission of the act or, in the case of a person who has entered into a criminal diversion agreement, that the person has satisfied the terms and conditions of the agreement. The state board of education may consider factors including, but not limited to, the following in determining whether to grant a license:

- (1) The nature and seriousness of the offense or act;
- (2) the conduct of the person subsequent to commission of the offense or act;
- (3) the time elapsed since the commission of the offense or act;
- (4) the age of the person at the time of the offense or act;
- (5) whether the offense or act was an isolated or recurring incident; and
- (6) discharge from probation, pardon or expungement.

(d) Before any license is denied by the state board of education for any of the offenses or acts specified in subsections (a) and (b), the person shall be given notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

(e) The county or district attorney shall file a report with the state board of education indicating the name, address and social security number of any person who has been determined to have committed any offense or act specified in subsection (a) or (b) or to have entered into a criminal diversion agreement after having been charged with any offense or act specified in subsection (b). Such report shall be filed within 30 days of the date of the determination that the person has committed any such act or entered into any such diversion agreement.

(f) The state board of education shall not be liable for civil damages to any person refused issuance or renewal of a license by reason of the state board's compliance, in good faith, with the provisions of this section.

Sec. 24. K.S.A. 2014 Supp. 74-7305 is hereby amended to read as follows: 74-7305. (a) An application for compensation shall be made in the manner and form prescribed by the board.

(b) Compensation may not be awarded unless an application has been filed with the board within two years of the reporting of the incident to law enforcement officials if the victim was less than 16 years of age and the injury or death is the result of any of the following crimes: (1) Indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5506(a)~~, and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5506(b)~~, and amendments thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5504(b)~~, and amendments thereto; (4) enticement of a child as defined in K.S.A. 21-3509 prior to its repeal; (5) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5508(a)~~, and amendments thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5508(b)~~, and amendments thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2014 Supp. 21-5510, and amendments thereto; ~~or~~ (8) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or ~~subsection (b) of K.S.A. 2014 Supp. 21-5604(b)~~, and amendments thereto; (9) human trafficking as defined in K.S.A. 21-3446, prior to its repeal, or K.S.A. 2014 Supp. 21-5426(a), and amendments thereto; (10) aggravated human trafficking as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2014 Supp. 21-5426(b), and amendments thereto; or (11) commercial sexual exploitation of a child as defined in K.S.A. 2014 Supp. 21-6422, and amendments thereto. Compensation for mental health counseling may be awarded, if a claim is filed within two years of testimony, to a claimant who is, or will be, required to testify in a sexually violent predator commitment, pursuant to article 29a of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, of an offender who victimized the claimant or the victim on whose behalf the claim is made. For all other incidents of criminally injurious conduct, compensation may not be awarded unless the claim has been filed with the board within two years after the injury or death upon which the claim is based. Compensation may not be awarded to a claimant who was the offender or an accomplice of the offender and may not be awarded to another person if the award would unjustly benefit the offender or accomplice.

(c) Compensation otherwise payable to a claimant shall be reduced or denied, to the extent, if any that the:

(1) Economic loss upon which the claimant's claim is based is recouped from other persons, including collateral sources;

(2) board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims; or

(3) board deems reasonable, because the victim was likely engaging in, or attempting to engage in, unlawful activity at the time of the crime upon which the claim for compensation is based. This subsection shall not be construed to reduce or deny compensation to a victim of domestic abuse or sexual assault.

(d) Compensation may be awarded only if the board finds that unless the claimant is awarded compensation the claimant will suffer financial stress as the result of economic loss otherwise reparable. A claimant suffers financial stress only if the claimant cannot maintain the claimant's customary level of health, safety and education for self and dependents without undue financial hardship. In making its determination

of financial stress, the board shall consider all relevant factors, including:

- (1) The number of claimant's dependents;
- (2) the usual living expenses of the claimant and the claimant's family;
- (3) the special needs of the claimant and the claimant's dependents;
- (4) the claimant's income and potential earning capacity; and
- (5) the claimant's resources.

(e) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the board finds there was good cause for the failure to report within that time.

(f) The board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, withdraw or reduce an award of compensation.

(g) Except in K.S.A. 21-3602 or 21-3603, prior to their repeal, or K.S.A. 2014 Supp. 21-5604, and amendments thereto, or cases of sex offenses established in article 35 of chapter 21, of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, ~~or and amendments thereto~~, K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, or human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2014 Supp. 21-5426, and amendments thereto, compensation may not be awarded if the economic loss is less than \$100.

(h) Compensation for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss may not exceed \$400 per week or actual loss, whichever is less.

(i) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed \$25,000 in the aggregate.

Sec. 25. K.S.A. 2014 Supp. 75-452 is hereby amended to read as follows: 75-452. The following words and phrases when used in K.S.A. 2014 Supp. 75-451 to 75-458, inclusive, and amendments thereto, shall have the meanings respectively ascribed to them herein, unless the context clearly requires otherwise:

- (a) "Abuse" means:
 - (1) Causing or attempting to cause physical harm;
 - (2) placing another person in fear of imminent physical harm;
 - (3) causing another person to engage involuntarily in sexual relations by force, threats or duress, or threatening to do so;
 - (4) engaging in mental abuse, which includes threats, intimidation and acts designed to induce terror;
 - (5) depriving another person of necessary health care, housing or food; or
 - (6) unreasonably and forcibly restraining the physical movement of another.
- (b) "Confidential address" means a residential street address, school street address or work street address of an individual, as specified on the individual's application to be a program participant under K.S.A. 2014 Supp. 75-451 to 75-458, inclusive, and amendments thereto.
- (c) "Confidential mailing address" means an address that is recognized for delivery by the United States postal service.
- (d) "Domestic violence" means abuse committed against a victim or the victim's

spouse or dependent child by:

- (1) A current or former spouse of the victim;
- (2) a person with whom the victim shares parentage of a child in common;
- (3) a person who is cohabitating with, or has cohabitated with, the victim;
- (4) a person who is related by blood or marriage; or
- (5) a person with whom the victim has or had a dating or engagement relationship.

(e) "Program participant" means a person certified as a program participant under K.S.A. 2014 Supp. 75-453, and amendments thereto.

(f) "Enrolling agent" means state and local agencies, law enforcement offices, nonprofit agencies and any others designated by the secretary of state that provide counseling and shelter services to victims of domestic violence, sexual assault, human trafficking or stalking.

(g) "Sexual assault" means an act which if committed in this state would constitute any crime defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto.

(h) "Stalking" means an act which if committed in this state would constitute "stalking" as defined by K.S.A. 60-31a01, and amendments thereto.

(i) "Human trafficking" means an act which if committed in this state would constitute the crime of human trafficking as defined by K.S.A. 21-3446, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5426(a)~~, and amendments thereto.

Sec. 26. K.S.A. 2014 Supp. 76-11a13 is hereby amended to read as follows: 76-11a13. (a) (1) Subject to the provisions of subsection (b), the provisions of K.S.A. 76-11a06 through 76-11a11, and amendments thereto, apply only to: (A) Teachers who have completed not less than three consecutive years of employment, and been offered a contract for a fourth year of employment, at the state school in which the teacher is currently employed; and (B) teachers who have completed not less than two consecutive years of employment, and been offered a contract for a third year of employment, at the state school in which the teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of ~~subpart subsection (a)(1)(A)~~ at the other state school.

(2) The state board may waive, at any time, the years of employment requirements of ~~provision subsection (a)(1)~~ for any teachers employed at a state school.

(3) The provisions of this subsection are subject to the provisions of K.S.A. 76-11a14, and amendments thereto.

(b) The provisions of K.S.A. 76-11a06 through 76-11a11, and amendments thereto, do not apply to any teacher whose certificate has been nonrenewed or revoked by the state board for the reason that the teacher: (1) Has been convicted of a felony under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009; (2) has been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, or an act described in K.S.A. 21-3412, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5413(a)~~, and amendments thereto, if the victim is a minor or student; (3) has been convicted of a felony described in any

section of article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6419 through ~~21-6421~~ 21-6422, and amendments thereto, or has been convicted of an act described in K.S.A. 21-3517, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-5505(a), and amendments thereto, if the victim is a minor or student; (4) has been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 56 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto; (5) has been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the Kansas Statutes Annotated, or ~~subsection (a)(6)~~ of K.S.A. 2014 Supp. 21-6412(a)(6), and amendments thereto; (6) has been convicted of an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2014 Supp. 21-5301, and amendments thereto, to commit any act specified in this subsection; (7) has been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, prior to their repeal, or K.S.A. 2014 Supp. 21-6401 or 21-6402, and amendments thereto; (8) has been convicted in another state or by the federal government of an act similar to any act described in this subsection; or (9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

Sec. 27. K.S.A. 2013 Supp. 38-2310, as amended by section 2 of chapter 131 of the 2014 Session Laws of Kansas, and K.S.A. 2014 Supp. 21-5501, 21-6328, 22-3424, 22-3436, 22-3701, 22-3727, 22-3727a, 22-4614, 23-2225, 23-3222, 38-2202, 38-2271, 38-2309, 38-2310, 39-970, 44-706, 59-2132, 59-29a14, 60-455, 60-5001, 65-5117, 72-1397, 74-7305, 75-452 and 76-11a13 are hereby repealed.";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "concerning"; by striking all in lines 2 and 3; in line 4, by striking all before the period and inserting "human trafficking and related crimes; relating to commercial sexual exploitation of a child; civil action for victims; restitution; amending K.S.A. 2014 Supp. 21-5501, 21-6328, 22-3424, 22-3436, 22-3701, 22-3727, 22-3727a, 22-4614, 23-2225, 23-3222, 38-2202, 38-2271, 38-2309, 38-2310, 39-970, 44-706, 59-2132, 59-29a14, 60-455, 60-5001, 65-5117, 72-1397, 74-7305, 75-452 and 76-11a13 and repealing the existing sections; also repealing K.S.A. 2013 Supp. 38-2310, as amended by section 2 of chapter 131 of the 2014 Session Laws of Kansas";

And your committee on conference recommends the adoption of this report.

JANICE PAULS

CHARLES MACHEERS

JIM WARD

Conferees on part of House

JEFF KING

GREG SMITH

Conferees on part of Senate

Senator King moved the Senate adopt the Conference Committee Report on **SB 113**.

On roll call, the vote was: Yeas 37; Nays 0; Present and Passing 1; Absent or Not Voting 2.

Yeas: Abrams, Baumgardner, Bowers, Bruce, Denning, Donovan, Faust-Goudeau, Fitzgerald, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, Schmidt, Smith, Tyson, Wagle, Wolf.

Present and Passing: Francisco.

Absent or Not Voting: Arpke, Wilborn.

The Conference Committee Report was adopted.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2331** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows:

On page 3, by striking all in lines 11 through 43;

By striking all on pages 4 through 17;

On page 18, by striking all in lines 1 through 6; following line 6, by inserting:

"Section 1. K.S.A. 2014 Supp. 12-16,124 is hereby amended to read as follows: 12-16,124. (a) No city or county shall adopt or enforce any ordinance, resolution or regulation, and no agent of any city or county shall take any administrative action, governing the requirement of fees, licenses or permits for, the commerce in or the sale, purchase, transfer, ownership, storage, carrying-~~or~~, transporting or taxation of firearms or ammunition, or any component or combination thereof.

~~(b) No city or county shall adopt or enforce any ordinance, resolution or regulation relating to the sale of a firearm by an individual, who holds a federal firearms license; that is more restrictive than any ordinance, resolution or regulation relating to the sale of any other commercial good.~~

~~(e)-(b)~~ Any ordinance, resolution or regulation prohibited by either subsection (a) ~~or (b)~~ that was adopted prior to July 1, ~~2014~~ 2015, shall be null and void.

~~(d)-(c)~~ Nothing in this section shall:

(1) Prohibit a city or county from adopting and enforcing any ordinance, resolution or regulation relating to the personnel policies of such city or county and the carrying of firearms by employees of such city or county, except that any such ordinance, resolution or regulation shall comply with the provisions of K.S.A. 2014 Supp. 75-7c01 et seq., and amendments thereto;

(2) prohibit a city or county from adopting any ordinance, resolution or regulation pursuant to K.S.A. 2014 Supp. 75-7c20, and amendments thereto; ~~or~~

(3) prohibit a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, from acting within the scope of such officer's duties; or

(4) prohibit a city or county from levying and collecting any retailers' sales tax on the sale of firearms, ammunition or any component or combination thereof as authorized by K.S.A. 12-189, and amendments thereto.

Sec. 2. K.S.A. 2014 Supp. 75-7c04, as amended by section 9 of 2015 Senate Bill No. 45, is hereby amended to read as follows: 75-7c04. (a) The attorney general shall not issue a license pursuant to this act if the applicant:

(1) Is not a resident of the county where application for licensure is made or is not a

resident of the state;

(2) is prohibited from shipping, transporting, possessing or receiving a firearm or ammunition under 18 U.S.C. § 922(g) or (n), and amendments thereto, or K.S.A. 21-4204, prior to its repeal, or K.S.A. 2014 Supp. 21-6301(a)(10) through (a)(13) or K.S.A. 2014 Supp. 21-6304(a)(1) through (a)(3), and amendments thereto; or

~~(3) has been convicted of or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of any of the offenses described in K.S.A. 2014 Supp. 21-6304(a)(1) and (a)(3), and amendments thereto; or~~

~~(4) is less than 21 years of age.~~

(b) (1) The attorney general shall adopt rules and regulations establishing procedures and standards as authorized by this act for an eight-hour handgun safety and training course required by this section. Such standards shall include: (A) A requirement that trainees receive training in the safe storage of handguns, actual firing of handguns and instruction in the laws of this state governing the carrying of concealed handguns and the use of deadly force; (B) general guidelines for courses which are compatible with the industry standard for basic handgun training for civilians; (C) qualifications of instructors; and (D) a requirement that the course be: (i) A handgun course certified or sponsored by the attorney general; or (ii) a handgun course certified or sponsored by the national rifle association or by a law enforcement agency, college, private or public institution or organization or handgun training school, if the attorney general determines that such course meets or exceeds the standards required by rules and regulations adopted by the attorney general and is taught by instructors certified by the attorney general or by the national rifle association, if the attorney general determines that the requirements for certification of instructors by such association meet or exceed the standards required by rules and regulations adopted by the attorney general. Any person wanting to be certified by the attorney general as an instructor shall submit to the attorney general an application in the form required by the attorney general and a fee not to exceed \$150.

(2) The cost of the handgun safety and training course required by this section shall be paid by the applicant. The following shall constitute satisfactory evidence of satisfactory completion of an approved handgun safety and training course:

(A) Evidence of completion of the course, in the form provided by rules and regulations adopted by the attorney general;

(B) an affidavit from the instructor, school, club, organization or group that conducted or taught such course attesting to the completion of the course by the applicant; or

(C) a determination by the attorney general pursuant to subsection (c).

(c) The attorney general may:

(1) Create a list of concealed carry handgun licenses or permits issued by other jurisdictions which the attorney general finds have training requirements that are equal to or greater than those of this state; and

(2) review each application received pursuant to K.S.A. 2014 Supp. 75-7c05, and amendments thereto, to determine if the applicant's previous training qualifications were equal to or greater than those of this state.

(d) For the purposes of this section:

(1) "Equal to or greater than" means the applicant's prior training meets or exceeds

the training established in this section by having required, at a minimum, the applicant to: (A) Receive instruction on the laws of self-defense; and (B) demonstrate training and competency in the safe handling, storage and actual firing of handguns.

(2) "Jurisdiction" means another state or the District of Columbia.

(3) "License or permit" means a concealed carry handgun license or permit from another jurisdiction which has not expired and, except for any residency requirement of the issuing jurisdiction, is currently in good standing.

Sec. 3. K.S.A. 2014 Supp. 12-16,124 and 75-7c04, as amended by section 9 of 2015 Senate Bill No. 45, are hereby repealed.";

And by renumbering sections accordingly;

On page 1, in the title, by striking all in lines 1 through 7 and inserting "AN ACT concerning firearms; relating to possession of firearms; amending K.S.A. 2014 Supp 12-16,124 and 75-7c04, as amended by section 9 of 2015 Senate Bill No. 45, and repealing the existing sections.";

And your committee on conference recommends the adoption of this report.

RALPH OSTMEYER

JACOB LATURNER

Conferees on part of Senate

STEVEN BRUNK

TRAVIS COUTURE-LOVELADY

Conferees on part of Senate

Senator Ostmeyer moved the Senate adopt the Conference Committee Report on **HB 2331**.

On roll call, the vote was: Yeas 35; Nays 3; Present and Passing 0; Absent or Not Voting 2.

Yeas: Abrams, Baumgardner, Bowers, Bruce, Denning, Donovan, Fitzgerald, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, Schmidt, Smith, Tyson, Wagle, Wolf.

Nays: Faust-Goudeau, Francisco, Pettey.

Absent or Not Voting: Arpke, Wilborn.

The Conference Committee Report was adopted.

EXPLANATION OF VOTE

Madam President: This legislation preempts the ability of cities or counties to enforce any ordinance, resolution or regulation relating to the sale of firearms by an individual in their home. These local units of government have a responsibility to their citizens to use the planning and zoning process to regulate home sales. Is a gun and ammunition home sale business safer for a neighborhood than a home hair salon? This legislation removes all local control. I vote "No" on **HB 2331**. —PAT PETTEY

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **S Sub HB 2353** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments as follows:

On page 17, by striking all in lines 11 through 27; following line 27, by inserting the following:

"Sec. 11. From and after July 1, 2015, K.S.A. 2014 Supp. 76-715b is hereby amended to read as follows: 76-715b. (a) As used in this section:

(1) "State board" means the state board of regents.
 (2) "State educational institution" has the meaning ascribed thereto in K.S.A. 76-711, and amendments thereto.

(3) "Leave time" means vacation leave and discretionary day leave.

(b) The state board may adopt a policy which authorizes state educational institutions to provide leave time to the classified employees and university support staff of any such institution in an amount not to exceed the amount of leave time provided to unclassified employees of such institution.

(c) Subject to the policy of the state board adopted pursuant to this section, each state educational institution may provide leave time to classified employees and university support staff of such institution. The amount of leave time may vary from the amount of leave time provided to classified or unclassified employees of state agencies that are not state educational institutions.

(d) The state board shall adopt any rules and regulations necessary to implement the provisions of this act.";

And your committee on conference recommends the adoption of this report.

TY MASTERSON

JIM DENNING

LAURA KELLY

Conferees on part of Senate

RONALD RYCKMAN

SHARON SCHWARTZ

JERRY HENRY

Conferees on part of House

Senator Masterson moved the Senate adopt the Conference Committee Report on **S Sub HB 2353**.

On roll call, the vote was: Yeas 38; Nays 0; Present and Passing 0; Absent or Not Voting 2.

Yeas: Abrams, Baumgardner, Bowers, Bruce, Denning, Donovan, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, Schmidt, Smith, Tyson, Wagle, Wolf.

Absent or Not Voting: Arpke, Wilborn.

The Conference Committee Report was adopted.

COMMITTEE OF THE WHOLE

On motion of Senator Bruce, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator Knox in the chair.

On motion of Senator Knox the following report was adopted:

Senator Donovan offered the following amendment on **S Sub HB 2109**, As Further Amended by Senate Committee of the Whole, on page 96, in line 8, after "income" by inserting "not including guaranteed payments as defined in section 707(c) of the federal internal revenue code and as reported to the taxpayer from federal schedule K-1, (form 1065-B) in box 9, code F or as reported to the taxpayer from federal schedule K-1, (form 1065) in box 4";

On page 98, in line 32, by striking "5.95%" and inserting "6.5%";

On page 103, in line 34, by striking "and"; in line 38, after "section" by inserting "; and

(x) commencing January 1, 2016, and thereafter, the gross receipts from the sale of food and food ingredients shall be taxed at 6.0%";

On page 105, in line 15, after "(5)" by inserting "(A)"; also in line 15, by striking "14.565%" and inserting "16.295%"; in line 17, by striking "5.95%" and inserting "6.5%"; following line 19, by inserting:

"(B) On January 1, 2016, the state treasurer shall credit 16.295% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rates of 6.5% and 6.0%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund."; in line 21, by striking "14.610%" and inserting "16.314%"; in line 22, by striking "rate" and inserting "rates"; also in line 22, by striking "5.95%" and inserting "6.5% and 6.0%";

On page 106, in line 36, by striking "5.95%" and inserting "6.50%", except that commencing January 1, 2016, such rate shall be 6.0% upon food and food ingredients as defined by K.S.A. 79-3602, and amendments thereto";

On page 108, in line 17, after "(5)" by inserting "(A)"; also in line 17, by striking "14.565%" and inserting "16.295%"; in line 19, by striking "5.95%" and inserting "6.5%"; following line 21, by inserting:

"(B) On January 1, 2016, the state treasurer shall credit 16.295% of the revenue collected and received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rates of 6.5% and 6.0%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund."; in line 23, by striking "14.610%" and inserting "16.314%"; in line 24, by striking "rate" and inserting "rates"; also in line 24, by striking "5.95%" and inserting "6.5% and 6.0%";

On page 109, following line 31, by inserting:

"New Sec. 11. A tax is hereby imposed upon the privilege of selling or dealing in electronic cigarettes in this state by any person engaged in business as a distributor thereof, at the rate of \$.20 per milliliter of consumable material and a proportionate tax at the like rate on all fractional parts thereof. For electronic cigarettes in the possession of retail dealers for which tax has not been paid, tax shall be imposed under this subsection at the earliest time the retail dealer: (a) Brings or causes to be brought into this state from without the state electronic cigarettes for sale; (b) makes, manufactures or fabricates electronic cigarettes in this state for sale in this state; or (c) sells electronic cigarettes to consumers within this state.

Sec. 12. K.S.A. 2014 Supp. 79-32,110 is hereby amended to read as follows: 79-32,110. (a) *Resident Individuals*. Except as otherwise provided by ~~subsection (a) of~~ K.S.A. 79-3220(a), and amendments thereto, a tax is hereby imposed upon the Kansas

taxable income of every resident individual, which tax shall be computed in accordance with the following tax schedules:

(1) *Married individuals filing joint returns.*

(A) For tax year 2012:

If the taxable income is:	The tax is:
Not over \$30,000	3.5% of Kansas taxable income
Over \$30,000 but not over \$60,000	\$1,050 plus 6.25% of excess over \$30,000
Over \$60,000	\$2,925 plus 6.45% of excess over \$60,000

(B) For tax year 2013:

If the taxable income is:	The tax is:
Not over \$30,000	3.0% of Kansas taxable income
Over \$30,000	\$900 plus 4.9% of excess over \$30,000

(C) For tax year 2014:

If the taxable income is:	The tax is:
Not over \$30,000	2.7% of Kansas taxable income
Over \$30,000	\$810 plus 4.8% of excess over \$30,000

(D) For tax ~~year~~ years 2015 through 2017:

If the taxable income is:	The tax is:
Not over \$30,000	2.7% of Kansas taxable income
Over \$30,000	\$810 plus 4.6% of excess over \$30,000

(E) For tax year ~~2016~~ 2018:

If the taxable income is:	The tax is:
Not over \$30,000	2.4% <u>2.3%</u> of Kansas taxable income
Over \$30,000	\$720 <u>\$690</u> plus 4.6% <u>4.1%</u> of excess over \$30,000

(F) For tax year ~~2017~~ 2019:

If the taxable income is:	The tax is:
Not over \$30,000	2.3% <u>2.0%</u> of Kansas taxable income
Over \$30,000	\$690 <u>\$600</u> plus 4.6% <u>4.1%</u> of excess over \$30,000

(G) For tax year ~~2018~~ 2020, and all tax years thereafter:

If the taxable income is:	The tax is:
Not over \$30,000	2.3% <u>1.9%</u> of Kansas taxable income
Over \$30,000	\$690 <u>\$570</u> plus 3.9% <u>3.8%</u> of excess over \$30,000

(2) *All other individuals.*

(A) For tax year 2012:

If the taxable income is:	The tax is:
Not over \$15,000	3.5% of Kansas taxable income
Over \$15,000 but not over \$30,000	\$525 plus 6.25% of excess over \$15,000

Over \$30,000	\$1,462.50 plus 6.45% of excess over \$30,000
(B) For tax year 2013:	
If the taxable income is:	The tax is:
Not over \$15,000	3.0% of Kansas taxable income
Over \$15,000	\$450 plus 4.9% of excess over \$15,000
(C) For tax year 2014:	
If the taxable income is:	The tax is:
Not over \$15,000	2.7% of Kansas taxable income
Over \$15,000	\$405 plus 4.8% of excess over \$15,000
(D) For tax-year years <u>2015 through 2017</u> :	
If the taxable income is:	The tax is:
Not over \$15,000	2.7% of Kansas taxable income
Over \$15,000	\$405 plus 4.6% of excess over \$15,000
(E) For tax year 2016 <u>2018</u> :	
If the taxable income is:	The tax is:
Not over \$15,000	2.4% <u>2.3%</u> of Kansas taxable income
Over \$15,000	\$360 <u>\$345</u> plus 4.6% <u>4.1%</u> of excess over \$15,000
(F) For tax year 2017 <u>2019</u> :	
If the taxable income is:	The tax is:
Not over \$15,000	2.3% <u>2.0%</u> of Kansas taxable income
Over \$15,000	\$345 <u>\$300</u> plus 4.6% <u>4.1%</u> of excess over \$15,000
(G) For tax year 2018 <u>2020</u> , and all tax years thereafter:	
If the taxable income is:	The tax is:
Not over \$15,000	2.3% <u>1.9%</u> of Kansas taxable income
Over \$15,000	\$345 <u>\$285</u> plus 3.9% <u>3.8%</u> of excess over \$15,000

(b) *Nonresident Individuals.* A tax is hereby imposed upon the Kansas taxable income of every nonresident individual, which tax shall be an amount equal to the tax computed under subsection (a) as if the nonresident were a resident multiplied by the ratio of modified Kansas source income to Kansas adjusted gross income.

(c) *Corporations.* A tax is hereby imposed upon the Kansas taxable income of every corporation doing business within this state or deriving income from sources within this state. Such tax shall consist of a normal tax and a surtax and shall be computed as follows:

(1) The normal tax shall be in an amount equal to 4% of the Kansas taxable income of such corporation; and

(2) (A) for tax year 2008, the surtax shall be in an amount equal to 3.1% of the Kansas taxable income of such corporation in excess of \$50,000;

(B) for tax years 2009 and 2010, the surtax shall be in an amount equal to 3.05% of the Kansas taxable income of such corporation in excess of \$50,000; and

(C) for tax year 2011, and all tax years thereafter, the surtax shall be in an amount

equal to 3% of the Kansas taxable income of such corporation in excess of \$50,000.

(d) *Fiduciaries.* A tax is hereby imposed upon the Kansas taxable income of estates and trusts at the rates provided in ~~paragraph (2)~~ of subsection (a)(2) hereof.

(e) Tax rates provided in this section shall be adjusted pursuant to the provisions of K.S.A. 2014 Supp. 79-32,269, and amendments thereto.

(f) Notwithstanding the provisions of subsections (a) and (b), for tax year 2016, and all tax years thereafter, married individuals filing joint returns with taxable income of \$12,500 or less, and all other individuals with taxable income of \$5,000 or less, shall have a tax liability of zero.

Sec. 13. K.S.A. 2014 Supp. 79-32,120 is hereby amended to read as follows: 79-32,120. (a) (1) If federal taxable income of an individual is determined by itemizing deductions from such individual's federal adjusted gross income, such individual may elect to deduct the Kansas itemized deduction in lieu of the Kansas standard deduction.

(2) For the tax year commencing on January 1, 2013, the Kansas itemized deduction of an individual means 70% of the total amount of deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the federal internal revenue code with the modifications specified in this section.

(3) For the tax year commencing on January 1, 2014, the Kansas itemized deduction of an individual means 65% of the total amount of deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the federal internal revenue code with the modifications specified in this section.

(4) For the ~~tax year~~ years commencing on and after January 1, 2015, the Kansas itemized deduction of an individual means ~~60% of the total amount of following~~ deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the federal internal revenue code and with the modifications specified in this section: (A) 100% of charitable contributions that qualify as charitable contributions allowable as deductions in section 170 of the federal internal revenue code; (B) 50% of the amount of qualified residence interest as provided in section 163(h) of the federal internal revenue code; and (C) 50% of the amount of taxes on real and personal property as provided in section 164(a) of the federal internal revenue code.

~~(5) For the tax year commencing on January 1, 2016, the Kansas itemized deduction of an individual means 55% of the total amount of deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the federal internal revenue code with the modifications specified in this section.~~

~~(6) For tax years commencing on and after January 1, 2017, the Kansas itemized deduction of an individual means 50% of the total amount of deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the federal internal revenue code with the modifications specified in this section.~~

(b) The total amount of deductions from federal adjusted gross income shall be reduced by the total amount of income taxes imposed by or paid to this state or any other taxing jurisdiction to the extent that the same are deducted in determining the federal itemized deductions and by the amount of all depreciation deductions claimed

for any real or tangible personal property upon which the deduction allowed by K.S.A. 2014 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto, is or has been claimed.

(c) The provisions of this section that provide for a reduction in the total amount of deductions from federal adjusted gross income shall not apply to contributions that qualify as charitable contributions allowable as deductions in section 170 of the federal internal revenue code, and amendments thereto.

(d) Notwithstanding any provision of this section to the contrary, for taxable years commencing after January 1, 2013, the total amount of deductions from federal adjusted gross income shall be reduced by the total amount of wagering losses claimed as an itemized deduction in section 165(d) of the federal internal revenue code, and amendments thereto.

Sec. 14. K.S.A. 2014 Supp. 79-32,269 is hereby amended to read as follows: 79-32,269. (a) (1) Except as provided in subsection (a)(2), commencing with fiscal year ~~2018~~ 2021, in any fiscal year in which the amount of selected actual state general fund receipts from such fiscal year exceeds the selected actual state general fund receipts for the immediately preceding fiscal year by more than 2%, the director of legislative research shall certify such excess amount to the secretary of revenue and the director of the budget. Upon receipt of such certified amount, the secretary shall compute the excess percentage increase in selected actual state general fund receipts above 2%. Based on such excess percentage of calculated receipt growth, the secretary shall compute the income tax rate reductions to go into effect for the next tax year that would reduce by such certified amount the tax rates during the fiscal year after the next fiscal year according to the provisions of this section, as follows: (A) Rate reductions for individual income tax rates shall be applied to reduce the highest marginal income tax rate applicable to the current tax year, by such excess percentage minus 0.5%, and the lowest marginal income tax rate applicable to the current tax year by such excess percentage plus 0.5%, except that in no case shall such excess percentage plus 0.5% result in an income tax rate increase. In any such computation by the secretary pursuant to this subsection: (i) The resulting income tax rate shall be rounded down to the nearest 0.1%; and (ii) in any case in which the income tax rate for any individual marginal income tax rate is below 0.4%, such rate shall be 0%. Based on all such determinations, the secretary shall reduce individual income tax rates prescribed by K.S.A. 79-32,110, and amendments thereto, as required by this section;

(B) upon all individual marginal income tax rates being reduced to 0% pursuant to the provisions of subsection (a)(1)(A), rate reduction next shall be applied for the surtax on corporations applicable to the current tax year by such excess percentage. In any such computation by the secretary pursuant to this subsection in which the surtax is below 0.4%, such surtax rate shall be 0%. Based on such determination, the secretary shall reduce the surtax on corporations prescribed by K.S.A. 79-32,110, and amendments thereto, as required by this section; and

(C) upon the surtax on corporations being reduced to a rate which when combined with the normal tax rate on corporations is equal to or below the combined surtax and normal tax imposed on national banking associations and state banks or is equal to or below the combined surtax and normal tax imposed on trust companies and savings and loan associations, rate reductions shall be proportionately applied for the tax on corporations, the tax on national banking associations and state banks, and the tax on

trust companies and savings and loan associations. Such rate reductions shall be first applied to the surtax until reduced to 0% and then applied to the normal tax for each such tax. In any such computation by the secretary pursuant to this subsection in which any such tax is below 0.4%, such tax rate shall be 0%. Based on such determination, the secretary shall reduce the surtax and the normal tax on corporations prescribed by K.S.A. 79-32,110, and amendments thereto, the surtax and normal tax on national banking associations and state banks prescribed by K.S.A. 79-1107, and amendments thereto, and the surtax and normal tax on trust companies and savings and loan associations prescribed by K.S.A. 79-1108, and amendments thereto, as required by this section.

(2) In any fiscal year in which the amount of selected actual state general fund receipts for such fiscal year are 102% or less than the selected actual state general fund receipts from the immediately preceding fiscal year, the director of legislative research shall certify such amount and fact to the secretary of revenue and the director of the budget. Upon receipt of such amount and fact, the secretary of revenue shall not make any adjustment to the income tax rates for that tax year.

(b) The secretary of revenue shall report any reduction in income tax rates prescribed by this section to the chairperson of the assessment and taxation committee of the senate, the chairperson of the taxation committee of the house of representatives and the governor, and shall cause notice of any such reduction to be published in the Kansas register prior to September 15 of the calendar year immediately preceding the tax year in which such reduction takes effect.

(c) As used in this section, "selected actual state general fund receipts" means receipts from the following taxes and fees: Individual and corporation income taxes imposed under K.S.A. 79-32,110, and amendments thereto, financial institutions privilege taxes imposed under article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, retail sales taxes imposed under K.S.A. 79-3601 et seq., and amendments thereto, compensating use taxes imposed under K.S.A. 79-3701 et seq., and amendments thereto, cigarette and tobacco product taxes imposed under K.S.A. 79-3301 et seq., and amendments thereto, cereal malt beverage and liquor gallonage taxes imposed under K.S.A. 41-501 et seq., and amendments thereto, liquor enforcement taxes imposed under K.S.A. 79-4101 et seq., and amendments thereto, liquor drink taxes imposed under K.S.A. 79-41a01 et seq., and amendments thereto, corporation franchise taxes imposed under K.S.A. 79-5401, and amendments thereto, annual franchise fees charged pursuant to law and mineral severance taxes imposed under K.S.A. 79-4216 et seq., and amendments thereto.

Sec. 15. K.S.A. 2014 Supp. 79-3301 is hereby amended to read as follows: 79-3301. As used in K.S.A. 79-3301 et seq., and amendments thereto:

(a) "Carrier" means one who transports cigarettes from a manufacturer to a wholesale dealer or from one wholesale dealer to another.

(b) "Carton" means the container used by the manufacturer of cigarettes in which no more than 10 packages of cigarettes are placed prior to shipment from such manufacturer.

(c) "Cigarette" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.

(d) "Consumer" means the person purchasing or receiving cigarettes or tobacco products for final use.

(e) "Dealer" means any person who engages in the sale or manufacture of cigarettes or electronic cigarettes in the state of Kansas, and who is required to be licensed under the provisions of this act.

(f) "Dealer establishment" means any location or premises, other than vending machine locations, at or from which cigarettes or electronic cigarettes are sold, and where records are kept.

(g) "Director" means the director of taxation.

(h) "Distributor" means: (1) Any person engaged in the business of selling tobacco products or electronic cigarettes in this state who brings, or causes to be brought, into this state from outside the state any tobacco products or electronic cigarettes for sale;

(2) any person who makes, manufactures, fabricates or stores tobacco products or electronic cigarettes in this state for sale in this state; or

(3) any person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products or electronic cigarettes to any person in the business of selling tobacco products or electronic cigarettes in this state.

(i) "Division" means the division of taxation.

(j) "License" means the privilege of a licensee to sell cigarettes ~~or~~ tobacco products or electronic cigarettes in the state of Kansas, and the written evidence of such authority or privilege as issued by the director.

(k) "Licensee" means any person holding a current license issued pursuant to this act.

(l) "Manufacturer's salesperson" means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers.

(m) "Meter imprints" means tax indicia applied by means of ink printing machines.

(n) (1) "Package" means a container in which no more than 25 individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer;

(2) for the purposes of ~~subsections (u), (v) and (w)~~ of K.S.A. 79-3321 (u), (v) and (w), and amendments thereto, "package" means the same as provided in 15 U.S.C. § 1332(4).

(o) "Person" means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise and any combination of individuals.

(p) "Received" means the coming to rest of cigarettes for sale by any dealer in the state of Kansas.

(q) "Retail dealer" means a person, other than a vending machine operator, in possession of cigarettes or electronic cigarettes for the purpose of sale to a consumer, either directly or by remote sale through the internet.

(r) "Sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes ~~or~~ tobacco products or electronic cigarettes, with or without consideration.

(s) "Sample" means cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.

(t) "Self-service display" means a display that contains cigarettes or tobacco products and is located in an area openly accessible to a retail dealer's consumers, and from which such consumers can readily access cigarettes or tobacco products without the assistance of a salesperson. A display case that holds cigarettes or tobacco products behind locked doors does not constitute a self-service display.

(u) "Stamps" means tax indicia applied either by means of water applied gummed paper or heat process.

(v) "Tax indicia" means visible evidence of tax payment in the form of stamps or meter imprints.

(w) "Tobacco products" means cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Tobacco products do not include cigarettes or electronic cigarettes.

(x) "Tobacco speciality store" means a dealer establishment that derives at least 75% of such dealer establishment's revenue from cigarettes or tobacco products.

(y) "Vending machine" means any coin operated machine, contrivance or device, by means of which merchandise may be sold.

(z) "Vending machine distributor" means any person who sells cigarette vending machines to a vending machine operator operating vending machines in the state of Kansas.

(aa) "Vending machine operator" means any person who places a vending machine, owned, leased or operated by such person, at locations where cigarettes are sold from such vending machine. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine, nor shall the owner or lessee, or any employee or agent of the owner or lessee be considered an authorized agent of the vending machine operator, if the owner or lessee does not own or lease the machine and the owner's or lessee's sole remuneration from the machine is a flat rental fee or commission based upon the number or value of cigarettes sold from the machine, or a combination of both.

(bb) "Wholesale dealer" means any person who sells cigarettes to other wholesale dealers, retail dealers, vending machine operators and manufacturer's salespersons for the purpose of resale in the state of Kansas.

(cc) "Wholesale sales price" means the original net invoice price for which a manufacturer sells a tobacco product to a distributor, as shown by the manufacturer's original invoice.

(dd) "Importer" means the same as provided in 26 U.S.C. § 5702(l).

(ee) "Manufacturer" means the same as provided in 26 U.S.C. § 5702(d).

(ff) "Electronic cigarette" means a battery-powered device, whether or not such device is shaped like a cigarette, that can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems. The term "electronic cigarette" includes consumable material but does not include any product regulated as a drug or device under chapter V of the federal food, drug and cosmetic act.

(gg) "Consumable material" means any liquid nicotine solution or other substance

containing nicotine that is sold, marketed or intended to be used in an electronic cigarette.

(hh) "Liquid nicotine container" means a bottle or other container of consumable material except where the consumable material is contained in a cartridge that is pre-filled and sealed by the manufacturer, and not intended to be opened by the consumer.

(ii) "Tank" means the reservoir section of an electronic cigarette where the consumable material from a liquid nicotine container is poured into and resides prior to its conversion to a vapor.

Sec. 16. K.S.A. 2014 Supp. 79-3310 is hereby amended to read as follows: 79-3310. There is imposed a tax upon all cigarettes sold, distributed or given away within the state of Kansas. ~~On and after July 1, 2002, and before January 1, 2003, the rate of such tax shall be \$.70 on each 20 cigarettes or fractional part thereof or \$.875 on each 25 cigarettes, as the case requires. On and after January 1, 2003~~ July 1, 2015, the rate of such tax shall be ~~\$.79~~ \$1.29 on each 20 cigarettes or fractional part thereof or ~~\$.99~~ \$1.61 on each 25 cigarettes, as the case requires. Such tax shall be collected and paid to the director as provided in this act. Such tax shall be paid only once and shall be paid by the wholesale dealer first receiving the cigarettes as herein provided.

The taxes imposed by this act are hereby levied upon all sales of cigarettes made to any department, institution or agency of the state of Kansas, and to the political subdivisions thereof and their departments, institutions and agencies.

Sec. 17. K.S.A. 2014 Supp. 79-3310c is hereby amended to read as follows: 79-3310c. ~~(H) On or before July 30, 2002~~ 31, 2015, each wholesale dealer, retail dealer and vending machine operator shall file a report with the director in such form as the director may prescribe showing cigarettes, cigarette stamps and meter imprints on hand at 12:01 a.m. on July 1, ~~2002~~ 2015. A tax of ~~\$.46~~ \$.50 on each 20 cigarettes or fractional part thereof or ~~\$.575~~ \$.61 on each 25 cigarettes, as the case requires and ~~\$.46 or \$.575~~ \$.50 or \$.61, as the case requires upon all tax stamps and all meter imprints purchased from the director and not affixed to cigarettes prior to July 1, ~~2002~~ 2015, is hereby imposed and shall be due and payable ~~in equal installments on or before July 30, 2002, on or before September 30, 2002, and on or before December 30, 2002~~ July 31, 2015. The tax imposed upon such cigarettes, tax stamps and meter imprints shall be imposed only once under this act. The director shall remit all moneys collected pursuant to this section to the state treasurer who shall credit the entire amount thereof to the state general fund.

~~(2) On or before January 30, 2003, each wholesale dealer, retail dealer and vending machine operator shall file a report with the director in such form as the director may prescribe showing cigarettes, cigarette stamps and meter imprints on hand at 12:01 a.m. on January 1, 2003. A tax of \$.09 on each 20 cigarettes or fractional part thereof or \$.115 on each 25 cigarettes, as the case requires and \$.09 or \$.115, as the case requires upon all tax stamps and all meter imprints purchased from the director and not affixed to cigarettes prior to January 1, 2003, is hereby imposed and shall be due and payable in equal installments on or before January 30, 2003, on or before March 30, 2003, and on or before June 30, 2003. The tax imposed upon such cigarettes, tax stamps and meter imprints shall be imposed only once under this act. The director shall remit all moneys collected pursuant to this section to the state treasurer who shall credit the entire amount thereof to the state general fund.~~

Sec. 18. K.S.A. 2014 Supp. 79-3311 is hereby amended to read as follows: 79-

3311. The director shall design and designate indicia of tax payment to be affixed to each package of cigarettes as provided by this act. The director shall sell water applied stamps only to licensed wholesale dealers in the amounts of 1,000 or multiples thereof. Stamps applied by the heat process shall be sold only in amounts of 30,000 or multiples thereof, except that such stamps which are suitable for packages containing 25 cigarettes each shall be sold in amounts prescribed by the director. Meter imprints shall be sold only in amounts of 10,000 or multiples thereof. Water applied stamps in amounts of 10,000 or multiples thereof and stamps applied by the heat process and meter imprints shall be supplied to wholesale dealers at a discount of ~~90% on and after July 1, 2002, and before January 1, 2003, and 80% 0.55% on and after July 1, 2015,~~ and thereafter from the face value thereof, and shall be deducted at the time of purchase or from the remittance therefor as hereinafter provided. Any wholesale cigarette dealer who shall file with the director a bond, of acceptable form, payable to the state of Kansas with a corporate surety authorized to do business in Kansas, shall be permitted to purchase stamps, and remit therefor to the director within 30 days after each such purchase, up to a maximum outstanding at any one time of 85% of the amount of the bond. Failure on the part of any wholesale dealer to remit as herein specified shall be cause for forfeiture of such dealer's bond. All revenue received from the sale of such stamps or meter imprints shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall first credit such amount as the director shall order to the cigarette tax refund fund and shall credit the remaining balance to the state general fund. A refund fund designated the cigarette tax refund fund not to exceed \$10,000 at any time shall be set apart and maintained by the director from taxes collected under this act and held by the state treasurer for prompt payment of all refunds authorized by this act. Such cigarette tax refund fund shall be in such amount as the director shall determine is necessary to meet current refunding requirements under this act.

The wholesale cigarette dealer shall affix to each package of cigarettes stamps or tax meter imprints required by this act prior to the sale of cigarettes to any person, by such dealer or such dealer's agent or agents, within the state of Kansas. The director is empowered to authorize wholesale dealers to affix revenue tax meter imprints upon original packages of cigarettes and is charged with the duty of regulating the use of tax meters to secure payment of the proper taxes. No wholesale dealer shall affix revenue tax meter imprints to original packages of cigarettes without first having obtained permission from the director to employ this method of affixation. If the director approves the wholesale dealer's application for permission to affix revenue tax meter imprints to original packages of cigarettes, the director shall require such dealer to file a suitable bond payable to the state of Kansas executed by a corporate surety authorized to do business in Kansas. The director may, to assure the proper collection of taxes imposed by the act, revoke or suspend the privilege of imprinting tax meter imprints upon original packages of cigarettes. All meters shall be under the direct control of the director, and all transfer assignments or anything pertaining thereto must first be authorized by the director. All inks used in the stamping of cigarettes must be of a special type devised for use in connection with the machine employed and approved by the director. All repairs to the meter are strictly prohibited except by a duly authorized representative of the director. Requests for service shall be directed to the director.

Meter machine ink imprints on all packages shall be clear and legible. If a wholesale dealer continuously issues illegible cigarette tax meter imprints, it shall be considered sufficient cause for revocation of such dealer's permit to use a cigarette tax meter.

A licensed wholesale dealer may, for the purpose of sale in another state, transport cigarettes not bearing Kansas indicia of tax payment through the state of Kansas provided such cigarettes are contained in sealed and original cartons.

Sec. 19. K.S.A. 2014 Supp. 79-3312 is hereby amended to read as follows: 79-3312. The director shall redeem any unused stamps or meter imprints that any wholesale dealer presents for redemption within six months after the purchase thereof, at the face value less ~~90% on and after July 1, 2002, and before January 1, 2003, and 80% thereafter~~ 0.55% thereof if such stamps or meter imprints have been purchased from the director. The director shall prepare a voucher showing the net amount of such refund due, and the director of accounts and reports shall draw a warrant on the state treasurer for the same. Wholesale dealers shall be entitled to a refund of the tax paid on cigarettes which have become unfit for sale upon proof thereof less ~~90% on and after July 1, 2002, and before January 1, 2003, and 80% thereafter~~ 0.55% of such tax.

Sec. 20. K.S.A. 2014 Supp. 79-3316 is hereby amended to read as follows: 79-3316. (a) All purchases of cigarettes or electronic cigarettes by any dealer shall be evidenced by an invoice, a duplicate of which shall be furnished the party receiving the cigarettes or electronic cigarettes from any dealer.

(b) Purchases of cigarettes or electronic cigarettes by wholesale dealers shall be made from the manufacturers of cigarettes or electronic cigarettes or from other Kansas licensed wholesale dealers. Purchases of cigarettes or electronic cigarettes by retail dealers or vending machine operators shall be from wholesale dealers.

(c) All invoices issued by wholesale dealers shall be in duplicate and a copy must accompany the consigned cigarettes or electronic cigarettes. Cigarettes or electronic cigarettes sold by a wholesale dealer to any other dealer shall be evidenced by invoices bearing the vendee's name and license number. A wholesale dealer selling cigarettes to a manufacturer's salesperson shall at the time of delivery of same make a true duplicate invoice inserting therein the name of the salesman together with the name of such salesperson's employer.

(d) All records pertaining to sales of cigarettes or electronic cigarettes by dealers in the state of Kansas shall be preserved for a period of three years and shall be available for inspection by the director or the director's designee at the dealer's place of business or, if the dealer has more than one place of business in the state, at a central location of the dealer.

(e) Every wholesale dealer shall report to the director on or before the 10th day of each month, stating the amount of cigarettes and the volume of consumable material in the case of electronic cigarettes sold during the preceding month and the amount of all cigarettes and the volume of consumable material in the case of electronic cigarettes returned to the manufacturer. Any wholesale dealer who refuses any shipment or part of a shipment of unstamped cigarettes or untaxed electronic cigarettes or has a shortage in the shipment of cigarettes or electronic cigarettes consigned to such dealer shall in the monthly report next following the refusal or shortage report to the director the number of packages or cartons of cigarettes or electronic cigarettes refused or short and the name of the carrier from whom the cigarettes or electronic cigarettes were refused or shortage occurred. Such report shall be made on forms provided by the director and

shall contain such other information as the director may require.

(f) Exemption from payment of ~~cigarette~~ tax on sale of cigarettes or electronic cigarettes made outside the state by any wholesale dealer shall be filed on forms provided by the director.

Sec. 21. K.S.A. 2014 Supp. 79-3334 is hereby amended to read as follows: 79-3334. (a) The Kansas department of revenue shall publish a list of active ~~cigarette~~ and tobacco and electronic cigarette licensees and shall update such list monthly.

(b) The list of active ~~cigarette~~ and tobacco and electronic cigarette licensees published as provided in subsection (a) shall contain the following information: County name, owner, business name, address, license type and license number.

(c) The provisions of this section shall be part of and supplemental to the Kansas cigarette and tobacco products act.

Sec. 22. K.S.A. 2014 Supp. 79-3602 is hereby amended to read as follows: 79-3602. Except as otherwise provided, as used in the Kansas retailers' sales tax act:

(a) "Agent" means a person appointed by a seller to represent the seller before the member states.

(b) "Agreement" means the multistate agreement entitled the streamlined sales and use tax agreement approved by the streamlined sales tax implementing states at Chicago, Illinois on November 12, 2002.

(c) "Alcoholic beverages" means beverages that are suitable for human consumption and contain 0.05% or more of alcohol by volume.

(d) "Certified automated system (CAS)" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(e) "Certified service provider (CSP)" means an agent certified under the agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(f) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(g) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(h) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(i) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing. Delivery charges shall not include charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

(j) "Direct mail" means printed material delivered or distributed by United States mail or other delivery services to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

(k) "Director" means the state director of taxation.

(l) "Educational institution" means any nonprofit school, college and university that offers education at a level above the ~~twelfth~~ 12th grade, and conducts regular classes and courses of study required for accreditation by, or membership in, the North Central Association of Colleges and Schools, the state board of education, or that otherwise qualify as an "educational institution," as defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall include: (1) A group of educational institutions that operates exclusively for an educational purpose; (2) nonprofit endowment associations and foundations organized and operated exclusively to receive, hold, invest and administer moneys and property as a permanent fund for the support and sole benefit of an educational institution; (3) nonprofit trusts, foundations and other entities organized and operated principally to hold and own receipts from intercollegiate sporting events and to disburse such receipts, as well as grants and gifts, in the interest of collegiate and intercollegiate athletic programs for the support and sole benefit of an educational institution; and (4) nonprofit trusts, foundations and other entities organized and operated for the primary purpose of encouraging, fostering and conducting scholarly investigations and industrial and other types of research for the support and sole benefit of an educational institution.

(m) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(n) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, candy, dietary supplements, food sold through vending machines, prepared food, soft drinks or tobacco.

(o) "Gross receipts" means the total selling price or the amount received as defined in this act, in money, credits, property or other consideration valued in money from sales at retail within this state; and embraced within the provisions of this act. The taxpayer, may take credit in the report of gross receipts for: (1) An amount equal to the selling price of property returned by the purchaser when the full sale price thereof, including the tax collected, is refunded in cash or by credit; and (2) an amount equal to the allowance given for the trade-in of property.

(p) "Ingredient or component part" means tangible personal property which is necessary or essential to, and which is actually used in and becomes an integral and material part of tangible personal property or services produced, manufactured or compounded for sale by the producer, manufacturer or compounder in its regular course of business. The following items of tangible personal property are hereby declared to be ingredients or component parts, but the listing of such property shall not be deemed to be exclusive nor shall such listing be construed to be a restriction upon, or an indication of, the type or types of property to be included within the definition of "ingredient or component part" as herein set forth:

(1) Containers, labels and shipping cases used in the distribution of property produced, manufactured or compounded for sale which are not to be returned to the producer, manufacturer or compounder for reuse.

(2) Containers, labels, shipping cases, paper bags, drinking straws, paper plates, paper cups, twine and wrapping paper used in the distribution and sale of property taxable under the provisions of this act by wholesalers and retailers and which is not to

be returned to such wholesaler or retailer for reuse.

(3) Seeds and seedlings for the production of plants and plant products produced for resale.

(4) Paper and ink used in the publication of newspapers.

(5) Fertilizer used in the production of plants and plant products produced for resale.

(6) Feed for animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber, fur, or the production of offspring for use for any such purpose or purposes.

(q) "Isolated or occasional sale" means the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. Any religious organization which makes a nonrecurring sale of tangible personal property acquired for the purpose of resale shall be deemed to be not engaged at the time of such sale in the business of selling such property. Such term shall include: (1) Any sale by a bank, savings and loan institution, credit union or any finance company licensed under the provisions of the Kansas uniform consumer credit code of tangible personal property which has been repossessed by any such entity; and (2) any sale of tangible personal property made by an auctioneer or agent on behalf of not more than two principals or households if such sale is nonrecurring and any such principal or household is not engaged at the time of such sale in the business of selling tangible personal property.

(r) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(1) Lease or rental does not include: (A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(B) a transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of \$100 or 1% of the total required payments; or

(C) providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect or set-up the tangible personal property.

(2) Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1).

(3) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the internal revenue code, the uniform commercial code, K.S.A. 84-1-101 et seq., and amendments thereto, or other provisions of federal, state or local law.

(4) This definition will be applied only prospectively from the effective date of this act and will have no retroactive impact on existing leases or rentals.

(s) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(t) "Member state" means a state that has entered in the agreement, pursuant to provisions of article VIII of the agreement.

(u) "Model 1 seller" means a seller that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(v) "Model 2 seller" means a seller that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(w) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least \$500,000,000, has a proprietary system that calculates the amount of tax due each jurisdiction and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subsection a seller includes an affiliated group of sellers using the same proprietary system.

(x) "Municipal corporation" means any city incorporated under the laws of Kansas.

(y) "Nonprofit blood bank" means any nonprofit place, organization, institution or establishment that is operated wholly or in part for the purpose of obtaining, storing, processing, preparing for transfusing, furnishing, donating or distributing human blood or parts or fractions of single blood units or products derived from single blood units, whether or not any remuneration is paid therefor, or whether such procedures are done for direct therapeutic use or for storage for future use of such products.

(z) "Persons" means any individual, firm, copartnership, joint adventure, association, corporation, estate or trust, receiver or trustee, or any group or combination acting as a unit, and the plural as well as the singular number; and shall specifically mean any city or other political subdivision of the state of Kansas engaging in a business or providing a service specifically taxable under the provisions of this act.

(aa) "Political subdivision" means any municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state or which certifies a levy to a municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state. Such term also shall include any public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law and the horsethief reservoir benefit district established pursuant to K.S.A. 82a-2201, and amendments thereto.

(bb) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(cc) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only

of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software, except that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

(dd) "Property which is consumed" means tangible personal property which is essential or necessary to and which is used in the actual process of and consumed, depleted or dissipated within one year in: (1) The production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property; (2) the providing of services; (3) the irrigation of crops, for sale in the regular course of business; or (4) the storage or processing of grain by a public grain warehouse or other grain storage facility, and which is not reusable for such purpose. The following is a listing of tangible personal property, included by way of illustration but not of limitation, which qualifies as property which is consumed:

(A) Insecticides, herbicides, germicides, pesticides, fungicides, fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals for use in commercial or agricultural production, processing or storage of fruit, vegetables, feeds, seeds, grains, animals or animal products whether fed, injected, applied, combined with or otherwise used;

(B) electricity, gas and water; and

(C) petroleum products, lubricants, chemicals, solvents, reagents and catalysts.

(ee) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

(ff) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(gg) "Quasi-municipal corporation" means any county, township, school district, drainage district or any other governmental subdivision in the state of Kansas having authority to receive or hold moneys or funds.

(hh) "Registered under this agreement" means registration by a seller with the member states under the central registration system provided in article IV of the agreement.

(ii) "Retailer" means a seller regularly engaged in the business of selling, leasing or renting tangible personal property at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale.

(jj) "Retail sale" or "sale at retail" means any sale, lease or rental for any purpose other than for resale, sublicense or subrent.

(kk) "Sale" or "sales" means the exchange of tangible personal property, as well as the sale thereof for money, and every transaction, conditional or otherwise, for a consideration, constituting a sale, including the sale or furnishing of electrical energy, gas, water, services or entertainment taxable under the terms of this act and including, except as provided in the following provision, the sale of the use of tangible personal property by way of a lease, license to use or the rental thereof regardless of the method by which the title, possession or right to use the tangible personal property is transferred. The term "sale" or "sales" shall not mean the sale of the use of any tangible personal property used as a dwelling by way of a lease or rental thereof for a term of

more than 28 consecutive days.

(ll) (1) "Sales or selling price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (A) The seller's cost of the property sold;
- (B) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;
- (C) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (D) delivery charges; and
- (E) installation charges.

(2) "Sales or selling price" includes consideration received by the seller from third parties if:

(A) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(D) one of the following criteria is met:

(i) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(ii) the purchaser identifies to the seller that the purchaser is a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or

(iii) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(3) "Sales or selling price" shall not include:

(A) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(B) interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(C) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser;

(D) the amount equal to the allowance given for the trade-in of property, if separately stated on the invoice, billing or similar document given to the purchaser; and

(E) commencing on July 1, 2006, and ending on June 30, 2009, cash rebates granted by a manufacturer to a purchaser or lessee of a new motor vehicle if paid directly to the retailer as a result of the original sale.

(mm) "Seller" means a person making sales, leases or rentals of personal property

or services.

(nn) "Service" means those services described in and taxed under the provisions of K.S.A. 79-3603, and amendments thereto.

(oo) "Sourcing rules" means the rules set forth in K.S.A. 2014 Supp. 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments thereto, which shall apply to identify and determine the state and local taxing jurisdiction sales or use taxes to pay, or collect and remit on a particular retail sale.

(pp) "Tangible personal property" means personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam and prewritten computer software.

(qq) "Taxpayer" means any person obligated to account to the director for taxes collected under the terms of this act.

(rr) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

(ss) "Entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

(tt) "Over-the-counter" drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The over-the-counter drug label includes: (1) A drug facts panel; or (2) a statement of the active ingredients with a list of those ingredients contained in the compound, substance or preparation. Over-the-counter drugs do not include grooming and hygiene products such as soaps, cleaning solutions, shampoo, toothpaste, antiperspirants and sun tan lotions and screens.

(uu) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service and voice mail services.

(vv) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(ww) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(xx) "Directory assistance" means an ancillary service of providing telephone number information or address information, or both.

(yy) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(zz) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(aaa) "Telecommunications service" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or

between or among points. The term telecommunications service includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmissions, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include:

(1) Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(2) installation or maintenance of wiring or equipment on a customer's premises;

(3) tangible personal property;

(4) advertising, including, but not limited to, directory advertising;

(5) billing and collection services provided to third parties;

(6) internet access service;

(7) radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. § 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;

(8) ancillary services; or

(9) digital products delivered electronically, including, but not limited to, software, music, video, reading materials or ring tones.

(bbb) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name 800, 855, 866, 877 and 888 toll-free calling, and any subsequent numbers designated by the federal communications commission.

(ccc) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. 900 service does not include the charge for collection services provided by the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name 900 service, and any subsequent numbers designated by the federal communications commission.

(ddd) "Value-added non-voice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

(eee) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

(fff) "Interstate" means a telecommunications service that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

(ggg) "Intrastate" means a telecommunications service that originates in one United

States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

(hhh) "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

(iii) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

(jjj) (1) "Prepared food" means any of the following:

(A) Food sold in a heated state or heated by the seller;

(B) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(C) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(2) "Prepared food" does not include:

(A) Food that is only cut, repackaged or pasteurized by the seller;

(B) eggs, fish, meat, poultry and foods containing these raw animal foods requiring cooking by the consumer as recommended by the United States food and drug administration, in chapter 3, part 401.11 of its food code, so as to prevent foodborne illnesses;

(C) if sold without eating utensils provided by the seller, bakery items, including breads, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas; or

(D) food sold by a seller whose primary North American industry classification system, United States, 2002 edition, classification is manufacturing in sector 311, except subsector 3118.

(lll) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products: soy, rice or similar milk substitutes; or greater than 50% of vegetable or fruit juice by volume.

(mmm) "Dietary supplement" shall have the same meaning ascribed to it as in K.S.A. 79-3606(jjj), and amendments thereto.

Sec. 23. K.S.A. 2014 Supp. 79-3695 is hereby amended to read as follows: 79-3695. If any contractor has entered into a written binding contract prior to May 1, ~~2010~~ 2015, for the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a building, facility or residential structure, or for the construction, reconstruction, restoration, replacement or repair of a bridge or highway, the state sales tax applicable to such contracts shall be remitted at the rate in effect prior to the state sales tax increase scheduled to take effect on July 1, ~~2010~~ 2015, if the contractor gives notice and proof of such contract to the director of taxation on or before July 10, ~~2010~~ 2015, which notice and proof shall be in such form and of such sufficiency as the director shall prescribe.";

Also on page 109, in line 33, after "91," by inserting "79-32,110,"; also in line 33, after "79-32,117," by inserting "79-32,120,"; also in line 33, after "79-32,265," by inserting "79-32,269, 79-32,270, 79-3301, 79-3310, 79-3310c, 79-3311, 79-3312, 79-3316, 79-3334, 79-3602,"; in line 35, after "79-3620," by inserting "79-3695,";

And by renumbering sections accordingly;

On page 1, in the title, in line 13, after "tax," by inserting "rates, subtraction modifications, itemized deductions,;" in line 16, after "rates," by inserting "food,;" also in line 16, after "thereof;" by inserting "taxation of cigarettes; taxation of electronic cigarettes,;" in line 18, after "91," by inserting "79-32,110,;" also in line 18, after "79-32,117," by inserting "79-32,120,;" also in line 18, after "79-32,265," by inserting "79-32,269, 79-3301, 79-3310, 79-3310c, 79-3311, 79-3312, 79-3316, 79-3334, 79-3602,;" in line 20, after "79-3620," by inserting "79-3695,;" in line 21, after "sections" by inserting "; also repealing K.S.A. 2014 Supp. 79-32,270"

In accordance with Senate Rule 27, Senator Hensley offered a motion to divide the question.

Part 1 contains an income tax exclusion for low income persons and is contained in section 12, subsection(f).

Upon the showing of five hands, a roll call was requested.

On roll call, the vote was: Yeas 33; Nays 4; Present and Passing 1; Absent or Not Voting 2.

Yeas: Baumgardner, Bowers, Bruce, Denning, Faust-Goudeau, Fitzgerald, Haley, Hawk, Hensley, Holland, Holmes, Kelly, Kerschen, King, Knox, LaTurner, Longbine, Love, Lynn, Masterson, McGinn, Melcher, O'Donnell, Olson, Petersen, Pettey, Pilcher-Cook, Powell, Pyle, Schmidt, Tyson, Wagle, Wolf.

Nays: Abrams, Donovan, Ostmeyer, Smith.

Present and Passing: Francisco.

Absent or Not Voting: Arpke, Wilborn.

Part 1 of the motion was retained.

EXPLANATION OF VOTE

Mr. Chairman: I vote to "Pass" on the amendment to create the income tax exclusion for some individuals. I do not believe the way the proposal is structured is fair. It will create a "cliff" in tax rates by exempting individuals with taxable incomes of \$5,000 or married individuals filing joint returns with taxable incomes of \$12,500 yet charging the full tax due to those making just one dollar more so they end up with less. There was some discussion that this would make up for eliminating the food sales tax rebate and the increase in sales tax but with no information about who this would help or if it is the best way to help. I understand that the reductions in income tax have created the shortfalls in revenue. This is one more proposal to eliminate income tax with the cost proposed to be paid by raising sales taxes. I will continue to work on proposals to make our Kansas taxes fair, balanced, and stable. —MARCI FRANCISCO

Part 2 raises the sales and compensating use tax to 6.5% as of July 1, 2015 and changes the rate on food to 6% on January 1, 2016 and is contained in sections 7, 8, 9, 10, 22 and 23.

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 8; Nays 30; Present and Passing 0; Absent or Not Voting 2.

Yeas: Donovan, Holmes, Kerschen, King, Longbine, Olson, Powell, Wagle.

Nays: Abrams, Baumgardner, Bowers, Bruce, Denning, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Kelly, Knox, LaTurner, Love, Lynn,

Masterson, McGinn, Melcher, O'Donnell, Ostmeyer, Petersen, Pettey, Pilcher-Cook, Pyle, Schmidt, Smith, Tyson, Wolf.

Absent or Not Voting: Arpke, Wilborn.

Part 2 was not retained.

Part 3 is the balance of the amendment not specified in parts one and two of this request. Part 3 was not retained by voice vote.

S Sub HB 2109 retains a place on the calendar.

CHANGE OF CONFERENCE

The President announced the appointment of Senator Masterson as a member of the Conference Committee on **H Sub SB 112** to replace Senator King.

The President announced the appointment of Senator Denning as a member of the Conference Committee on **H Sub SB 112** to replace Senator Smith.

The President announced the appointment of Senator Kelly as a member of the Conference Committee on **H Sub SB 112** to replace Senator Pettey.

REPORT ON ENROLLED BILLS

SR 1753 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on June 1, 2015.

On motion of Senator Bruce, the Senate adjourned until 10:00 a.m., Tuesday, June 2, 2015.

ROSE MARIE GLATT, CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks*.
COREY CARNAHAN, *Secretary of the Senate*.

□