

HOUSE BILL No. 2792

AN ACT reconciling amendments to certain statutes and making certain technical changes related thereto; amending K.S.A. 2011 Supp. 16-1602, 21-5428, 21-6811, 22-3437, 22-4705, 44-703, 44-706, 59-2132, 65-516, as amended by section 5 of 2012 House Bill No. 2660, 65-1626, as amended by section 1 of 2012 Senate Bill No. 134, 65-4915, as amended by section 51 of 2012 Senate Bill No. 397, 65-6805, as amended by section 54 of 2012 Senate Bill No. 397, 68-1051, as amended by section 2 of 2012 House Bill No. 2441, 72-1397, 72-5445, 74-5602, as amended by section 2 of 2012 House Bill No. 2496, 75-2935, as amended by section 115 of 2012 Senate Bill No. 316, 75-37,121, as amended by section 117 of 2012 Senate Bill No. 316, 76-11a13, 77-421, as amended by section 38 of 2012 House Bill No. 2535, 79-201a, as amended by section 1 of 2012 House Bill No. 2769 and 79-3234, as amended by section 127 of 2012 Senate Bill No. 316 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 21-5428a, 21-6811a, 22-3437b, 22-4705a, 32-1049a, as amended by section 64 of 2012 Senate Bill No. 316, 44-703a, 44-706b, 65-1436a, 65-1626, as amended by section 42 of 2012 Senate Bill No. 397, 65-4915, as amended by section 1 of 2012 House Bill No. 2428, 65-6805, as amended by section 28 of 2012 House Bill No. 2416, 68-1051, as amended by section 2 of 2012 House Bill No. 2509, 72-5445a, 74-4911f, as amended by section 95 of 2012 Senate Bill No. 316, 74-5089, as amended by section 6 of 2012 Senate Bill No. 417, 74-5602, as amended by section 105 of 2012 Senate Bill No. 316, 74-5602, as amended by section 2 of 2012 Senate Bill No. 424, 75-2935, as amended by section 28 of 2012 Senate Bill No. 417, 75-3372, 75-37,121, as amended by section 33 of 2012 House Bill No. 2416, 77-415, as amended by section 1 of 2012 Senate Bill No. 252, 77-421, as amended by section 123 of 2012 Senate Bill No. 316, 77-421, as amended by section 55 of 2012 House Bill No. 2416, 77-421, as amended by section 2 of 2012 Senate Bill No. 252, 79-201a, as amended by section 124 of 2012 Senate Bill No. 316 and 79-3234b, as amended by section 128 of 2012 Senate Bill No. 316.

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

New Section 1. (a) The secretary of social and rehabilitation services shall convey by quitclaim deed, without consideration, all of the rights, title and interest in the following described real estate, and any improvements thereon, located in Ellsworth county, Kansas, to the evangelical lutheran good samaritan society:

A tract of land in the Southwest Quarter of Section 29, Township 15 South, Range 8 West of the 6th P.M. in Ellsworth County, Kansas, described as follows: COMMENCING at the Southeast Corner of said Quarter Section, thence on an assumed bearing of South 89 degrees 29 minutes 36 seconds West, 943.70 feet along the south line of said Quarter Section to the POINT OF BEGINNING; FIRST COURSE, thence South 89 degrees 29 minutes 36 seconds West, 300.34 feet along the south line of said Quarter Section; SECOND COURSE, thence North 02 degrees 04 minutes 45 seconds West, 1182.69 feet; THIRD COURSE, thence North 89 degrees 29 minutes 36 seconds East, 1286.17 feet to the east line of said Quarter Section; FOURTH COURSE, thence South 00 degrees 02 minutes 18 seconds East, 723.78 feet along the east line of said Quarter Section; FIFTH COURSE, thence South 89 degrees 59 minutes 12 seconds West, 120.33 feet to the existing westerly K-14/K-156 right of way; SIXTH COURSE, thence South 44 degrees 21 minutes 14 seconds West, 418.34 feet along said westerly right of way; SEVENTH COURSE, thence South 78 degrees 21 minutes 59 seconds West, 499.13 feet along said westerly right of way; EIGHTH COURSE, thence South 48 degrees 36 minutes 13 seconds West, 55.95 feet along said westerly right of way to the existing northerly township road right of way; NINTH COURSE, thence South 00 degrees 30 minutes 24 seconds East, 30.00 feet to the south line of said Quarter Section and the point of beginning.

The above described tract contains 29.641 acres, which includes 1.592 acres of existing right of way, resulting in a tract of 28.049 acres, more or less.

(b) The deed conveying the real estate described in subsection (a) shall be approved by the attorney general and executed by the secretary of social and rehabilitation services.

(c) The deed to the real estate described in subsection (a) shall provide for the retention by the state of Kansas of all mineral rights in and under such property, except that any exercise of these rights shall be without degradation, use or damage to the surface or any improvements thereto in any manner.

(d) The conveyance of real property authorized by this section shall not be subject to the provisions of K.S.A. 2011 Supp. 75-6609 or 75-6611, and amendments thereto.

(e) In the event that the secretary of social and rehabilitation services determines that the legal description of the parcel described by this section is incorrect, the secretary of social and rehabilitation services may convey the property utilizing the correct legal description but the deed

conveying the property shall be subject to the approval of the attorney general.

Sec. 2. K.S.A. 2011 Supp. 16-1602 is hereby amended to read as follows: 16-1602. In this act:

(a) “Agreement” means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(b) “Automated transaction” means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction.

(c) “Computer program” means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(d) “Contract” means the total legal obligation resulting from the parties’ agreement as affected by this act and other applicable law.

(e) “Digital signature” means a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer’s public key can accurately determine whether:

(1) The transformation was created using the private key that corresponds to the signer’s public key; and

(2) the initial message has not been altered since the transformation was made.

(f) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(g) “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(h) “Electronic record” means a record created, generated, sent, communicated, received or stored by electronic means.

(i) “Electronic signature” means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(j) “Governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state.

(k) “Information” means data, text, images, sounds, codes, computer programs, software, databases or the like.

(l) “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

(m) “Message” means a digital representation of information.

(n) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(o) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(p) “Registered certification authority” means a person providing certification of a digital signature who is, or is certified by, a member of the group of certification authorities approved by and registered with the secretary.

(q) “Secretary” means the Kansas secretary of state.

(r) “Security procedure” means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures.

(s) “State” means a state of the United States, the District of Colum-

bia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(t) “*Transaction*” means an action or set of actions occurring between two or more persons relating to the conduct of business, insurance, health care, commercial or governmental affairs.

Sec. 3. K.S.A. 2011 Supp. 21-5428 is hereby amended to read as follows: 21-5428. (a) Blackmail is *intentionally* gaining or attempting to gain anything of value or compelling or attempting to compel another to act against such person’s will, by threatening to:

(1) Communicate accusations or statements about any person that would subject such person or any other person to public ridicule, contempt or degradation; or

(2) disseminate any videotape, photograph, film, or image obtained in violation of subsection (a)(6) of K.S.A. 2011 Supp. 21-6101, and amendments thereto.

(b) Blackmail as defined in:

(1) Subsection (a)(1) is a severity level 7, nonperson felony; and

(2) subsection (a)(2) is a severity level 4, person felony.

Sec. 4. K.S.A. 2011 Supp. 21-6811 is hereby amended to read as follows: 21-6811. In addition to the provisions of K.S.A. 2011 Supp. 21-6810, and amendments thereto, the following shall apply in determining an offender’s criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender’s criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in K.S.A. 21-3408, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments thereto, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of criminal possession of a firearm as defined in subsection (a)(1) or (a)(5) of K.S.A. 21-4204, prior to its repeal, criminal use of weapons as defined in subsection (a)(10) or (a)(11) of K.S.A. 2011 Supp. 21-6301, and amendments thereto, or unlawful possession of a firearm as in effect on June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, as in effect on June 30, 1996, involuntary manslaughter in the commission of driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(d) Prior burglary adult convictions and juvenile adjudications will be scored for criminal history purposes as follows:

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (a) of K.S.A. 21-3715, prior to its repeal, or subsection (a)(1) of K.S.A. 2011 Supp. 21-5807, and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (b) or (c) of K.S.A. 21-3715, prior to its repeal, or subsection (a)(2) or (a)(3) of K.S.A. 2011 Supp. 21-5807, and amendments thereto.

The facts required to classify prior burglary adult convictions and ju-

venile adjudications shall be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions and juvenile adjudications shall be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications. The facts required to classify out-of-state adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(f) Except as provided in subsections (d)(4), (d)(5) or (d)(6) of K.S.A. 21-4710, prior to its repeal, or subsections (d)(3)(B), (d)(3)(C), (d)(3)(D) and (d)(4) of K.S.A. 2011 Supp. 21-6810, and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

(i) *If the current crime of conviction is for a violation of subsections (b)(2) through (b)(4) of K.S.A. 8-1602, and amendments thereto, each of the following prior convictions committed on or after July 1, 2011 shall count as a person felony for criminal history purposes: K.S.A. 8-235, 8-262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104, and amendments thereto, and subsection (a)(3) of K.S.A. 2011 Supp. 21-5405 and 21-5406, and amendments thereto, or a violation of a city ordinance or law of another state which would also constitute a violation of such sections.*

Sec. 5. K.S.A. 2011 Supp. 22-3437 is hereby amended to read as follows: 22-3437. (a) (1) In any hearing or trial, a report concerning forensic examinations and certificate of forensic examination executed pursuant to this section shall be admissible in evidence if the report and certificate are prepared and attested by a criminalist or other employee of the Kansas bureau of investigation, Kansas highway patrol, Johnson County sheriff's laboratory, Sedgwick County regional forensic science center, or any laboratory of the federal bureau of investigation, federal postal inspection service, federal bureau of alcohol, tobacco and firearms or federal drug enforcement administration. If the examination involves a breath test for alcohol content, the report must also be admissible pursuant to K.S.A. 8-1001, and amendments thereto, and be conducted by a law enforcement officer or other person who is certified by the department of health and environment as a breath test operator as provided by K.S.A. 65-1,107 *et seq.*, and amendments thereto.

(2) Upon the request of any law enforcement agency, such person as provided in paragraph (1) performing the analysis shall prepare a certificate. Such person shall sign the certificate under oath and shall include in the certificate an attestation as to the result of the analysis. The presentation of this certificate to a court by any party to a proceeding shall be evidence that all of the requirements and provisions of this section have been complied with. This certificate shall be supported by a written declaration pursuant to K.S.A. 53-601, and amendments thereto, or shall be sworn to before a notary public or other person empowered by law to take oaths and shall contain a statement establishing the following: The type of analysis performed; the result achieved; any conclusions reached based upon that result; that the subscriber is the person who performed the analysis and made the conclusions; the subscriber's training or expe-

rience to perform the analysis; the nature and condition of the equipment used; and the certification and foundation requirements for admissibility of breath test results, when appropriate. When properly executed, the certificate shall, subject to the provisions of paragraph (3) and notwithstanding any other provision of law, be admissible evidence of the results of the forensic examination of the samples or evidence submitted for analysis and the court shall take judicial notice of the signature of the person performing the analysis and of the fact that such person is that person who performed the analysis.

(3) Whenever a party intends to proffer in a criminal or civil proceeding, a certificate executed pursuant to this section, notice of an intent to proffer that certificate and the reports relating to the analysis in question, including a copy of the certificate, shall be conveyed to the opposing party or parties at least ~~20~~-21 days before the beginning of a hearing where the proffer will be used. An opposing party who intends to object to the admission into evidence of a certificate shall give notice of objection and the grounds for the objection within ~~10~~-14 days upon receiving the adversary's notice of intent to proffer the certificate. Whenever a notice of objection is filed, admissibility of the certificate shall be determined not later than two days before the beginning of the trial. A proffered certificate shall be admitted in evidence unless it appears from the notice of objection and grounds for that objection that the conclusions of the certificate, including the composition, quality or quantity of the substance submitted to the laboratory for analysis or the alcohol content of a blood or breath sample will be contested at trial. A failure to comply with the time limitations regarding the notice of objection required by this section shall constitute a waiver of any objections to the admission of the certificate. The time limitations set forth in this section may be extended upon a showing of good cause.

(b) (1) In any hearing or trial where there is a report concerning forensic examinations from a person as provided in paragraph (1) of subsection (a), district and municipal courts may, upon request of either party, use two-way interactive video technology, including internet-based videoconferencing, to take testimony from that person if the testimony is in relation to the report.

(2) The use of any two-way interactive video technology must be in accordance with any requirements and guidelines established by the office of judicial administration, and all proceedings at which such technology is used in a district court must be recorded verbatim by the court.

Sec. 6. K.S.A. 2011 Supp. 22-4705 is hereby amended to read as follows: 22-4705. (a) The following events are reportable events under this act:

- (1) Issuance of an arrest warrant;
- (2) an arrest;
- (3) release of a person after arrest without the filing of a charge;
- (4) *the filing of a charge*;
- ~~(4)~~(5) dismissal or quashing of an indictment or criminal information;
- ~~(5)~~(6) an acquittal, conviction or other disposition at or following trial, including a finding of probation before judgment;
- ~~(6)~~(7) imposition of a sentence;
- ~~(7)~~(8) commitment to a correctional facility, whether state or locally operated;
- ~~(8)~~(9) release from detention or confinement;
- ~~(9)~~(10) an escape from confinement;
- ~~(10)~~(11) a pardon, reprieve, commutation of sentence or other change in a sentence, including a change ordered by a court;
- ~~(11)~~(12) judgment of an appellate court that modifies or reverses the lower court decision;
- ~~(12)~~(13) order of a court in a collateral proceeding that affects a person's conviction, sentence or confinement, including any expungement or annulment of arrests or convictions pursuant to state statute; and
- ~~(13)~~(14) any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the director.

(b) There is hereby established a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated

by the Kansas bureau of investigation under the administrative control of the director.

(c) Except as otherwise provided by this subsection, every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this act. A criminal justice agency shall report to the central repository those reportable events involving a violation of a county resolution or city ordinance only when required by rules and regulations adopted by the director.

(d) Reporting methods may include:

(1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;

(2) if the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or

(3) if the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by the agencies.

(e) Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of that criminal history record information is governed by the provisions of this act.

(f) The director may determine, by rule and regulation, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.

(g) Except as otherwise provided in this subsection, no court or criminal justice agency may assess fees or charges against the central repository for providing criminal history record information created prior to, on or after July 1, 2011. A court or criminal justice agency may assess a fee or charge against the central repository for providing criminal history record information if such court or criminal justice agency has previously provided such criminal history record information as required by law.

Sec. 7. K.S.A. 2011 Supp. 44-703 is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise:

(a) (1) “Annual payroll” means the total amount of wages paid or payable by an employer during the calendar year.

(2) “Average annual payroll” means the average of the annual payrolls of any employer for the last three calendar years immediately preceding the computation date as hereinafter defined if the employer has been continuously subject to contributions during those three calendar years and has paid some wages for employment during each of such years. In determining contribution rates for the calendar year, if an employer has not been continuously subject to contribution for the three calendar years immediately preceding the computation date but has paid wages subject to contributions during only the two calendar years immediately preceding the computation date, such employer’s “average annual payroll” shall be the average of the payrolls for those two calendar years.

(3) “Total wages” means the total amount of wages paid or payable by an employer during the calendar year, including that part of remuneration in excess of the limitation prescribed as provided in subsection (o)(1) of this section.

(b) “Base period” means the first four of the last five completed calendar quarters immediately preceding the first day of an individual’s benefit year, except that the base period in respect to combined wage claims means the base period as defined in the law of the paying state.

(1) (A) If an individual lacks sufficient base period wages in order to establish a benefit year in the matter set forth above and satisfies the requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of K.S.A. 44-703, and amendments thereto, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subsection, “alternative base period” means the last four completed quarters immediately preceding the date the qualifying injury occurred. In the event the wages in the alternative base period have been used on a prior claim, then they shall be excluded from the new alternative base period.

(B) If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above the claimant shall have an alternative base period substituted for the current base period. For the purposes of this subsection, “alternative base period” means eligibility shall be determined using a base period that consists of the four most recently completed calendar quarters preceding the start of the benefit year.

(2) For the purposes of this chapter, the term “base period” includes the alternative base period.

(c) (1) “Benefits” means the money payments payable to an individual, as provided in this act, with respect to such individual’s unemployment.

(2) “Regular benefits” means benefits payable to an individual under this act or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(d) “Benefit year” with respect to any individual, means the period beginning with the first day of the first week for which such individual files a valid claim for benefits, and such benefit year shall continue for one full year. In the case of a combined wage claim, the benefit year shall be the benefit year of the paying state. Following the termination of a benefit year, a subsequent benefit year shall commence on the first day of the first week with respect to which an individual next files a claim for benefits. When such filing occurs with respect to a week which overlaps the preceding benefit year, the subsequent benefit year shall commence on the first day immediately following the expiration date of the preceding benefit year. Any claim for benefits made in accordance with subsection (a) of K.S.A. 44-709, and amendments thereto, shall be deemed to be a “valid claim” for the purposes of this subsection if the individual has been paid wages for insured work as required under subsection (e) of K.S.A. 44-705, and amendments thereto. Whenever a week of unemployment overlaps two benefit years, such week shall, for the purpose of granting waiting-period credit or benefit payment with respect thereto, be deemed to be a week of unemployment within that benefit year in which the greater part of such week occurs.

(e) “Commissioner” or “secretary” means the secretary of labor.

(f) (1) “Contributions” means the money payments to the state employment security fund which are required to be made by employers on account of employment under K.S.A. 44-710, and amendments thereto, and voluntary payments made by employers pursuant to such statute.

(2) “Payments in lieu of contributions” means the money payments to the state employment security fund from employers which are required to make or which elect to make such payments under subsection (e) of K.S.A. 44-710, and amendments thereto.

(g) “Employing unit” means any individual or type of organization, including any partnership, association, limited liability company, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, which has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) “Employer” means:

(1) (A) Any employing unit for which agricultural labor as defined in subsection (w) of this section is performed and which during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the

preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.

(B) For the purpose of this subsection (h)(1), any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(i) Such crew leader holds a valid certificate of registration under the federal migrant and seasonal agricultural workers protection act or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment or any other mechanized equipment, which is provided by such crew leader; and

(ii) such individual is not in the employment of such other person within the meaning of subsection (i) of this section.

(C) For the purpose of this subsection (h)(1), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on the crew leader's own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(D) For the purposes of this subsection (h)(1) "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on such individual's own behalf or on behalf of such other person, the individuals so furnished by such individual for the service in agricultural labor performed by them; and

(iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(2) (A) Any employing unit which for calendar year 2007 and each calendar year thereafter: (i) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of \$1,500 or more, (ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least one individual, whether or not the same individual was in employment in each such day, or (iii) elects to have an unemployment tax account established at the time of initial registration in accordance with subsection (c) of K.S.A. 44-711, and amendments thereto.

(B) Employment of individuals to perform domestic service or agricultural labor and wages paid for such service or labor shall not be considered in determining whether an employing unit meets the criteria of this subsection (h)(2).

(3) Any employing unit for which service is employment as defined in subsection (i)(3)(E) of this section.

(4) (A) Any employing unit, whether or not it is an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to (i) substantially all of the employing enterprises, organization, trade or business, or (ii) substantially all the assets, of another employing unit which at the time of such acquisition was an employer subject to this act;

(B) any employing unit which is controlled substantially, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests, whether or not such interest or interests are an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to a portion of an employer's annual payroll, which is less than 100% of such employer's annual payroll, and which intends to continue the acquired portion as a going business.

(5) Any employing unit which paid cash remuneration of \$1,000 or more in any calendar quarter in the current or preceding calendar year to individuals employed in domestic service as defined in subsection (aa) of this section.

(6) Any employing unit which having become an employer under this subsection (h) has not, under subsection (b) of K.S.A. 44-711, and amendments thereto, ceased to be an employer subject to this act.

(7) Any employing unit which has elected to become fully subject to this act in accordance with subsection (c) of K.S.A. 44-711, and amendments thereto.

(8) Any employing unit not an employer by reason of any other paragraph of this subsection (h), for which within either the current or preceding calendar year services in employment are or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or which, as a condition for approval of this act for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, to be an “employer” under this act.

(9) Any employing unit described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income tax under section 501(a) of the code that had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(i) “Employment” means:

(1) Subject to the other provisions of this subsection, service, including service in interstate commerce, performed by:

(A) Any active officer of a corporation; or

(B) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee *subject to the provisions of subsection (i)(3)(D)*; or

(C) any individual other than an individual who is an employee under subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services for remuneration for any person:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for such individual’s principal; or

(ii) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of subsection (i)(1)(C), the term “employment” shall include services described in paragraphs (i) and (ii) above only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(c) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) The term “employment” shall include an individual’s entire service within the United States, even though performed entirely outside this state if:

(A) The service is not localized in any state; and

(B) the individual is one of a class of employees who are required to travel outside this state in performance of their duties; and

(C) the individual’s base of operations is in this state, or if there is no base of operations, then the place from which service is directed or controlled is in this state.

(3) The term “employment” shall also include:

(A) Services performed within this state but not covered by the provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(B) Services performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act only if the individual performing such services is a resident of this state and the secretary approved the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(C) Services covered by an arrangement pursuant to subsection (I) of K.S.A. 44-714, and amendments thereto, between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the secretary has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(D) Services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this act ~~unless and until it is shown to the satisfaction of the secretary that: (i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of hire and in fact; and (ii) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed if the business for which activities of the individual are performed retains not only the right to control the end result of the activities performed, but the manner and means by which the end result is accomplished.~~

(E) Service performed by an individual in the employ of this state or any instrumentality thereof, any political subdivision of this state or any instrumentality thereof, or in the employ of an Indian tribe, as defined pursuant to section 3306(u) of the federal unemployment tax act, any instrumentality of more than one of the foregoing or any instrumentality which is jointly owned by this state or a political subdivision thereof or Indian tribes and one or more other states or political subdivisions of this or other states, provided that such service is excluded from "employment" as defined in the federal unemployment tax act by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subsection (i)(4)(A) of this section. For purposes of this section, the exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also be applicable to services performed in the employ of an Indian tribe.

(F) Service performed by an individual in the employ of a religious, charitable, educational or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act, and is not excluded from employment under paragraphs (I) through (M) of subsection (i)(4).

(G) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States except in Canada, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subsection (i)(2) or subsection (i)(3) or the parallel provisions of another state's law), if:

(i) The employer's principal place of business in the United States is located in this state; or

(ii) the employer has no place of business in the United States, but:

~~(A)~~(a) The employer is an individual who is a resident of this state;

~~(B)~~(b) the employer is a corporation which is organized under the laws of this state; or

~~(C)~~(c) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of paragraphs (i) and (ii) above of this subsection (i)(3)(G) are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(H) An “American employer,” for purposes of subsection (i)(3)(G), means a person who is:

- (i) An individual who is a resident of the United States; ~~or~~
- (ii) a partnership if or more of the partners are residents of the United States; ~~or~~
- (iii) a trust, if all of the trustees are residents of the United States; or
- (iv) a corporation organized under the laws of the United States or of any state.

(I) Notwithstanding subsection (i)(2) of this section, all service performed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office, from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(J) Notwithstanding any other provisions of this subsection (i), service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this act.

(K) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(4) The term “employment” shall not include: (A) Service performed in the employ of an employer specified in subsection (h)(3) of this section if such service is performed by an individual in the exercise of duties:

- (i) As an elected official;
- (ii) as a member of a legislative body, or a member of the judiciary, of a state, political subdivision or of an Indian tribe;
- (iii) as a member of the state national guard or air national guard;
- (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
- (v) in a position which, under or pursuant to the laws of this state or tribal law, is designated as a major nontenured policymaking or advisory position or as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

(B) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(C) service performed by an individual in the employ of such individual’s son, daughter or spouse, and service performed by a child under the age of 21 years in the employ of such individual’s father or mother;

(D) service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state shall not be certified for any year by the federal security agency under section 3304(c) of the federal internal revenue code of 1986, the payments required of such instrumentalities with respect to such year shall be refunded by the secretary from the fund in the same manner and within the same period as is provided in subsection (f) of K.S.A. 44-717, and amendments thereto, with respect to contributions erroneously collected;

(E) service covered by an arrangement between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit’s duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

(F) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(G) service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(H) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal internal revenue code of 1986 (other than an organization described in section 401(a) or under section 521 of such code) if the remuneration for such service is less than \$50. In construing the application of the term “employment,” if services performed during $\frac{1}{2}$ or more of any pay period by an individual for the person employing such individual constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than $\frac{1}{2}$ of any such pay period by an individual for the person employing such individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection (i)(4)(H) the term “pay period” means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(I) services performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(J) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of such individual’s ministry or by a member of a religious order in the exercise of duties required by such order;

(K) service performed in a facility conducted for the purpose of carrying out a program of:

(i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or

(ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(L) service performed as part of an employment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training;

(M) service performed by an inmate of a custodial or correctional institution;

(N) service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;

(O) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection (i)(4)(O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(P) service performed in the employ of a hospital licensed, certified or approved by the secretary of health and environment, if such service is performed by a patient of the hospital;

(Q) services performed as a qualified real estate agent. As used in this subsection (i)(4)(Q) the term “qualified real estate agent” means any

individual who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom:

(i) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(ii) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes;

(R) services performed for an employer by an extra in connection with any phase of motion picture or television production or television commercials for less than 14 days during any calendar year. As used in this subsection, the term "extra" means an individual who pantomimes in the background, adds atmosphere to the set and performs such actions without speaking and "employer" shall not include any employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(S) services performed by an oil and gas contract pumper. As used in this subsection (i)(4)(S), "oil and gas contract pumper" means a person performing pumping and other services on one or more oil or gas leases, or on both oil and gas leases, relating to the operation and maintenance of such oil and gas leases, on a contractual basis for the operators of such oil and gas leases and "services" shall not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(T) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$200 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(ii) such individual was regularly employed, as determined under subparagraph (i), by such employer in the performance of such service during the preceding calendar quarter.

Such excluded service shall not include any services performed for an employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(U) service which is performed by any person who is a member of a limited liability company and which is performed as a member or manager of that limited liability company; and

(V) services performed as a qualified direct seller. The term "direct seller" means any person if:

(i) Such person:

(a) Is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

(b) is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than to the number of hours worked;

(iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes;

(iv) for purposes of this act, a sale or a sale resulting exclusively from a solicitation made by telephone, mail, or other telecommunications method, or other nonpersonal method does not satisfy the requirements of this subsection;

(W) service performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

(X) service performed by agricultural workers who are aliens admitted to the United States to perform labor pursuant to section 1101(a)(15)(H)(ii)(a) of the immigration and nationality act; and

(Y) service performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 *et seq.*, the federal social security act, 42 U.S.C. § 301 *et seq.*, the federal unemployment tax act, 26 U.S.C. § 3301 *et seq.*, and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 *et seq.* Employees or agents of the owner-operator shall not be considered employees of the licensed motor carrier for purposes of employment security taxation or compensation. As used in this subsection (Y), the following definitions apply: (i) “Motor vehicle” means any automobile, truck-trailer, semi-trailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property; (ii) “licensed motor carrier” means any person, firm, corporation or other business entity that holds a certificate of convenience and necessity or a certificate of public service from the state corporation commission or is required to register motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) “owner-operator” means a person, firm, corporation or other business entity that is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier.

(j) “Employment office” means any office operated by this state and maintained by the secretary of labor for the purpose of assisting persons to become employed.

(k) “Fund” means the employment security fund established by this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

(l) “State” includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the District of Columbia and the Virgin Islands.

(m) “Unemployment.” An individual shall be deemed “unemployed” with respect to any week during which such individual performs no services and with respect to which no wages are payable to such individual, or with respect to any week of less than full-time work if the wages payable to such individual with respect to such week are less than such individual’s weekly benefit amount.

(n) “Employment security administration fund” means the fund established by this act, from which administrative expenses under this act shall be paid.

(o) “Wages” means all compensation for services, including commissions, bonuses, back pay and the cash value of all remuneration, including benefits, paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual which has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period. Effective January 1, 1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total \$20 or more for a calendar month whether the tips are received directly from

a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. The term “wages” shall not include:

(1) That part of the remuneration which has been paid in a calendar year to an individual by an employer or such employer’s predecessor in excess of \$3,000 for all calendar years prior to 1972, in excess of \$4,200 for the calendar years 1972 to 1977, inclusive, in excess of \$6,000 for calendar years 1978 to 1982, inclusive, in excess of \$7,000 for the calendar year 1983, and in excess of \$8,000 with respect to employment during any calendar year following 1983, except that if the definition of the term “wages” as contained in the federal unemployment tax act is amended to include remuneration in excess of \$8,000 paid to an individual by an employer under the federal act during any calendar year, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer’s predecessor with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o)(1), the term “employment” shall include service constituting employment under any employment security law of another state or of the federal government;

(2) the amount of any payment (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of such employee’s dependents under a plan or system established by an employer which makes provisions for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of (A) sickness or accident disability, except in the case of any payment made to an employee or such employee’s dependents, this subparagraph shall exclude from the term “wages” only payments which are received under a workers compensation law. Any third party which makes a payment included as wages by reason of this subparagraph (2)(A) shall be treated as the employer with respect to such wages, or (B) medical and hospitalization expenses in connection with sickness or accident disability, or (C) death;

(3) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) any payment made to, or on behalf of, an employee or such employee’s beneficiary:

(A) From or to a trust described in section 401(a) of the federal internal revenue code of 1986 which is exempt from tax under section 501(a) of the federal internal revenue code of 1986 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the federal internal revenue code of 1986;

(C) under a simplified employee pension as defined in section 408(k)(1) of the federal internal revenue code of 1986, other than any contribution described in section 408(k)(6) of the federal internal revenue code of 1986;

(D) under or to an annuity contract described in section 403(b) of the federal internal revenue code of 1986, other than a payment for the purchase of such contract which was made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise;

(E) under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the federal internal revenue code of 1986;

(F) to supplement pension benefits under a plan or trust described

in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the cost of living, as determined by the secretary of labor, since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the federal employee retirement income security act of 1974; or

(G) under a cafeteria plan within the meaning of section 125 of the federal internal revenue code of 1986;

(5) the payment by an employing unit (without deduction from the remuneration of the employee) of the tax imposed upon an employee under section 3101 of the federal internal revenue code of 1986 with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(7) remuneration paid to or on behalf of an employee if and to the extent that at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the federal internal revenue code of 1986 relating to moving expenses;

(8) any payment or series of payments by an employer to an employee or any of such employee's dependents which is paid:

(A) Upon or after the termination of an employee's employment relationship because of (i) death or (ii) retirement for disability; and

(B) under a plan established by the employer which makes provisions for employees generally, a class or classes of employees or for such employees or a class or classes of employees and their dependents, other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(9) remuneration for agricultural labor paid in any medium other than cash;

(10) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 129 of the federal internal revenue code of 1986 which relates to dependent care assistance programs;

(11) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the federal internal revenue code of 1986;

(12) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132 of the federal internal revenue code of 1986;

(14) any payment made, or benefit furnished, to or for the benefit of an employee, if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the federal internal revenue code of 1986 relating to educational assistance to the employee; or

(15) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d) of the federal internal revenue code of 1986 relating to health savings accounts.

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages": (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the federal internal revenue code of 1986, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the federal internal revenue code of 1986; or (2) any amount treated as an employer contribution under section 414(h)(2) of the federal internal revenue code of 1986.

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this section as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account

as wages by reason of this paragraph, and the income attributable thereto, shall not thereafter be treated as wages for purposes of this section. For purposes of this paragraph, the term “nonqualified deferred compensation plan” means any plan or other arrangement for deferral of compensation other than a plan described in subsection (o)(4).

(p) “Week” means such period or periods of seven consecutive calendar days, as the secretary may by rules and regulations prescribe.

(q) “Calendar quarter” means the period of three consecutive calendar months ending March 31, June 30, September 30 or December 31, or the equivalent thereof as the secretary may by rules and regulations prescribe.

(r) “Insured work” means employment for employers.

(s) “Approved training” means any vocational training course or course in basic education skills, including a job training program authorized under the federal workforce investment act of 1998, approved by the secretary or a person or persons designated by the secretary.

(t) “American vessel” or “American aircraft” means any vessel or aircraft documented or numbered or otherwise registered under the laws of the United States; and any vessel or aircraft which is neither documented or numbered or otherwise registered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(u) “Institution of higher education,” for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor’s or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection (u), all colleges and universities in this state are institutions of higher education for purposes of this section, except that no college, university, junior college or other postsecondary school or institution which is operated by the federal government or any agency thereof shall be an institution of higher education for purposes of the employment security law.

(v) “Educational institution” means any institution of higher education, as defined in subsection (u) of this section, or any institution, except private for profit institutions, in which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher and which is approved, licensed or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school or to an Indian tribe in the operation of an educational institution. The courses of study or training which an educational institution offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

(w) (1) “Agricultural labor” means any remunerated service:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operating, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(C) In connection with the production or harvesting of any commod-

ity defined as an agricultural commodity in section (15)(g) of the agricultural marketing act, as amended (46 Stat. 1500, sec. 3; 12 U.S.C. § 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than $\frac{1}{2}$ of the commodity with respect to which such service is performed;

(ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (i) above of this subsection (w)(1)(D), but only if such operators produced more than $\frac{1}{2}$ of the commodity with respect to which such service is performed;

(iii) the provisions of paragraphs (i) and (ii) above of this subsection (w)(1)(D) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(E) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(2) "Agricultural labor" does not include service performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the federal immigration and nationality act.

(3) As used in this subsection (w), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(4) For the purpose of this section, if an employing unit does not maintain sufficient records to separate agricultural labor from other employment, all services performed during any pay period by an individual for the person employing such individual shall be deemed to be agricultural labor if services performed during $\frac{1}{2}$ or more of such pay period constitute agricultural labor; but if the services performed during more than $\frac{1}{2}$ of any such pay period by an individual for the person employing such individual do not constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor. As used in this subsection (w), the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing such individual.

(x) "Reimbursing employer" means any employer who makes payments in lieu of contributions to the employment security fund as provided in subsection (e) of K.S.A. 44-710, and amendments thereto.

(y) "Contributing employer" means any employer other than a reimbursing employer or rated governmental employer.

(z) "Wage combining plan" means a uniform national arrangement approved by the United States secretary of labor in consultation with the state unemployment compensation agencies and in which this state shall participate, whereby wages earned in one or more states are transferred to another state, called the "paying state," and combined with wages in the paying state, if any, for the payment of benefits under the laws of the paying state and as provided by an arrangement so approved by the United States secretary of labor.

(aa) "Domestic service" means any service for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority, as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

(bb) "Rated governmental employer" means any governmental entity which elects to make payments as provided by K.S.A. 44-710d, and amendments thereto.

(cc) "Benefit cost payments" means payments made to the employ-

ment security fund by a governmental entity electing to become a rated governmental employer.

(dd) “Successor employer” means any employer, as described in subsection (h) of this section, which acquires or in any manner succeeds to (1) substantially all of the employing enterprises, organization, trade or business of another employer or (2) substantially all the assets of another employer.

(ee) “Predecessor employer” means an employer, as described in subsection (h) of this section, who has previously operated a business or portion of a business with employment to which another employer has succeeded.

(ff) “Lessor employing unit” means any independently established business entity which engages in the business of providing leased employees to a client lessee.

(gg) “Client lessee” means any individual, organization, partnership, corporation or other legal entity leasing employees from a lessor employing unit.

(hh) “Qualifying injury” means a personal injury by accident arising out of and in the course of employment within the coverage of the Kansas workers compensation act, K.S.A. 44-501 *et seq.*, and amendments thereto.

Sec. 8. K.S.A. 2011 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. 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;

(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 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;

(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; or

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

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

(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; or

(ii) a police record documenting the abuse; or

(iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in ~~article~~ *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. 2011 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 2-6421-21-6421*, and amendments thereto, where the victim was a family or household member; or

(iv) medical documentation of the abuse; or

(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 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 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. 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. Failure of the employee to notify the employer of an absence shall be considered *prima facie* evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

(2) For the purposes of this subsection, the use of or impairment caused by alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be *prima facie* evidence of conduct which is a violation of a duty or obligation reasonably owed to the employer as a condition of employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be defined as provided in K.S.A. 41-2701, and amendments thereto. Controlled substance shall be defined as provided in K.S.A. 2011 Supp. 21-5701, and amendments thereto. As used in this paragraph, "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 open meeting by the governing body of any special district or other local governmental entity. Chemical test shall include, but is not limited to, tests of urine, blood or saliva. A 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, for the drugs or abuse listed therein. A positive breath test shall mean a test result showing an alcohol concentration of .04 or greater. Alcohol concentration means the number of grams of alcohol per 210 liters of breath. An individual's refusal to submit to a chemical test or breath alcohol test shall be conclusive evidence of misconduct if the test meets the standards of the drug free workplace act, 41 U.S.C. § 701 *et seq.*; 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; the test was otherwise required by law and the test constituted a required condition of employment for the individual's job; 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 there was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working. A positive breath alcohol test or a positive chemical test shall be conclusive evidence to prove misconduct if the following conditions are met:

(A) Either (i) the test was required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. § 701 *et seq.*, (ii) 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, (iii) 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, (iv) the test was required by law and the test constituted a required condition of employment for the individual's job, or (v) there was probable cause to believe that the individual used, had possession of, or was impaired by alcoholic liquor, the cereal malt beverage or the controlled substance while working;

(B) the test sample was collected either (i) as prescribed by the drug free workplace act, 41 U.S.C. § 701 *et seq.*, (ii) 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, (iii) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment, (iv) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job, or (v) 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)(2)(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 description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(G) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual.

(3) (A) For the purposes of this subsection, misconduct shall include, but not be limited to, repeated absence, including incarceration, resulting in absence from work of three days or longer, excluding Saturdays, Sundays and legal holidays, and lateness, from scheduled work if the facts show:

- (i) The individual was absent without good cause;
- (ii) the absence was in violation of the employer's written absenteeism policy;
- (iii) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence may or will result in discharge; and
- (iv) the employee had knowledge of the employer's written absenteeism policy.

(B) For the purposes of this subsection, if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause. If the employee alleges that the employee's repeated absences 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).

(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;

(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, and/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 one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year 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.

(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, 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, 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, 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 in-

formation 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, 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, 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 rev-

enue 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; or

(2) the individual is attending approved training as defined in subsection (s) of K.S.A. 44-703, 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 (c) of K.S.A. 44-705, 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) If the individual has been discharged for failing a preemployment drug screen required by the employer and if such discharge occurs not later than seven days after the employer is notified of the results of such drug screen. 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.

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A. 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. 9. K.S.A. 2011 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 department of social and rehabilitation services 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 department of social and rehabilitation services 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 department of social and rehabilitation services 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. 2011 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, 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. 10. K.S.A. 2011 Supp. 65-516, as amended by section 5 of 2012 House Bill No. 2660, is hereby amended to read as follows: 65-516. (a) No person shall knowingly maintain a child care facility if, there resides, works or regularly volunteers any person who in this state or in other states or the federal government:

(1) (A) Has a felony conviction for a crime against persons; (B) has a felony conviction 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; (C) has a conviction of any act which is described in articles 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. 2011 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2011 Supp. 21-5301, and amendments thereto, to commit any such act or a conviction of conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2011 Supp. 21-5302, and amendments thereto, to commit such act, or similar statutes of other states or the federal government; or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2011 Supp. 21-6401, and amendments thereto, or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 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. 2011 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or similar statutes of other states or the federal government, or is any act described in K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2011 Supp. 21-6401, and amendments thereto, or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse and who is listed in the child abuse and neglect registry maintained by the department of social and rehabilitation services pursuant to K.S.A. 2011 Supp. 38-2226, and amendments thereto, and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child removed from home based on a court order pursuant to K.S.A. 2011 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child to be deprived or a child in need of care based on a finding of physical, mental or emotional abuse or neglect or sexual abuse and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan approved by the department of health and environment;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 2011 Supp. 38-2266 through 38-2270, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et seq.*, and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 2011 Supp. 38-2346, and amendments thereto, involving a charge of child abuse or a sexual offense; or

(7) has an infectious or contagious disease.

(b) No person shall maintain a child care facility 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.

(c) Any person who resides in a child care facility and who has been found to be in need of a guardian or a conservator, or both, shall be counted in the total number of children allowed in care.

(d) In accordance with the provisions of this subsection, the secretary of health and environment shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information including, but not limited to, diversion agreements, in the possession of the Kansas bureau of investigation and any report of investigations as authorized by K.S.A. 2011 Supp. 38-2226, and amendments thereto, in the possession of the department of social and rehabilitation services or court of this state concerning persons working, regularly volunteering or residing in a child care facility. The secretary shall have access to these records for the purpose of de-

termining whether or not the home meets the requirements of K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

(e) In accordance with the provisions of this subsection, the secretary is authorized to conduct national criminal history record checks to determine criminal history on persons residing, working or regularly volunteering in a child care facility. In order to conduct a national criminal history check the secretary shall require fingerprinting for identification and determination of criminal history. The secretary shall submit the fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation and receive a reply to enable the secretary to verify the identity of such person and whether such person has been convicted of any crime that would prohibit such person from residing, working or regularly volunteering in a child care facility. The secretary is authorized to use information obtained from the national criminal history record check to determine such person's fitness to reside, work or regularly volunteer in a child care facility.

(f) The secretary shall notify the child care applicant or licensee, within seven days by certified mail with return receipt requested, when the result of the national criminal history record check or other appropriate review reveals unfitness specified in subsection (a)(1) through (7) with regard to the person who is the subject of the review.

(g) No child care facility or the employees thereof, shall be liable for civil damages to any person refused employment or discharged from employment by reason of such facility's or home's compliance with the provisions of this section if such home acts in good faith to comply with this section.

(h) For the purpose of subsection (a)(3), a person listed in the child abuse and neglect central registry shall not be prohibited from residing, working or volunteering in a child care facility unless such person has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the Kansas judicial review act.

(i) In regard to Kansas issued criminal history records:

(1) The secretary of health and environment shall provide in writing information available to the secretary to each child placement agency requesting information under this section, including the information provided by the Kansas bureau of investigation pursuant to this section, for the purpose of assessing the fitness of persons living, working or regularly volunteering in a family foster home under the child placement agency's sponsorship.

(2) The child placement agency is considered to be a governmental entity and the designee of the secretary of health and environment for the purposes of obtaining, using and disseminating information obtained under this section.

(3) The information shall be provided to the child placement agency regardless of whether the information discloses that the subject of the request has been convicted of any offense.

(4) Whenever the information available to the secretary reveals that the subject of the request has no criminal history on record, the secretary shall provide notice thereof in writing to each child placement agency requesting information under this section.

(5) Any staff person of a child placement agency who receives information under this subsection shall keep such information confidential, except that the staff person may disclose such information on a need-to-know basis to: (A) The person who is the subject of the request for information; (B) the applicant or operator of the family foster home in which the person lives, works or regularly volunteers; (C) the department of health and environment; (D) the department of social and rehabilitation services; (E) the juvenile justice authority; and (F) the courts.

(6) A violation of the provisions of subsection (i)(5) shall be an unclassified misdemeanor punishable by a fine of \$100 for each violation.

(j) No person shall maintain a day care facility unless such person is a high school graduate or the equivalent thereof, except where extraordinary circumstances exist, the secretary of health and environment may exercise discretion to make exceptions to this requirement. The provisions of this subsection shall not apply to any person who was maintaining a

day care facility on the day immediately prior to July 1, 2010 or who had an application for an initial license or the renewal of an existing license pending on July 1, 2010.

Sec. 11. K.S.A. 2011 Supp. 65-1626, as amended by section 1 of 2012 Senate Bill No. 134, is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) “Administer” means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

- (1) A practitioner or pursuant to the lawful direction of a practitioner;
- (2) the patient or research subject at the direction and in the presence of the practitioner; or
- (3) a pharmacist as authorized in K.S.A. 65-1635a, and amendments thereto.

(b) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier’s or warehouseman’s business.

(c) “Application service provider” means an entity that sells electronic prescription or pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its server.

(d) “Authorized distributor of record” means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer’s prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the internal revenue code, complies with any one of the following: (1) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and (2) the wholesale distributor is listed on the manufacturer’s current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(e) “Board” means the state board of pharmacy created by K.S.A. 74-1603, and amendments thereto.

(f) “Brand exchange” means the dispensing of a different drug product of the same dosage form and strength and of the same generic name as the brand name drug product prescribed.

(g) “Brand name” means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(h) “Chain pharmacy warehouse” means a permanent physical location for drugs or devices, or both, that acts as a central warehouse and performs intracompany sales or transfers of prescription drugs or devices to chain pharmacies that have the same ownership or control. Chain pharmacy warehouses must be registered as wholesale distributors.

(i) “Co-licensee” means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug and the national drug code on the drug product label shall be used to determine the identity of the drug manufacturer.

(j) “DEA” means the U.S. department of justice, drug enforcement administration.

(k) “Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(l) “Direct supervision” means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician to a sufficient degree to assure that all such activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

(m) “Dispense” means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner.

(n) “Dispenser” means a practitioner or pharmacist who dispenses prescription medication.

(o) “Distribute” means to deliver, other than by administering or dispensing, any drug.

(p) “Distributor” means a person who distributes a drug.

(q) “Drop shipment” means the sale, by a manufacturer, that manufacturer’s co-licensee, that manufacturer’s third party logistics provider, or that manufacturer’s exclusive distributor, of the manufacturer’s prescription drug, to a wholesale distributor whereby the wholesale distributor takes title but not possession of such prescription drug and the wholesale distributor invoices the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug, and the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug receives delivery of the prescription drug directly from the manufacturer, that manufacturer’s co-licensee, that manufacturer’s third party logistics provider, or that manufacturer’s exclusive distributor, of such prescription drug. Drop shipment shall be part of the “normal distribution channel.”

(r) “Drug” means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term “drug” shall not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated, prior to its repeal.

(s) “Durable medical equipment” means technologically sophisticated medical devices that may be used in a residence, including the following: (1) Oxygen and oxygen delivery system; (2) ventilators; (3) respiratory disease management devices; (4) continuous positive airway pressure (CPAP) devices; (5) electronic and computerized wheelchairs and seating systems; (6) apnea monitors; (7) transcutaneous electrical nerve stimulator (TENS) units; (8) low air loss cutaneous pressure management devices; (9) sequential compression devices; (10) feeding pumps; (11) home phototherapy devices; (12) infusion delivery devices; (13) distribution of medical gases to end users for human consumption; (14) hospital beds; (15) nebulizers; or (16) other similar equipment determined by the board in rules and regulations adopted by the board.

(t) “Electronic prescription” means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.

(u) “Electronic prescription application” means software that is used to create electronic prescriptions and that is intended to be installed on the prescriber’s computers and servers where access and records are controlled by the prescriber.

(v) “Electronic signature” means a confidential personalized digital key, code, number or other method for secure electronic data transmissions which identifies a particular person as the source of the message, authenticates the signatory of the message and indicates the person’s approval of the information contained in the transmission.

(w) “Electronic transmission” means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber’s electronic prescription application to a pharmacy’s computer, where the data file is imported into the pharmacy prescription application.

(x) “Electronically prepared prescription” means a prescription that is generated using an electronic prescription application.

(y) “Exclusive distributor” means any entity that: (1) Contracts with a manufacturer to provide or coordinate warehousing, wholesale distribution or other services on behalf of a manufacturer and who takes title to that manufacturer’s prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer’s pre-

scription drug; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must be an authorized distributor of record.

(z) “Facsimile transmission” or “fax transmission” means the transmission of a digital image of a prescription from the prescriber or the prescriber’s agent to the pharmacy. “Facsimile transmission” includes but is not limited to transmission of a written prescription between the prescriber’s fax machine and the pharmacy’s fax machine; transmission of an electronically prepared prescription from the prescriber’s electronic prescription application to the pharmacy’s fax machine, computer or printer; or transmission of an electronically prepared prescription from the prescriber’s fax machine to the pharmacy’s fax machine, computer or printer.

(aa) “Generic name” means the established chemical name or official name of a drug or drug product.

(bb) (1) “Institutional drug room” means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the revised Kansas code for care of children and the revised Kansas juvenile justice code;

(C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;

(D) employees of a business or other employer; or

(E) persons receiving inpatient hospice services.

(2) “Institutional drug room” does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(cc) “Intermediary” means any technology system that receives and transmits an electronic prescription between the prescriber and the pharmacy.

(dd) “Intracompany transaction” means any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership or control of a corporate entity, or any transaction or transfer between co-licensees of a co-licensed product.

(ee) “Medical care facility” shall have the meaning provided in K.S.A. 65-425, and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b, and amendments thereto, except community mental health centers and facilities for ~~the mentally retarded~~ *people with intellectual disability*.

(ff) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual’s own use or the preparation, compounding, packaging or labeling of a drug by:

(1) A practitioner or a practitioner’s authorized agent incident to such practitioner’s administering or dispensing of a drug in the course of the practitioner’s professional practice;

(2) a practitioner, by a practitioner’s authorized agent or under a practitioner’s supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or

(3) a pharmacist or the pharmacist’s authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(gg) “Manufacturer” means a person licensed or approved by the FDA to engage in the manufacture of drugs and devices.

(hh) “Mid-level practitioner” means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written pro-

tocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

(ii) “Normal distribution channel” means a chain of custody for a prescription-only drug that goes from a manufacturer of the prescription-only drug, from that manufacturer to that manufacturer’s co-licensed partner, from that manufacturer to that manufacturer’s third-party logistics provider, or from that manufacturer to that manufacturer’s exclusive distributor, directly or by drop shipment, to:

(1) A pharmacy to a patient or to other designated persons authorized by law to dispense or administer such drug to a patient;

(2) a wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(3) a wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse’s intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(4) a chain pharmacy warehouse to the chain pharmacy warehouse’s intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

(jj) “Person” means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(kk) “Pharmacist” means any natural person licensed under this act to practice pharmacy.

(ll) “Pharmacist-in-charge” means the pharmacist who is responsible to the board for a registered establishment’s compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist-in-charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(mm) “Pharmacist intern” means: (1) A student currently enrolled in an accredited pharmacy program; (2) a graduate of an accredited pharmacy program serving an internship; or (3) a graduate of a pharmacy program located outside of the United States which is not accredited and who has successfully passed equivalency examinations approved by the board.

(nn) “Pharmacy,” “drugstore” or “apothecary” means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words “pharmacist,” “pharmaceutical chemist,” “pharmacy,” “apothecary,” “drugstore,” “druggist,” “drugs,” “drug sundries” or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign “Rx” may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(oo) “Pharmacy prescription application” means software that is used to process prescription information, is installed on a pharmacy’s computers or servers, and is controlled by the pharmacy.

(pp) “Pharmacy technician” means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

(qq) “Practitioner” means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist or scientific investigator or other person authorized by law to use a prescription-only drug

in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(rr) “Preceptor” means a licensed pharmacist who possesses at least two years’ experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(ss) “Prescriber” means a practitioner or a mid-level practitioner.

(tt) “Prescription” or “prescription order” means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a prescriber in the authorized course of such prescriber’s professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such prescriber, regardless of whether the communication is oral, electronic, facsimile or in printed form.

(uu) “Prescription medication” means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(vv) “Prescription-only drug” means any drug whether intended for use by man or animal, required by federal or state law—(, including 21 U.S.C. § 353), to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

(ww) “Probation” means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(xx) “Professional incompetency” means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

(yy) “Readily retrievable” means that records kept by automatic data processing applications or other electronic or mechanized record-keeping systems can be separated out from all other records within a reasonable time not to exceed 48 hours of a request from the board or other authorized agent or that hard-copy records are kept on which certain items are asterisked, redlined or in some other manner visually identifiable apart from other items appearing on the records.

(zz) “Retail dealer” means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

(aaa) “Secretary” means the executive secretary of the board.

(bbb) “Third party logistics provider” means an entity that: (1) Provides or coordinates warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug’s sale or disposition; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(ccc) “Unprofessional conduct” means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions;

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information under K.S.A. 65-1654, and amendments thereto;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee's professional practice or the efficacy or value of a drug;

(9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice; or

(10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

(ddd) "Vaccination protocol" means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and record-keeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(eee) "Valid prescription order" means a prescription that is issued for a legitimate medical purpose by an individual prescriber licensed by law to administer and prescribe drugs and acting in the usual course of such prescriber's professional practice. A prescription issued solely on the basis of an internet-based questionnaire or consultation without an appropriate prescriber-patient relationship is not a valid prescription order.

(fff) "Veterinary medical teaching hospital pharmacy" means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a nonhuman.

(ggg) "Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs or devices in or into the state, including, but not limited to, manufacturers, repackagers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, including manufacturers' and distributors' warehouses, co-licensees, exclusive distributors, third party logistics providers, chain pharmacy warehouses that conduct wholesale distributions, and wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distributions. Wholesale distributor shall not include persons engaged in the sale of durable medical equipment to consumers or patients.

(hhh) "Wholesale distribution" means the distribution of prescription drugs or devices by wholesale distributors to persons other than consumers or patients, and includes the transfer of prescription drugs by a pharmacy to another pharmacy if the total number of units of transferred drugs during a twelve-month period does not exceed 5% of the total number of all units dispensed by the pharmacy during the immediately preceding twelve-month period. Wholesale distribution does not include:

(1) The sale, purchase or trade of a prescription drug or device, an offer to sell, purchase or trade a prescription drug or device or the dispensing of a prescription drug or device pursuant to a prescription;

(2) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device for emergency medical reasons;

(3) intracompany transactions, as defined in this section, unless in violation of own use provisions;

(4) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device among hospitals, chain pharmacy warehouses, pharmacies or other health care entities that are under common control;

(5) the sale, purchase or trade of a prescription drug or device or the offer to sell, purchase or trade a prescription drug or device by a charitable organization described in 503(c)(3) of the internal revenue code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(6) the purchase or other acquisition by a hospital or other similar health care entity that is a member of a group purchasing organization of a prescription drug or device for its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations;

(7) the transfer of prescription drugs or devices between pharmacies pursuant to a centralized prescription processing agreement;

(8) the sale, purchase or trade of blood and blood components intended for transfusion;

(9) the return of recalled, expired, damaged or otherwise non-salable prescription drugs, when conducted by a hospital, health care entity, pharmacy, chain pharmacy warehouse or charitable institution in accordance with the board's rules and regulations;

(10) the sale, transfer, merger or consolidation of all or part of the business of a retail pharmacy or pharmacies from or with another retail pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets, in accordance with the board's rules and regulations;

(11) the distribution of drug samples by manufacturers' and authorized distributors' representatives;

(12) the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use; or

(13) the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer, originating wholesale distributor or to a third party returns processor in accordance with the board's rules and regulations.

Sec. 12. K.S.A. 2011 Supp. 65-4915, as amended by section 51 of 2012 Substitute for Senate Bill No. 397, is hereby amended to read as follows: 65-4915. (a) As used in this section:

(1) "Health care provider" means: (A) Those persons and entities defined as a health care provider under K.S.A. 40-3401, and amendments thereto; and (B) a dentist licensed by the Kansas dental board, a dental hygienist licensed by the Kansas dental board, a professional nurse licensed by the board of nursing, a practical nurse licensed by the board of nursing, a mental health technician licensed by the board of nursing, a physical therapist licensed by the state board of healing arts, a physical therapist assistant certified by the state board of healing arts, an occupational therapist licensed by the state board of healing arts, an occupational therapy assistant licensed by the state board of healing arts, a respiratory therapist licensed by the state board of healing arts, a physician assistant licensed by the state board of healing arts and attendants and ambulance services certified by the emergency medical services board.

(2) "Health care provider group" means:

(A) A state or local association of health care providers or one or more committees thereof;

(B) the board of governors created under K.S.A. 40-3403, and amendments thereto;

(C) an organization of health care providers formed pursuant to state or federal law and authorized to evaluate medical and health care services;

(D) a review committee operating pursuant to K.S.A. 65-2840c, and amendments thereto;

(E) an organized medical staff of a licensed medical care facility as defined by K.S.A. 65-425, and amendments thereto, an organized medical staff of a private psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto, or an organized medical staff of a state psychiatric hospital or state institution for people with intellectual disability, as follows: Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center;

(F) a health care provider;

(G) a professional society of health care providers or one or more committees thereof;

(H) a Kansas corporation whose stockholders or members are health care providers or an association of health care providers, which corporation evaluates medical and health care services; ~~or~~

(I) an insurance company, health maintenance organization or administrator of a health benefits plan which engages in any of the functions defined as peer review under this section; *or*

(J) *the university of Kansas medical center.*

(3) "Peer review" means any of the following functions:

(A) Evaluate and improve the quality of health care services rendered by health care providers;

(B) determine that health services rendered were professionally in-

licated or were performed in compliance with the applicable standard of care;

(C) determine that the cost of health care rendered was considered reasonable by the providers of professional health services in this area;

(D) evaluate the qualifications, competence and performance of the providers of health care or to act upon matters relating to the discipline of any individual provider of health care;

(E) reduce morbidity or mortality;

(F) establish and enforce guidelines designed to keep within reasonable bounds the cost of health care;

(G) conduct of research;

(H) determine if a hospital's facilities are being properly utilized;

(I) supervise, discipline, admit, determine privileges or control members of a hospital's medical staff;

(J) review the professional qualifications or activities of health care providers;

(K) evaluate the quantity, quality and timeliness of health care services rendered to patients in the facility;

(L) evaluate, review or improve methods, procedures or treatments being utilized by the medical care facility or by health care providers in a facility rendering health care.

(4) "Peer review officer or committee" means:

(A) An individual employed, designated or appointed by, or a committee of or employed, designated or appointed by, a health care provider group and authorized to perform peer review; or

(B) a health care provider monitoring the delivery of health care at correctional institutions under the jurisdiction of the secretary of corrections.

(b) Except as provided by K.S.A. 60-437, and amendments thereto, and by subsections (c) and (d), the reports, statements, memoranda, proceedings, findings and other records submitted to or generated by peer review committees or officers shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding. Information contained in such records shall not be discoverable or admissible at trial in the form of testimony by an individual who participated in the peer review process. The peer review officer or committee creating or initially receiving the record is the holder of the privilege established by this section. This privilege may be claimed by the legal entity creating the peer review committee or officer, or by the commissioner of insurance for any records or proceedings of the board of governors.

(c) Subsection (b) shall not apply to proceedings in which a health care provider contests the revocation, denial, restriction or termination of staff privileges or the license, registration, certification or other authorization to practice of the health care provider. A licensing agency in conducting a disciplinary proceeding in which admission of any peer review committee report, record or testimony is proposed shall hold the hearing in closed session when any such report, record or testimony is disclosed. Unless otherwise provided by law, a licensing agency conducting a disciplinary proceeding may close only that portion of the hearing in which disclosure of a report or record privileged under this section is proposed. In closing a portion of a hearing as provided by this section, the presiding officer may exclude any person from the hearing location except the licensee, the licensee's attorney, the agency's attorney, the witness, the court reporter and appropriate staff support for either counsel. The licensing agency shall make the portions of the agency record in which such report or record is disclosed subject to a protective order prohibiting further disclosure of such report or record. Such report or record shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity. No person in attendance at a closed portion of a disciplinary proceeding shall at a subsequent civil, criminal or administrative hearing, be required to testify regarding the existence or content of a report or record privileged under this section which was disclosed in a closed portion of a hearing, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing. A licensing agency conducting a disciplinary proceeding may review peer review committee records, testimony

or reports but must prove its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceeding in open meeting of the licensing agency. Offering such testimony or records in an open public hearing shall not be deemed a waiver of the peer review privilege relating to any peer review committee testimony, records or report.

(d) Nothing in this section shall limit the authority, which may otherwise be provided by law, of the commissioner of insurance, the state board of healing arts or other health care provider licensing or disciplinary boards of this state to require a peer review committee or officer to report to it any disciplinary action or recommendation of such committee or officer; to transfer to it records of such committee's or officer's proceedings or actions to restrict or revoke the license, registration, certification or other authorization to practice of a health care provider; or to terminate the liability of the fund for all claims against a specific health care provider for damages for death or personal injury pursuant to subsection (i) of K.S.A. 40-3403, and amendments thereto. Reports and records so furnished shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a disciplinary proceeding by the state board of healing arts or other health care provider licensing or disciplinary boards of this state.

(e) A peer review committee or officer may report to and discuss its activities, information and findings to other peer review committees or officers or to a board of directors or an administrative officer of a health care provider without waiver of the privilege provided by subsection (b) and the records of all such committees or officers relating to such report shall be privileged as provided by subsection (b).

(f) Nothing in this section shall be construed to prevent an insured from obtaining information pertaining to payment of benefits under a contract with an insurance company, a health maintenance organization or an administrator of a health benefits plan.

Sec. 13. K.S.A. 2011 Supp. 65-6805, as amended by section 54 of 2012 Substitute for Senate Bill No. 397, is hereby amended to read as follows: 65-6805. Each medical care facility as defined by subsection (h) of K.S.A. 65-425, and amendments thereto; health care provider as defined in K.S.A. 40-3401, and amendments thereto; providers of health care as defined in subsection (f) of K.S.A. 65-5001, and amendments thereto; health care personnel as defined in subsection (e) of K.S.A. 65-5001, and amendments thereto; home health agency as defined by subsection (b) of K.S.A. 65-5101, and amendments thereto; psychiatric hospitals licensed under K.S.A. 75-3307b, and amendments thereto; state institutions for people with intellectual disability; community facilities for people with intellectual disability as defined under K.S.A. 65-4412, and amendments thereto; community mental health center as defined under K.S.A. 65-4432, and amendments thereto; adult care homes as defined by K.S.A. 39-923, and amendments thereto; laboratories described in K.S.A. 65-1,107, and amendments thereto; pharmacies; board of nursing; Kansas dental board; board of examiners in optometry; state board of pharmacy; state board of healing arts and third-party payors, including, but not limited to, licensed insurers, medical and hospital service corporations, health maintenance organizations, fiscal intermediaries for government-funded programs and self-funded employee health plans, shall file health care data with the ~~Kansas health policy authority~~ *department of health and environment* as prescribed by the ~~authority~~ *secretary of health and environment*. The provisions of this section shall not apply to any individual, facility or other entity under this section which uses spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination for the treatment or cure of disease.

Sec. 14. K.S.A. 2011 Supp. 68-1051, as amended by section 2 of 2012 House Bill No. 2441, is hereby amended to read as follows: 68-1051. The portion of United States highway 75 where it enters the state on the Kansas-Nebraska border on the north then south to the junction with K-9 ~~then west to the junction of K-9 with K-62~~, then south ~~from the junction of K-9 with K-62~~ to the junction of K-62 with K-16 then east to the junction with United States highway 75 then south on United States high-

way 75 to the southern city limits of Holton, then from the junction of United States highway 75 and N.W. 46th street in Shawnee county then south on United States highway 75 to the southern boundary of Osage county, then from the northern boundary of Woodson county south on United States highway 75 to the Kansas-Oklahoma border, is hereby designated the purple heart/combat wounded veterans highway. The secretary of transportation shall place markers along the highway right-of-way at proper intervals to indicate that the highway is the purple heart/combat wounded veterans highway. The secretary of transportation may accept and administer gifts and donations to aid in obtaining suitable highway signs bearing the proper approved inscription.

Sec. 15. K.S.A. 2011 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. 2011 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. 2011 Supp. 21-5506, 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. 2011 Supp. 21-5506, and amendments thereto;
- (4) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2011 Supp. 21-5504, 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. 2011 Supp. 21-5504, 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. 2011 Supp. 21-5508, 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. 2011 Supp. 21-5508, 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. 2011 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. 2011 Supp. 21-5604, 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. 2011 Supp. 21-5601, and amendments thereto;
- (11) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2011 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. 2011 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. 2011 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. 2011 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. 2011 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. 2011 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. 2011 Supp. 21-5505, 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. 2011 Supp. 21-5505, and amendments thereto;
- (20) attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2011 Supp. 21-5301, and amendments thereto, to commit any act specified in this subsection;
- (21) conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A.

2011 Supp. 21-5302, and amendments thereto, to commit any act specified in this subsection;

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

(23) 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. 2011 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. 2011 Supp. 21-5413, and amendments thereto, or domestic battery, as described in K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2011 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. 2011 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. 2011 Supp. 21-6412, 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. 2011 Supp. 21-6401, 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. 2011 Supp. 21-6401, 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. 2011 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. 2011 Supp. 21-5601, 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. 2011 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. 2011 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. 16. K.S.A. 2011 Supp. 72-5445 is hereby amended to read as follows: 72-5445. (a) (1) Subject to the provisions of subsections (b) and (c), the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, apply only to: (A) Teachers who have completed not less than three consecutive years of employment, and been offered a fourth contract, in the school district, area vocational-technical school or community college by which any such teacher is currently employed; and (B) teachers who have completed not less than two consecutive years of employment, and been offered a third contract, in the school district, area vocational-technical school or community college by which any such teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of subpart (A) in any school district, area vocational-technical school or community college in this state.

(2) Any board may waive, at any time, the years of employment requirements of provision (1) for any teacher employed by it.

(3) The provisions of this subsection are subject to the provisions of K.S.A. 72-5446, and amendments thereto.

(b) The provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply to any teacher whose license has been non-renewed or revoked by the state board of education 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. 2011 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. 2011 Supp. 21-5413*, or K.S.A. 21-3412a, prior to ~~their~~ its repeal, or K.S.A. 2011 Supp. ~~21-5413~~ or 21-5414, 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. 2011 Supp. 21-6419 through 21-6421, 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. 2011 Supp. 21-5505*, 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 Anno-

tated, 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 ~~and~~ or subsection (a)(6) of K.S.A. 2011 Supp. 21-6412, and amendments thereto; (6) has been convicted of an attempt under K.S.A. 21-3301, prior to ~~their~~^{its} repeal, or K.S.A. 2011 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. 2011 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.

(c) (1) The provisions of this subsection shall apply to a teacher described in subsection (a)(1)(A) of this section. After a teacher has completed not less than three consecutive years of employment and if the requirements of paragraph (2) have been satisfied, the board of education of the school district and the teacher may enter into an agreement under which the school district may offer the teacher a contract of employment for a fourth year or a fourth and fifth year and the teacher agrees that the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, shall not apply to such teacher unless a sixth contract is offered to the teacher.

(2) A school district offering a contract pursuant to this subsection shall prepare a written plan of assistance for the teacher being offered such contract and shall submit such plan of assistance to the teacher at the time such contract is offered. Prior to signing or rejecting a contract, the teacher shall have not less than 48 hours from the time the contract is offered to review and consider the contract and the plan of assistance. The plan of assistance shall be written to address those areas of teacher performance where the school district believes the teacher's performance is less than satisfactory.

(3) If an agreement under this subsection is reached by the teacher and the school district, then the school district shall file annually a report with the state board of education which shall contain the following information in subparagraphs (A) through (D):

(A) The number of teachers that were offered by the school district a contract under subsection (a)(1)(A) of this section;

(B) the number of teachers that were offered by the school district an agreement under this subsection;

(C) the number of teachers that accepted the agreement under this subsection;

(D) the number of teachers that were not offered by the school district either a contract under subsection (a)(1)(A) of this section or an agreement under this subsection.

(4) In addition to the reports required under paragraph (3), each school district shall report annually to the state board of education, the committee on education of the senate and the committee on education of the house of representatives the number of contracts issued under subsection (a) which result in the application of K.S.A. 72-5438 through 72-5443, and amendments thereto, to the teachers who receive such contracts and the year of employment for which the contract is issued.

(5) The provisions of this subsection shall expire on July 1, 2016.

Sec. 17. K.S.A. 2011 Supp. 74-5602, as amended by section 2 of 2012 House Bill No. 2496, is hereby amended to read as follows: 74-5602. As used in the Kansas law enforcement training act:

(a) "Training center" means the law enforcement training center within ~~the division of continuing education of~~ the university of Kansas, created by K.S.A. 74-5603, and amendments thereto.

(b) "Commission" means the Kansas commission on peace officers' standards and training, created by K.S.A. 74-5606, and amendments thereto, *or the commission's designee*.

(c) "~~Dean-Chancellor~~" means the ~~dean of continuing education~~ *chancellor* of the university of Kansas, *or the chancellor's designee*.

(d) "Director of police training" means the director of police training at the law enforcement training center.

(e) “Director” means the executive director of the Kansas commission on peace officers’ standards and training.

(f) “Law enforcement” means the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof.

(g) “Police officer” or “law enforcement officer” means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to: The sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff’s office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858, and amendments thereto; conservation officers of the Kansas department of wildlife, parks and tourism; university police officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus police officers, as defined in K.S.A. 22-2401a, and amendments thereto; law enforcement agents of the director of alcoholic beverage control; law enforcement agents designated by the secretary of revenue pursuant to K.S.A. 2011 Supp. 75-5157, and amendments thereto; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol police, existing under the authority of K.S.A. 75-4503, and amendments thereto; special investigators of the juvenile justice authority; and law enforcement officers appointed by the adjutant general pursuant to K.S.A. 48-204, and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524, and amendments thereto; school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222, and amendments thereto; the manager and employees of the horsethief reservoir benefit district pursuant to K.S.A. 2011 Supp. 82a-2212, and amendments thereto; and the director of the Kansas commission on peace officers’ standards and training and any other employee of such commission designated by the director pursuant to K.S.A. 74-5603, and amendments thereto, as a law enforcement officer. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official’s elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the commissioner of juvenile justice who is employed solely to perform correctional, administrative or operational duties related to juvenile correctional facilities; any employee of the secretary of corrections, any employee of the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife, parks and tourism; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person’s office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(h) “Full-time” means employment requiring at least 1,000 hours of law enforcement related work per year.

(i) “Part-time” means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of law enforcement related work per year.

(j) “Misdemeanor crime of domestic violence” means a violation of domestic battery as provided by K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2011 Supp. 21-5414, and amendments thereto, or any other misdemeanor under federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.

(k) “Auxiliary personnel” means members of organized nonsalaried groups who operate as an adjunct to a police or sheriff’s department, including reserve officers, posses and search and rescue groups.

(l) “Active law enforcement certificate” means a certificate which attests to the qualification of a person to perform the duties of a law enforcement officer and which has not been suspended or revoked by action of the Kansas commission on peace officers’ standards and training and has not lapsed by operation of law as provided in K.S.A. 74-5622, and amendments thereto.

Sec. 18. K.S.A. 2011 Supp. 75-2935, as amended by section 115 of 2012 Senate Bill No. 316, is hereby amended to read as follows: 75-2935. The civil service of the state of Kansas is hereby divided into the unclassified and the classified services.

(1) The unclassified service comprises positions held by state officers or employees who are:

(a) Chosen by election or appointment to fill an elective office;

(b) members of boards and commissions, heads of departments required by law to be appointed by the governor or by other elective officers, and the executive or administrative heads of offices, departments, divisions and institutions specifically established by law;

(c) except as otherwise provided under this section, one personal secretary to each elective officer of this state, and in addition thereto, 10 deputies, clerks or employees designated by such elective officer;

(d) all employees in the office of the governor;

(e) officers and employees of the senate and house of representatives of the legislature and of the legislative coordinating council and all officers and employees of the office of revisor of statutes, of the legislative research department, of the division of legislative administrative services, of the division of post audit and the legislative counsel;

(f) chancellor, president, deans, administrative officers, student health service physicians, pharmacists, teaching and research personnel, health care employees and student employees in the institutions under the state board of regents, the executive officer of the board of regents and the executive officer’s employees other than clerical employees, and, at the discretion of the state board of regents, directors or administrative officers of departments and divisions of the institution and county extension agents, except that this subsection (1)(f) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such institution, except administrative officers and directors; as used in this subsection (1)(f), “health care employees” means employees of the university of Kansas medical center who provide health care services at the university of Kansas medical center and who are medical technicians or technologists or respiratory therapists, who are licensed professional nurses or licensed practical nurses, or who are in job classes which are designated for this purpose by the chancellor of the university of Kansas upon a finding by the chancellor that such designation is required for the university of Kansas medical center to recruit or retain personnel for positions in the designated job classes; and employees of any institution under the state board of regents who are medical technologists;

(g) operations, maintenance and security personnel employed to implement agreements entered into by the adjutant general and the federal national guard bureau, and officers and enlisted persons in the national guard and the naval militia;

(h) persons engaged in public work for the state but employed by contractors when the performance of such contract is authorized by the legislature or other competent authority;

(i) persons temporarily employed or designated by the legislature or by a legislative committee or commission or other competent authority to make or conduct a special inquiry, investigation, examination or installation;

(j) officers and employees in the office of the attorney general and special counsel to state departments appointed by the attorney general, except that officers and employees of the division of the Kansas bureau of investigation shall be in the classified or unclassified service as provided in K.S.A. 75-711, and amendments thereto;

(k) all employees of courts;

- (l) client, patient and inmate help in any state facility or institution;
 - (m) all attorneys for boards, commissions and departments;
 - (n) the secretary and assistant secretary of the Kansas state historical society;
 - (o) physician specialists, dentists, dental hygienists, pharmacists, medical technologists and long term care workers employed by the department of social and rehabilitation services;
 - (p) physician specialists, dentists and medical technologists employed by any board, commission or department or by any institution under the jurisdiction thereof;
 - (q) student employees enrolled in public institutions of higher learning;
 - (r) administrative officers, directors and teaching personnel of the state board of education and the state department of education and of any institution under the supervision and control of the state board of education, except that this subsection (1)(r) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such institution, except administrative officers and directors;
 - (s) all officers and employees in the office of the secretary of state;
 - (t) one personal secretary and one special assistant to the following: The secretary of administration, the secretary of aging, the secretary of agriculture, the secretary of commerce, the secretary of corrections, the secretary of health and environment, the superintendent of the Kansas highway patrol, the secretary of labor, the secretary of revenue, the secretary of social and rehabilitation services, the secretary of transportation, the secretary of wildlife, parks and tourism and the commissioner of juvenile justice;
 - (u) one personal secretary and one special assistant to the chancellor and presidents of institutions under the state board of regents;
 - (v) one personal secretary and one special assistant to the executive vice chancellor of the university of Kansas medical center;
 - (w) one public information officer and one chief attorney for the following: The department of administration, the department on aging, the department of agriculture, the department of commerce, the department of corrections, the department of health and environment, the department of labor, the department of revenue, the department of social and rehabilitation services, the department of transportation, the Kansas department of wildlife, parks and tourism and the commissioner of juvenile justice;
 - (x) civil service examination monitors;
 - (y) one executive director, one general counsel and one director of public affairs and consumer protection in the office of the state corporation commission;
 - (z) specifically designated by law as being in the unclassified service;
 - (aa) ~~all officers and employees of Kansas, Inc.;~~
 - ~~(bb)~~ any position that is classified as a position in the information resource manager job class series, that is the chief position responsible for all information resources management for a state agency, and that becomes vacant on or after the effective date of this act. Nothing in this section shall affect the classified status of any employee in the classified service who is employed on the date immediately preceding the effective date of this act in any position that is a classified position in the information resource manager job class series and the unclassified status as prescribed by this subsection shall apply only to a person appointed to any such position on or after the effective date of this act that is the chief position responsible for all information resources management for a state agency; and
 - ~~(cc)~~(bb) positions at state institutions of higher education that have been converted to unclassified positions pursuant to K.S.A. 2011 Supp. 76-715a, and amendments thereto.
- (2) The classified service comprises all positions now existing or hereafter created which are not included in the unclassified service. Appointments in the classified service shall be made according to merit and fitness from eligible pools which so far as practicable shall be competitive. No person shall be appointed, promoted, reduced or discharged as an officer, clerk, employee or laborer in the classified service in any manner or by

any means other than those prescribed in the Kansas civil service act and the rules adopted in accordance therewith.

(3) For positions involving unskilled, or semiskilled duties, the secretary of administration, as provided by law, shall establish rules and regulations concerning certifications, appointments, layoffs and reemployment which may be different from the rules and regulations established concerning these processes for other positions in the classified service.

(4) Officers authorized by law to make appointments to positions in the unclassified service, and appointing officers of departments or institutions whose employees are exempt from the provisions of the Kansas civil service act because of the constitutional status of such departments or institutions shall be permitted to make appointments from appropriate pools of eligibles maintained by the division of personnel services.

Sec. 19. K.S.A. 2011 Supp. 75-37,121, as amended by section 117 of 2012 Senate Bill No. 316, is hereby amended to read as follows: 75-37,121. (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ or contract with presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the state agencies, boards and commissions specified in subsection (h). The office shall conduct adjudicative proceedings of any state agency which is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its presiding officers within 60 days in response to a requesting agency's request, the director shall designate in writing a full-time employee of an agency other than the requesting agency to serve as presiding officer for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of presiding officers employed by the office.

(d) The director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding other than a proceeding as provided in subsection (h).

(e) The secretary of administration may adopt rules and regulations:

(1) To establish procedures for agencies to request and for the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

(2) to establish procedures and adopt forms, consistent with the Kansas administrative procedure act, the model rules of procedure, and other provisions of law, to govern presiding officers; and

(3) to facilitate the performance of the responsibilities conferred upon the office by the Kansas administrative procedure act.

(f) The director may implement the provisions of this section and rules and regulations adopted under its authority.

(g) The secretary of administration may adopt rules and regulations to establish fees to charge a state agency for the cost of using a presiding officer.

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for conducting adjudicative hearings under the Kansas administrative procedures act in which the presiding officer is not the agency head or one or more members of the agency head:

(1) On and after July 1, 2005: Department of social and rehabilitation services, juvenile justice authority, department on aging, department of health and environment, Kansas public employees retirement system, Kansas water office, Kansas animal health department and Kansas insurance department.

(2) On and after July 1, 2006: Emergency medical services board, emergency medical services council, ~~Kansas health policy authority~~ and Kansas human rights commission.

(3) On and after July 1, 2007: Kansas lottery, Kansas racing and gaming commission, state treasurer, pooled money investment board, Kansas department of wildlife, parks and tourism and state court of tax appeals.

(4) On and after July 1, 2008: Department of human resources, state corporation commission, state conservation commission, agricultural labor relations board, department of administration, department of revenue, board of adult care home administrators, Kansas state grain inspection department, board of accountancy and Kansas wheat commission.

(5) On and after July 1, 2009, all other Kansas administrative procedure act hearings not mentioned in subsections (1), (2), (3) and (4).

(i) (1) Effective July 1, 2005, any presiding officer in agencies specified in subsection (h)(1) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(2) Effective July 1, 2006, any presiding officer in agencies specified in subsection (h)(2) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(3) Effective July 1, 2007, any presiding officer in agencies specified in subsection (h)(3) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(4) Effective July 1, 2008, any full-time presiding officer in agencies specified in subsection (h)(4) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative

hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(5) Effective July 1, 2009, any full-time presiding officer in agencies specified in subsection (h)(5) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment occurred.

Sec. 20. K.S.A. 2011 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 (A) at the other state school.

(2) The state board may waive, at any time, the years of employment requirements of provision (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. 2011 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. 2011 Supp. 21-5413, 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. 2011 Supp. 21-6419 through 21-6421, 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. 2011 Supp. 21-5505, 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. 2011 Supp. 21-6412, and amendments thereto; (6) has been convicted of an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2011 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. 2011 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. 21. K.S.A. 2011 Supp. 77-421, as amended by section 38 of 2012 House Bill No. 2535, is hereby amended to read as follows: 77-421. (a) (1) Except as provided by subsection (a)(2), subsection (a)(3) or subsection (a)(4), prior to the adoption of any permanent rule and regulation or any temporary rule and regulation which is required to be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the secretary of administration and the attorney general, the adopting state agency shall give at least 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations established by K.S.A. 77-436, and amendments thereto. The notice shall be provided to the secretary of state and to the chairperson, vice chairperson, ranking minority member of the joint committee and legislative research department and shall be published in the Kansas register. A complete copy of all proposed rules and regulations and the complete economic impact statement required by K.S.A. 77-416, and amendments thereto, shall accompany the notice sent to the secretary of state. The notice shall contain:

(A) A summary of the substance of the proposed rules and regulations;

(B) a summary of the economic impact statement indicating the estimated economic impact on governmental agencies or units, persons subject to the proposed rules and regulations and the general public;

(C) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed rules and regulations;

(D) the address where a complete copy of the proposed rules and regulations, the complete economic impact statement, the environmental benefit statement, if applicable, required by K.S.A. 77-416, and amendments thereto, may be obtained;

(E) the time and place of the public hearing to be held; the manner in which interested parties may present their views; and

(F) a specific statement that the period of 60 days' notice constitutes a public comment period for the purpose of receiving written public comments on the proposed rules and regulations and the address where such comments may be submitted to the state agency. Publication of such notice in the Kansas register shall constitute notice to all parties affected by the rules and regulations.

(2) Prior to adopting any rule and regulation which establishes seasons and fixes bag, creel, possession, size or length limits for the taking or possession of wildlife and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of wildlife, parks and tourism shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(3) Prior to adopting any rule and regulation which establishes any permanent prior authorization on a prescription-only drug pursuant to K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or reimbursement for pharmaceuticals under the pharmacy program of the state medicaid plan, and after such rule and regulation has been approved by the secretary of administration and the attorney general, the ~~Kansas health policy authority~~ *secretary of health and environment* shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(4) Prior to adopting any rule and regulation pursuant to subsection (c), the state agency shall give at least ~~30~~ 60 days' notice of its intended

action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of notice constitutes a public comment period on such rules and regulations.

(b) (1) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. At the time it adopts or amends a rule and regulation, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including:

(A) The agency's reasons for not accepting substantial arguments made in testimony and comments; and

(B) the reasons for any substantial change between the text of the proposed adopted or amended rule and regulation contained in the published notice of the proposed adoption or amendment of the rule and regulation and the text of the rule and regulation as finally adopted.

(2) Whenever a state agency is required by any other statute to give notice and hold a hearing before adopting, amending, reviving or revoking a rule and regulation, the state agency, in lieu of following the requirements or statutory procedure set out in such other law, may give notice and hold hearings on proposed rules and regulations in the manner prescribed by this section.

(3) Notwithstanding the other provisions of this section, the secretary of corrections may give notice or an opportunity to be heard to any inmate in the custody of the secretary with regard to the adoption of any rule and regulation.

(c) (1) The agency shall initiate new rulemaking proceedings under this act, if a state agency proposes to adopt a final rule and regulation that:

(A) Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and

(B) is not a logical outgrowth of the rule and regulation as originally proposed.

~~(2) In accordance with subsection (a), the period for public comment required by K.S.A. 77-421, and amendments thereto, may be shortened to not less than 30 days.~~

~~(3) For the purposes of this provision, a rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed if a person affected by the final rule and regulation was not put on notice that such person's interests were affected in the rulemaking.~~

(d) When, pursuant to this or any other statute, a state agency holds a hearing on the adoption of a proposed rule and regulation, the agency shall cause written minutes or other records, including a record maintained on sound recording tape or on any electronically accessed media or any combination of written or electronically accessed media records of the hearing to be made. If the proposed rule and regulation is adopted and becomes effective, the state agency shall maintain, for not less than three years after its effective date, such minutes or other records, together with any recording, transcript or other record made of the hearing and a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing and any written comments submitted during the public comment period.

(e) No rule and regulation shall be adopted by a board, commission, authority or other similar body except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.

Sec. 22. K.S.A. 2011 Supp. 79-201a, as amended by section 1 of 2012 House Bill No. 2769, is hereby amended to read as follows: 79-201a. The following described property, to the extent herein specified, shall be exempt from all property or *ad valorem* taxes levied under the laws of the state of Kansas:

First. All property belonging exclusively to the United States, except

property which congress has expressly declared to be subject to state and local taxation.

Second. All property used exclusively by the state or any municipality or political subdivision of the state. All property owned, being acquired pursuant to a lease-purchase agreement or operated by the state or any municipality or political subdivision of the state, including property which is vacant or lying dormant, which is used or is to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be used exclusively by the state, municipality or political subdivision for the purposes of this section. The lease by a municipality or political subdivision of the state of any real property owned or being acquired pursuant to a lease-purchase agreement for the purpose of providing office space necessary for the performance of medical services by a person licensed to practice medicine and surgery or osteopathic medicine by the board of healing arts pursuant to K.S.A. 65-2801 *et seq.*, and amendments thereto, dentistry services by a person licensed by the Kansas dental board pursuant to K.S.A. 65-1401 *et seq.*, and amendments thereto, optometry services by a person licensed by the board of examiners in optometry pursuant to K.S.A. 65-1501 *et seq.*, and amendments thereto, or K.S.A. 74-1501 *et seq.*, and amendments thereto, podiatry services by a person licensed by the board of healing arts pursuant to K.S.A. 65-2001 *et seq.*, and amendments thereto, or the practice of psychology by a person licensed by the behavioral sciences regulatory board pursuant to K.S.A. 74-5301 *et seq.*, and amendments thereto, shall be construed to be a governmental function, and such property actually and regularly used for such purpose shall be deemed to be used exclusively for the purposes of this paragraph. The lease by a municipality or political subdivision of the state of any real property, or portion thereof, owned or being acquired pursuant to a lease-purchase agreement to any entity for the exclusive use by it for an exempt purpose, including the purpose of displaying or exhibiting personal property by a museum or historical society, if no portion of the lease payments include compensation for return on the investment in such leased property shall be deemed to be used exclusively for the purposes of this paragraph. All property leased, other than motor vehicles leased for a period of at least one year and property being acquired pursuant to a lease-purchase agreement, to the state or any municipality or political subdivision of the state by any private entity shall not be considered to be used exclusively by the state or any municipality or political subdivision of the state for the purposes of this section except that the provisions of this sentence shall not apply to any such property subject to lease on the effective date of this act until the term of such lease expires but property taxes levied upon any such property prior to tax year 1989, shall not be abated or refunded. Any property constructed or purchased with the proceeds of industrial revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 12-1740 through 12-1749, and amendments thereto, or purchased with proceeds of improvement district bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-2776, and amendments thereto, or with proceeds of bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-3815a and 19-3815b, and amendments thereto, or any property improved, purchased, constructed, reconstructed or repaired with the proceeds of revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 13-1238 to 13-1245, inclusive, and amendments thereto, or any property improved, reimproved, reconstructed or repaired with the proceeds of revenue bonds issued after July 1, 1963, under the authority of K.S.A. 13-1238 to 13-1245, inclusive, and amendments thereto, which had previously been improved, reconstructed or repaired with the proceeds of revenue bonds issued under such act on or before July 1, 1963, shall be exempt from taxation for so long as any of the revenue bonds issued to finance such construction, reconstruction, improvement, repair or purchase shall be outstanding and unpaid. Any property constructed or purchased with the proceeds of any revenue bonds authorized by K.S.A. 13-1238 to 13-1245, inclusive, *and amendments thereto*, 19-2776, 19-3815a and 19-3815b, and amendments thereto, issued on or after July 1, 1963, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Any property, all or any portion of which is constructed or purchased with the proceeds of revenue bonds authorized by K.S.A. 12-1740 to 12-1749,

inclusive, and amendments thereto, issued on or after July 1, 1963 and prior to July 1, 1981, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased wholly with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued. The exemption of that portion of the property constructed or purchased with the proceeds of revenue bonds shall terminate upon the failure to pay all taxes levied on that portion of the property which is not exempt and the entire property shall be subject to sale in the manner prescribed by K.S.A. 79-2301 *et seq.*, and amendments thereto. Property constructed or purchased in whole or in part with the proceeds of revenue bonds issued on or after January 1, 1995, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, and used in any retail enterprise identified under NAICS sectors 44 and 45, except facilities used exclusively to house the headquarters or back office operations of such retail enterprises identified thereunder, shall not be exempt from taxation. For the purposes of the preceding provision “NAICS” means the North American industry classification system, as developed under the authority of the office of management and budget of the office of the president of the United States. “Headquarters or back office operations” means a facility from which the enterprise is provided direction, management, administrative services, or distribution or warehousing functions in support of transactions made by the enterprise. Property purchased, constructed, reconstructed, equipped, maintained or repaired with the proceeds of industrial revenue bonds issued under the authority of K.S.A. 12-1740 *et seq.*, and amendments thereto, which is located in a redevelopment project area established under the authority of K.S.A. 12-1770 *et seq.*, and amendments thereto, shall not be exempt from taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for any poultry confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903, and amendments thereto, shall not be exempt from such taxation. Property purchased, acquired, constructed, reconstructed, improved, equipped, furnished, repaired, enlarged or remodeled with all or any part of the proceeds of revenue bonds issued under the authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, for a rabbit confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation, as such terms are defined by K.S.A. 17-5903, and amendments thereto, shall not be exempt from such taxation.

Third. All works, machinery and fixtures used exclusively by any rural water district or township water district for conveying or production of potable water in such rural water district or township water district, and all works, machinery and fixtures used exclusively by any entity which performed the functions of a rural water district on and after January 1, 1990, and the works, machinery and equipment of which were exempted hereunder on March 13, 1995.

Fourth. All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof, and for the meeting of fire companies, whether belonging to any rural fire district, township fire district, town, city or village, or to any fire company organized therein or therefor.

Fifth. All property, real and personal, owned by county fair associations organized and operating under the provisions of K.S.A. 2-125 *et seq.*, and amendments thereto.

Sixth. Property acquired and held by any municipality under the mu-

municipal housing law, K.S.A. 17-2337 *et seq.*, and amendments thereto, except that such exemption shall not apply to any portion of the project used by a nondwelling facility for profit making enterprise.

Seventh. All property of a municipality, acquired or held under and for the purposes of the urban renewal law, K.S.A. 17-4742 *et seq.*, and amendments thereto, except that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

Eighth. All property acquired and held by the Kansas armory board for armory purposes under the provisions of K.S.A. 48-317, and amendments thereto.

Ninth. All property acquired and used by the Kansas turnpike authority under the authority of K.S.A. 68-2001 *et seq.*, and amendments thereto, K.S.A. 68-2030 *et seq.*, and amendments thereto, K.S.A. 68-2051 *et seq.*, and amendments thereto, and K.S.A. 68-2070 *et seq.*, and amendments thereto.

Tenth. All property acquired and used for state park purposes by the Kansas department of wildlife ~~and parks~~, *parks and tourism*.

Eleventh. The state office building constructed under authority of K.S.A. 75-3607 *et seq.*, and amendments thereto, and the site upon which such building is located.

Twelfth. All buildings erected under the authority of K.S.A. 76-6a01 *et seq.*, and amendments thereto, and all other student union buildings and student dormitories erected upon the campus of any institution mentioned in K.S.A. 76-6a01, and amendments thereto, by any other non-profit corporation.

Thirteenth. All buildings, as the same is defined in subsection (c) of K.S.A. 76-6a13, and amendments thereto, which are erected, constructed or acquired under the authority of K.S.A. 76-6a13 *et seq.*, and amendments thereto, and building sites acquired therefor.

Fourteenth. All that portion of the waterworks plant and system of the city of Kansas City, Missouri, now or hereafter located within the territory of the state of Kansas pursuant to the compact and agreement adopted by K.S.A. 79-205, and amendments thereto.

Fifteenth. All property, real and personal, owned by a groundwater management district organized and operating pursuant to K.S.A. 82a-1020, and amendments thereto.

Sixteenth. All property, real and personal, owned by the joint water district organized and operating pursuant to K.S.A. 80-1616 *et seq.*, and amendments thereto.

Seventeenth. All property, including interests less than fee ownership, acquired for the state of Kansas by the secretary of transportation or a predecessor in interest which is used in the administration, construction, maintenance or operation of the state system of highways, regardless of how or when acquired.

Eighteenth. Any building used primarily as an industrial training center for academic or vocational education programs designed for and operated under contract with private industry, and located upon a site owned, leased or being acquired by or for an area vocational school, an area vocational-technical school, a technical college, or a community college, as defined by K.S.A. 72-4412, and amendments thereto, and the site upon which any such building is located.

Nineteenth. For all taxable years commencing after December 31, 1997, all buildings of an area vocational school, an area vocational-technical school, a technical college or a community college, as defined by K.S.A. 72-4412, and amendments thereto, which are owned and operated by any such school or college as a student union or dormitory and the site upon which any such building is located.

Twentieth. For all taxable years commencing after December 31, 1997, all personal property which is contained within a dormitory that is exempt from property taxation and which is necessary for the accommodation of the students residing therein.

Twenty-First. All real property from and after the date of its transfer by the city of Olathe, Kansas, to the Kansas state university foundation, all buildings and improvements thereafter erected and located on such property, and all tangible personal property, which is held, used or op-

erated for educational and research purposes at the Kansas state university Olathe innovation campus located in the city of Olathe, Kansas.

Twenty-Second. All real property, and all tangible personal property, owned by postsecondary educational institutions, as that term is defined in K.S.A. 74-3201b, and amendments thereto, or by the board of regents on behalf of the postsecondary educational institutions, which is leased by a for profit company and is actually and regularly used exclusively for research and development purposes so long as any rental income received by such postsecondary educational institution or the board of regents from such a company is used exclusively for educational or scientific purposes. Any such lease or occupancy described in this section shall be for a term of no more than five years.

Twenty-Third. Any and all housing developments and related improvements located on United States department of defense military installations in the State of Kansas, which are developed pursuant to the military housing privatization initiative, 10 U.S.C. § 2871 *et seq.*, or any successor thereto, and which are provided exclusively or primarily for use by military personnel of the United States and their families.

Except as otherwise specifically provided, the provisions of this section shall apply to all taxable years commencing after December 31, 2010.

Sec. 23. K.S.A. 2011 Supp. 79-3234, as amended by section 127 of 2012 Senate Bill No. 316 is hereby amended to read as follows: 79-3234.

(a) All reports and returns required by this act shall be preserved for three years and thereafter until the director orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act; and it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer or employee engaged in the administration of this act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Kansas, by any other state or by the United States government, or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Kansas, any other state or by the United States government.

(c) The secretary or the secretary's designee may: (1) Publish statistics, so classified as to prevent the identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or other legal representatives of the state;

(3) provide the post auditor access to all income tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

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

(5) disclose to the secretary of commerce the following: (A) Specific taxpayer information related to financial information previously submitted by the taxpayer to the secretary of commerce concerning or relevant to any income tax credits, for purposes of verification of such information or evaluating the effectiveness of any tax credit or economic incentive program administered by the secretary of commerce; (B) the amount of payroll withholding taxes an employer is retaining pursuant to K.S.A. 2011 Supp. 74-50,212, and amendments thereto; (C) information received from businesses completing the form required by K.S.A. 2011 Supp. 74-50,217, and amendments thereto; and (D) findings related to a compliance audit conducted by the department of revenue upon the request of

the secretary of commerce pursuant to K.S.A. 2011 Supp. 74-50,215, and amendments thereto;

(6) disclose income tax returns to the state gaming agency to be used solely for the purpose of determining qualifications of licensees of and applicants for licensure in tribal gaming. Any information received by the state gaming agency shall be confidential and shall not be disclosed except to the executive director, employees of the state gaming agency and members and employees of the tribal gaming commission;

(7) disclose the taxpayer's name, last known address and residency status to the Kansas department of wildlife and parks, *parks and tourism* to be used solely in its license fraud investigations;

(8) disclose the name, residence address, employer or Kansas adjusted gross income of a taxpayer who may have a duty of support in a title IV-D case to the secretary of the Kansas department of social and rehabilitation services for use solely in administrative or judicial proceedings to establish, modify or enforce such support obligation in a title IV-D case. In addition to any other limits on use, such use shall be allowed only where subject to a protective order which prohibits disclosure outside of the title IV-D proceeding. As used in this section, "title IV-D case" means a case being administered pursuant to part D of title IV of the federal social security act (42 U.S.C. § 651 *et seq.*), and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e);

(9) permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an income tax, or the authorized representative of either, to inspect the income tax returns made under this act and the secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in income tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the income tax laws, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of tax laws of such state, the state of Kansas or of the United States;

(10) communicate to the executive director of the Kansas lottery information as to whether a person, partnership or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer;

(11) communicate to the executive director of the Kansas racing commission as to whether a person, partnership or corporation has failed to meet any tax obligation to the state of Kansas for the purpose of determining whether such person, partnership or corporation is eligible for a facility owner license or facility manager license pursuant to the Kansas parimutuel racing act;

(12) provide such information to the executive director of the Kansas public employees retirement system for the purpose of determining that certain individuals' reported compensation is in compliance with the Kansas public employees retirement act, K.S.A. 74-4901 *et seq.*, and amendments thereto;

(13) (i) provide taxpayer information of persons suspected of violating K.S.A. 2011 Supp. 44-766, and amendments thereto, to the secretary of labor or such secretary's designee for the purpose of determining compliance by any person with the provisions of *subsection (i)(3)(D) of K.S.A. 44-703(i)(3)(D)* and K.S.A. 2011 Supp. 44-766, and amendments thereto. The information to be provided shall include all relevant information in the possession of the department of revenue necessary for the secretary of labor to make a proper determination of compliance with the provisions of *subsection (i)(3)(D) of K.S.A. 44-703(i)(3)(D)* and K.S.A. 2011 Supp. 44-766, and amendments thereto, and to calculate any unemployment contribution taxes due. Such information to be provided by the department of revenue shall include, but not be limited to, withholding tax and payroll information, the identity of any person that has been or is currently being audited or investigated in connection with the administration and enforcement of the withholding and declaration of estimated tax act,

K.S.A. 79-3294 *et seq.*, and amendments thereto, and the results or status of such audit or investigation;

(ii) any person receiving tax information under the provisions of this paragraph shall be subject to the same duty of confidentiality imposed by law upon the personnel of the department of revenue and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality; *and*

(iii) each of the secretary of labor and the secretary of revenue may adopt rules and regulations necessary to effect the provisions of this paragraph; *and*

(14) *provide such information to the state treasurer for the sole purpose of carrying out the provisions of K.S.A. 58-3934, and amendments thereto. Such information shall be limited to current and prior addresses of taxpayers or associated persons who may have knowledge as to the location of an owner of unclaimed property. For the purposes of this paragraph, "associated persons" includes spouses or dependents listed on income tax returns.*

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

(e) Any violation of subsection (b) or (c) is a class A nonperson misdemeanor and, if the offender is an officer or employee of the state, such officer or employee shall be dismissed from office.

(f) Nothing in this section shall be construed to allow disclosure of the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information, where such disclosure is prohibited by the federal internal revenue code as in effect on September 1, 1996, and amendments thereto, related federal internal revenue rules or regulations, or other federal law.

Sec. 24. K.S.A. 2011 Supp. 16-1602, 21-5428, 21-5428a, 21-6811, 21-6811a, 22-3437, 22-3437b, 22-4705, 22-4705a, 32-1049a, as amended by section 64 of 2012 Senate Bill No. 316, 44-703, 44-703a, 44-706, 44-706b, 59-2132, 65-516, as amended by section 5 of 2012 House Bill No. 2660, 65-1436a, 65-1626, as amended by section 1 of 2012 Senate Bill No. 134, 65-1626, as amended by section 42 of 2012 Senate Bill No. 397, 65-4915, as amended by section 1 of 2012 House Bill No. 2428, 65-4915, as amended by section 51 of 2012 Bill No. 397, 65-6805, as amended by section 28 of 2012 House Bill No. 2416, 65-6805, as amended by section 54 of 2012 Bill No. 397, 68-1051, as amended by section 2 of 2012 House Bill No. 2441, 68-1051, as amended by section 2 of 2012 House Bill No. 2509, 72-1397, 72-5445, 72-5445a, 74-4911f, as amended by section 95 of 2012 Senate Bill No. 316, 74-5089, as amended by section 6 of 2012 Senate Bill No. 417, 74-5602, as amended by section 105 of 2012 Senate Bill No. 316, 74-5602, as amended by section 2 of 2012 House Bill No. 2496, 74-5602, as amended by section 2 of 2012 Senate Bill No. 424, 75-2935, as amended by section 115 of 2012 Senate Bill No. 316, 75-2935, as amended by section 28 of 2012 Senate Bill No. 417, 75-3372, 75-37,121, as amended by section 117 of 2012 Senate Bill No. 316, 75-37,121, as amended by section 33 of 2012 House Bill No. 2416, 76-11a13, 77-415, as amended by section 1 of 2012 Senate Bill No. 252, 77-421, as amended by section 123 of 2012 Senate Bill No. 316, 77-421, as amended by section 2 of 2012 Senate Bill No. 252, 77-421, as amended by section 38 of 2012 House Bill No. 2535, 77-421, as amended by section 55 of 2012 House Bill No. 2416, 79-201a, as amended by section 1 of 2012 House Bill No. 2769, 79-201a, as amended by section 124 of 2012 Senate Bill No. 316, 79-3234, as amended by section 127 of 2012 Senate Bill No. 316 and 79-3234b, as amended by section 128 of 2012 Senate Bill No. 316 are hereby repealed.

Sec. 25. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.